



Super Commodities Ltd v Rarama & another (Environment and Land Appeal E028 of 2024) [2024] KEELC 5428 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5428 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E028 OF 2024**

**AA OMOLLO, J
JULY 25, 2024**

BETWEEN

SUPER COMMODITIES LTD APPLICANT

AND

JAMES RARAMA 1ST RESPONDENT

COUNTY GOVERNMENT NAIROBI 2ND RESPONDENT

RULING

1. For determination is the Appellant’s notice of motion dated 16th March, 2024 and brought under the provisions of article 40 of the Constitution Order 41 and 51 of the Civil Procedure Rules and under overriding powers of the court. The Appellant/Applicant prays for orders;
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit this Honourable Court be pleased to issue a temporary injunction against the 1st Respondent and/or their servants or agents from carrying out any constructions, works, development of establishment or running of any commercial business in form of a car bazaar on all that parcel of land referenced as LR/27/70 situated at Ridgeways Nairobi.
 4. That costs of this application be provided for.
2. The application is premised on the grounds on its face *inter alia*;
 - a. That Appellant/Applicant is a resident of Ridgeways which property borders the 1st Defendants parcel of land referenced as LR No 27/70 “suit property” situate in Nairobi County.



- b. That on or about the 1st July, 2023 the 1st Respondent as registered proprietor of the suit property commenced construction works on the suit property with the aim of establishment of a car bazaar for sale of motor vehicles to members of the public.
 - c. That on the 14th February, 2024 Hon. S. A. Opande issued a ruling that struck suit out necessitating the instant appeal ELC Appeal No E028 of 2024 Super Commodities Ltd v James Karama & Another before this Honourable Court.
 - d. That the Applicant is apprehensive that pending the instant appeal as filed the 1st Respondent will complete the illegal works already commenced an year ago as no preservatory orders exist to safe guard the Applicants property from immediate loss rendering the appeal moot and nugatory.
3. The applicant was further supported by the affidavit of Stephen Kirumba sworn on 16th March, 2024. He annexed photographs of the constructions works of a car bazaar on the suit property. Consequently, at the commencement of the construction, he filed CM ELC 359 of 2023 which was struck out. Subsequently, the Applicant deposes to filing the current appeal.
 4. He contends that the establishment of car bazaar in a residential neighbourhood next to my parcel of land shall cause the immediate vicinity especially my parcel of land to lose its lustre & appeal with the value of my land greatly to deteriorate in the face of a car lot riddled with cages and barbed security wire. That moreover the security of the area and in particular my residence, chattels on my property and persons living with me shall be greatly exposed to larceny as the 1st Respondent cannot be reasonably expected to guarantee security and oversight over all persons making way to the proposed establishment.
 5. The application was opposed by grounds of opposition and replying affidavit both dated 19th April, 2024. The 1st Respondent deposed that he has developed the suit property in accordance with the law and has been using one of the buildings as a guest house since the year 2008 and all this time he has never had conflict with his neighbours.
 6. He deposed that my property in order to cater for the activities of Guest House has a large carpark grounds to host events among other structures for the convenience and comfort of our guests. That he was in the process of improving the grounds and the car park which has been in use all years when the Appellant/Applicant filed these proceedings to stop improvements which were already part of the regular renovation of the facility in need of a facelift.
 7. That among these regular part time customers is a car bazaar owner who usually stored his cars in my parking pending moving them to the yard where they were sold and he sought to rent out some of my office space I was developing in order to station his staff there instead of moving the cars back and forth and he undertook the approval process for the same and obtained the approval on 13th October, 2023.
 8. The 1st Respondent added that the renovations are complete and the car bazaar has taken out a unified business permit. He urged that the present application be dismissed with costs.
 9. I have perused the skeleton arguments filed by the 1st Respondent dated 30th May, 2024. On the issue of whether there is a pending suit upon which the injunction can be granted, my answer is, yes. The applicant has come before this court by way of appeal challenging the orders striking out his suit.
 10. On whether to grant the orders of injunction sought, the Applicant must satisfy the criteria set in the case of *Giella v Cassman* brown of proof of *prima facie* case, irreparable loss and on whose favour the balance of convenience tilts.



11. There is no dispute as to whether the Applicant and the 1st Respondent are neighbours. From the pleadings, the 1st Respondent has not denied that he is leased part of his suit property to be used for a car bazaar. He went further to explain that the property is developed, has been used for guest house, guests' car park and hosting of events. This averment mean that the allegations raised on how the property has been put to use is not unfounded. Thus a prima facie case is established to the extent that the suit which was struck out challenged the usage and which is the gist of this appeal.
12. On whether the Appellant is likely to suffer irreparable loss is a question which may not be determined in this appeal. The Appeal is challenging a negative order and the suit was struck out before delving into merits. In any event, the Appellant has not demonstrated any way of affidavit that the nuisance and insecurity suffered cannot be compensated by way of damages.
13. Under the heading of balance of convenience, I find the same tilts in favour of the 1st Respondent. Although the Applicant stated that the 1st Respondent commenced construction on 1st July, 2023, the property was developed with a house as at 2008. What was taking place in July, 2023 is what the 1st Respondent refers to improvement of the grounds for car park/bazaar and which is already complete.
14. By the time this application was filed, the bazaar was already operational. The nature of the usage in my view can easily be reversed in the event the Applicant succeeds. It serves the interest of justice that the 1st Respondent carries on with his business until the appeal is heard instead of giving mandatory orders of injunction couched as temporary injunction.
15. In conclusion, I find the present application dated 16th March, 2024 to be without merit. It is dismissed. The cost does abide the appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024

A. OMOLLO

JUDGE

