



Owino, Ndogo & Okemwa (Suing in their Representative Capacities as the Secretary, Chairman and Treasurer Respectively of Tassia Welfare Association) v Board of Trustees National Social Security Funds & another (Environment & Land Case E161 of 2023) [2024] KEELC 5528 (KLR) (15 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E161 OF 2023**

**JA MOGENI, J
JULY 15, 2024**

BETWEEN

**JOHN PATTERSON OWINO, ELIJAH NDOGA & AGNES OKEMWA
(SUING IN THEIR REPRESENTATIVE CAPACITIES AS THE SECRETARY,
CHAIRMAN AND TREASURER RESPECTIVELY OF TASSIA WELFARE
ASSOCIATION) PLAINTIFF**

AND

**THE BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY
FUNDS 1ST DEFENDANT
NAIROBI CITY COUNTY 2ND DEFENDANT**

RULING

1. Before this Court for determination is a Notice of motion dated 7/11/2023 brought pursuant to Order 40 Rule 1(a) and (27 of the Civil Procedure Rules, Section 1A, 1B, 3A and 63 (E) of the Civil Procedure Act, Section 24 (a), 25 (1) of the land registration act No. 3 of 2012, article 40 and 159 of the constitution of the Republic of Kenya 2010 and other enabling provisions of the Law. The Plaintiff/Applicant seeks the following orders:

1. Spent.
2. Spent.
3. That an order of an injunction be issued restraining the Defendants/Respondents herein whether by themselves, their agents, servants, employees, invitees, and/or otherwise whosoever from entering upon, trespassing, constructing or offering for sale, selling, disposing of, charging, sub-dividing, dealing, alienating, occupying, managing, letting, issuing of titles,



allocating or otherwise using residing, remaining, interfering with the quiet possession and enjoyment over all that pieces of land known as L.R No. 97/5262 police post, L.R No. 97/5265, D.O's office, L.R No. 97/ 5264 chief's office, L.R No. 97/5263 post office, L.R No. 97/5266, health centre L.R No. 97/5288 Ap lines, L.R No. 97/2715, community hall L.R No. 97/5289 open space (park) L.R No. 97/2660 primary school and L.R No. 97/2659, nursery school, plot No. 5266/1, 5566/2, 5266/3,5266/4, 5266/5, 5266/6, 5266/7, 5266/8, 5266/9, 5266/10, 5266/11, 5266/12, 5266/13, 5266/14, 5266/15, 5266/16,, 5266/17, 5266/18, 5266/19, 5266/20, 5266/21, 5246/22, 5266/23, 5266/24, 5266/25, 5266/26, 5266/27, 5266/28, 5266/29, 5266/30, 5266/31, 5266/32, 5266/33, 5266/34, 5266/35, 5266/36, 5266/37, 5266/38, 5266/39, 5266/40, 5266/41, 5266/42, 5266/43, 5266/44, 5266/45, 5266/46, 5266/47, 5266/48, 5266/49, 5266/50, 5266/51, 5266/52, 5266/53, 5266/54, 5266/55, 5266/56, 5266/57, 5266/58, 5266/59, 5266/60, 5266/61, 5266/62, 5266/63, 5566/64, 5266/65, 5266/66, 5266/67, 5266/68, 5266/69, 5266/70, 5266/71, 5266/72, 5266/73, 5266/74, 5266/75, 5566/76, 5266/77, 5266/78, 5266/79, 5266/80, 5266/81, 5266/82, 5266/83, 5266/84, 5266/85, 5266/86, 5266/87, 5266/88, 5266,89, 5266/90, 5266/91, 5266/92, 5266/93, 5266/94, 5266/95 5266/96, 5266/97, 5266/98, 5266/99 and 5266/100, 97/6 sub-divided created L. R 6/1, 6/2, 6/3, 6/4, 6/5, LR No. 97/5 sub-divided and created L.R No. 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, L.R No. 7/4893 sub-divided and created L.R No. 4838/1 4838/2, 4838/3, 4838/4, 4838/5, 4838/6, 4838/7, 4838/8, 4838/9, 4838/10, 4838/11, L.R No. 97/4422 school subdivided and created L.R No. 4422/1, 4422/2, 4422/3, 4422/4, 4422/5, 4422/6, 4422/7, 4422/8, 4422/9, 4422/10, 4422/11, 4422/12, L.R No. 97/2459/1,L.R. No.97/2871/1, L.R NO. 97/533/1, TR NO: 97/560/1, L.R NO, 97/561/1, L..R NO. 97/588/1, L.R NO. 97/589/1. LR NO. 97/614/1, L.R NO. 97/615/1, L.R NO. 97/640/1, L.R NO. 97/2212/1 and UR NO, 97/2206/1 within Nairobi County pending the hearing and determination of this suit.

