



Ongwacho v County Government of Narok & 2 others (Environment & Land Case 6 of 2024) [2024] KEELC 4781 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4781 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 6 OF 2024
CG MBOGO, J
JUNE 20, 2024**

BETWEEN

ABEL MORANGA ONGWACHO PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NAROK 1ST DEFENDANT

THE LAND REGISTRAR NAROK COUNTY 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion Application dated 15th April, 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Article 40 of *the Constitution* of Kenya, Order 50 of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. Spent
 3. The honourable court be pleased to grant a temporary injunction orders restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating, transferring or otherwise interfering or dealing with the property being title number IR. 265657 pending the hearing and determination of the main suit.
 4. The costs of this application be provided for.
2. The application is premised on the grounds inter alia that the plaintiff/applicant followed due process in acquiring the suit land situated in Lologorian trading center.



3. The application is supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that in the year 1996, he was allocated plot number 672 within Lolgorian trading centre by the then Trans Mara County Council and since then, he has been paying the rent. He deposed that in the year 2023, he was issued with the certificate of title by the Registrar of Titles as the registered proprietor and a lessee vide Title no. IR. 265657 upon successful approvals thereof.
4. The plaintiff/ applicant deposed that in the month of February, 2024, the 1st defendant/ respondent threatened him with an eviction, and leasing the suit land to prominent persons which is contrary to the law, and that he is apprehensive that should the defendants/ respondents proceed to evict him or cancel the lease before the expiry of 99 years, he will be deprived of his rights contrary to the Constitution of Kenya.
5. On 23rd April, 2024, this court directed that the application be canvassed by way of written submissions. The defendants/ respondents were equally directed to file their responses to the application. The defendants/ respondents despite service of the application as per the affidavit of service sworn on 22nd April, 2024, they have not filed their response to the said application. Neither of the parties also filed their written submissions.
6. Be that as it may, I have considered the application, and in my view, the issue for determination is whether the plaintiff/ applicant has met the criteria for grant of temporary injunction. The requirements for the grant of an interlocutory injunction was set out in the case of Giella versus Cassman Brown & Co. Ltd [1973] EA 358 where it was stated:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience (E.A. INDUSTRIES VS. TRUFOODS [1972] E.A. 420.)”
7. A prima facie case was described in the case of Mrao Ltd versus First American Bank of Kenya Ltd & Others Civil Appeal No. 39 of 2002, as:

“In civil case, it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter”
8. On whether the plaintiff/ applicant has established a prima facie case with a probability of success, it is not in dispute that he is the registered owner of the suit land as evidenced by a copy of the lease dated 16th May, 2023. The plaintiff/ applicant therefore succeeds on the first limb of the requirements necessary for grant of injunction.
9. On whether the plaintiff/ applicant will suffer injury or damage that cannot be compensated by damages, the plaintiff/ applicant averred that in the month of February, 2024, the 1st respondent threatened him with an eviction from the suit land or leasing out the same to other prominent persons. On this issue, this court is not able to ascertain the kind of threat said to be issued to the plaintiff/ applicant. Was it verbal or written? There is no evidence or material that has been placed before this court to show that indeed the plaintiff/ applicant is threatened and there is likelihood of eviction. In the absence of the evidence, this court is not able to determine whether the damages to be suffered cannot be compensated by damages.



10. On the third limb and whether the court is in doubt, this court is of the view that the threat of eviction has not been substantiated to warrant the grant the orders sought. Even as the application has not been opposed, it behoves the court to analyse the merits or otherwise of the case.
11. My analysis is that the plaintiff/ applicant has not established sufficient cause to warrant the grant of temporary injunction on account of failure to prove the threat(s) of eviction.
12. Arising from the above, the notice of motion dated 15th April, 2024 lacks merit and it is hereby dismissed. I make no orders as to costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL this 20TH day of JUNE, 2024.

HON. MBOGO C.G.

JUDGE

20/06/2024.

In presence of: -

Mr. Meyoki Pere – C. A

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