4. That the OCS Kasarani Police Station do supervise compliance of the orders issued herein.
5. That costs of this application be provided for.
2. The Application was supported on the grounds stated in paragraph (1) – (18) on the face of the Application, the annexed affidavit sworn on 7/11/2023, Supplementary Affidavit sworn on 14/03/2024 and Further Affidavit sworn on 11/04/2024, all by John Patterson Owino, the secretary of the Plaintiff/Applicant herein. I do not need to reproduce the same.
3. The Application is opposed by both Defendants. The 1st Defendant/Respondent filed a Replying Affidavit by Hellen C. Koech, Ag. Manager Legal and Regulatory Services of the 1st Defendant/Respondent herein, sworn on 19/01/2024. In summary, the 1st Defendant/Respondent described the Plaintiff/Applicant's application as mischievous and misleading the court through fraudulent misrepresentation and non-disclosure of material facts. According to them, the matter concerns properties in Tassia, Nairobi, owned by the 1st Defendant/Respondent, which were purchased between 1992 and 1995 from Tassia Coffee Estate Limited for development.
4. They contended that the 1st Defendant/Respondent holds titles for significant land parcels in Tassia Estate. In 2002, squatters and land grabbers invaded and subdivided these properties without valid titles. Despite obtaining a favorable judgment in 2004 (HCC NO. 529 of 2002) for eviction and demolition of illegal structures, logistical and security challenges prevented enforcement. Following consultations, the 1st Defendant/Respondent agreed in 2005 to sell plots to the squatters. This led to a regularization effort, approved in 2018 after significant delays. However, implementing the plan proved challenging, necessitating re-surveying. Consequently, it has been contended that the Plaintiff/Applicants' claims lack standing and are based on unsubstantiated allegations. They do not have a



legitimate interest or titles to the properties and have not disclosed any valid claims. The application is deemed frivolous, vexatious, and without merit, and thus should be dismissed.

5. The 2nd Defendant/Respondent filed a Replying Affidavit by Tom Achar, the Chief Officer – Urban Development and Planning at the 2nd Defendant/Respondent herein, sworn on 27/03/2024. In a nutshell, the 2nd Defendant/Respondent responded by outlining that between 1992 and 1995, the 1st Respondent purchased three land parcels in Tassia Estate, Embakasi, with plans to develop them into commercial and residential properties. A survey and subdivision master plan, the NSSF Tassia II & III Embakasi Regulation Plan 2006, was created, including 5,200 plots and various public purpose plots. The 1st Respondent surrendered these public purpose plots to the 2nd Respondent for the development of public utilities. However, only a portion of these plots has been utilized, with the rest being illegally occupied. The 1st Respondent has since re-surveyed and subdivided these plots, conflicting with the original surrender.
6. The 2nd Defendant/Respondent contends that the Plaintiff's request for injunctive orders would prevent the 2nd Respondent from managing and providing essential public services on these plots, which serve approximately 10,000 residents. They argue that these orders are detrimental, unreasonable, and would disrupt crucial services, including education and healthcare. The 2nd Defendant has sought to review and set aside interim injunctive orders already issued, emphasizing that public interest and convenience weigh against the Plaintiff's application. They request that the court dismiss the application with costs, or at least modify the orders to exclude the 2nd Respondent from their scope.
7. The Court gave directions on filing of written submissions and a Ruling date was reserved. The parties duly submitted and I have considered them. The Plaintiff/Applicant filed written submissions dated 14/03/2024. The 1st Defendant/Respondent filed written submissions dated 31/01/2024. The 2nd Defendant/Respondent filed written submissions dated 27/03/2024. The Plaintiff/Applicant filed a Reply to the 2nd Defendant/Respondent's submissions dated 13/05/2024.
8. I in turn have had time to analyze the emerging issues therein. The instant Application relates to the grant of temporary injunctive relief pending the hearing and determination of this suit.
9. The substantive law on this matter is Order 40 Rule 1 (a) of the Civil Procedure Rules 2010 which provides:

“Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
10. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the Applicant has established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicant stands to suffer irreparable loss that the Respondent would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who's favour the balance of convenience tilted. These principles were established in *Giella vs. Cassman Brown & Co. Ltd* 1973 E.A 358.



11. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in *Nguruman Ltd v. Jan Bonde Nielsen & 2 Others*, [2014] eKLR observed that:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

- a. Establish his case only at a prima facie level,
- b. Demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) Alleviate any doubts as to (b) by showing that the balance of convenience is in his favour.

12. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Applicants have established a prima facie case. A prima facie case was defined in *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where Bosire, JA stated as follows:

“So what is a prima facie case? I would say that in civil cases 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 apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. The Court of Appeal deliberating what amounted to a prima facie case in *Nguruman* (Supra) made the following comments: -

“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial

and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

14. Having established the school of judicial thought I ought to abide, I shall now fix my gaze upon this instant application all the while cautioning myself not delve into the intricacies of the case as that is a preserve of the substantive suit.

15. A key point of contention in this matter is the ownership of the suit property and management of the suit properties. Both the Plaintiff and the 2nd Defendant/Respondent are laying claim to the public utility suit properties which they each want preserved but each party is accusing the other of meddling in the impugned suit property. The said ownership can only be resolved by calling witnesses in the main trial. The disputed facts cannot be resolved by affidavit evidence.

16. The 2nd Defendant/Respondent deponed that they have been in quite possession for over 15 years now and are managing the suit properties on behalf of the public and injunctive orders are tantamount to evicting them from the suit property to the detriment of the public services they are overseeing for the provision to the public.



17. The 2nd Defendant/Respondent deponed that the Public interests and balance of convenience in the circumstances of this case weighs heavily in its favour and against this instant Application (Orders as currently framed) for temporary injunctive orders. They thus prayed it be dismissed with costs if this court is not inclined to invoke its inherent jurisdiction and alter the orders sought.
18. In considering the above circumstances, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the application, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.
19. I note that this application was also brought under the provisions of Sections 3A of the *Civil Procedure Act*, which grants this court a wide discretion to grant interlocutory orders as may appear to be just and convenient.
20. The Black's Law Dictionary, Butter Worth's 9th Edition, defines status quo as a Latin word which means 'the situation as it exists'. The purpose of an order of status quo has been reiterated in a number of decisions.
21. In the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”
22. In the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows: -

“... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
23. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit, it is the view of the court that apart from preserving the substratum of the subject matter, an order of status quo is a case management strategy, where the Court will be keen to prevent prejudice as between the parties to a matter pending the hearing and determination of the main suit. The circumstances in this matter demonstrate that both the Plaintiff/Applicant and the 2nd Defendant/Respondent as it stands have an interest that needs to be preserved pending the determination of this suit. To meet the end of justice, neither party should be prejudiced.
24. Having discussed the definition and purpose of a status quo order, the next question is the nature of the order and whether it differs from an injunctive order. In the case of Fatuma Abdi Jillo v Kuro Lengesen & another [2021] eKLR, it was stated as follows: -

“Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows:



“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

25. Further, in the case of *Thugi River Estate Limited & Another v National Bank of Kenya Limited & 3 Others* [2015] eKLR, Onguto J. stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court.

“Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved.”

26. Odunga J. in the case of *Thugi River Estate Limited* (supra) goes further to set out the proper manner in which the court ought to frame a status quo order, especially where it is one that the court has originated. He stated that;

“ Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

27. In summary from the above cases, the following matters relating to status quo orders are emergent; that status quo orders can be made by the Court on its own motion in the exercise of its general jurisdiction; that status quo orders can be issued for the purpose of preserving the subject matter of the property, for case management reasons and in a bid to prevent prejudice from being visited against either party to the case; that status quo orders are different from injunctions, meaning that the considerations to be established for grant of injunctions are not necessary under status quo orders; and that a court originating status quo orders to explicitly frame the state of affairs to be preserved.

28. Arising from all the above, this Honourable Court proceeds to make the following findings. These findings are: -



- a. That the Court issues an order for status quo to be maintained on the suit property meaning there shall be no interference with the quiet possession, this means no sub-division, selling and/or allocating to third parties all that pieces of land known as L.R No. 97/5262 police post, L.R No. 97/5265, D.O's office, L.R No. 97/ 5264 chief's office, L.R No. 97/5263 post office, L.R No. 97/5266, health centre LR No. 97/5288 Ap lines, L.R No. 97/2715, community hall L.R No. 97/5289 open space (park) L.R No. 97/2660 primary school and L.R No. 97/2659, nursery school, plot No. 5266/1, 5566/2, 5266/3, 5266/4, 5266/5, 5266/6, 5266/7, 5266/8, 5266/9, 5266/10, 5266/11, 5266/12, 5266/13, 5266/14, 5266/15, 5266/16, 5266/17, 5266/18, 5266/19, 5266/20, 5266/21, 5246/22, 5266/23, 5266/24, 5266/25, 5266/26, 5266/27, 5266/28, 5266/29, 5266/30, 5266/31, 5266/32, 5266/33, 5266/34, 5266/35, 5266/36, 5266/37, 5266/38, 5266/39, 5266/40, 5266/41, 5266/42, 5266/43, 5266/44, 5266/45, 5266/46, 5266/47, 5266/48, 5266/49, 5266/50, 5266/51, 5266/52, 5266/53, 5266/54, 5266/55, 5266/56, 5266/57, 5266/58, 5266/59, 5266/60, 5266/61, 5266/62, 5266/63, 5566/64, 5266/65, 5266/66, 5266/67, 5266/68, 5266/69, 5266/70, 5266/71, 5266/72, 5266/73, 5266/74, 5266/75, 5566/76, 5266/77, 5266/78, 5266/79, 5266/80, 5266/81, 5266/82, 5266/83, 5266/84, 5266/85, 5266/86, 5266/87, 5266/88, 5266/89, 5266/90, 5266/91, 5266/92, 5266/93, 5266/94, 5266/95 5266/96, 5266/97, 5266/98, 5266/99 and 5266/100, 97/6 sub-divided created L.R 6/1, 6/2, 6/3, 6/4, 6/5, LR No. 97/5 sub-divided and created L.R No. 5/1, 5/2, 5/3, 5/4, 5/5, 5/6, L.R No. 7/4893 sub-divided and created L.R No. 4838/1 4838/2, 4838/3, 4838/4, 4838/5, 4838/6, 4838/7, 4838/8, 4838/9, 4838/10, 4838/11, L.R No. 97/4422 school subdivided and created L.R No. 4422/1, 4422/2, 4422/3, 4422/4, 4422/5, 4422/6, 4422/7, 4422/8, 4422/9, 4422/10, 4422/11, 4422/12, L.R No. 97/2459/1, L.R. No.97/2871/1, L.R No. 97/533/1, LR No. 97/560/1, L.R No, 97/561/1, L.R No. 97/588/1, L.R No. 97/589/1. LR No. 97/614/1, L.R No. 97/615/1, L.R No. 97/640/1, L.R No. 97/2212/1 and LR No, 97/2206/1 until this matter is heard and determined.
- b. That there shall be maintained peace and tranquility by all the parties and their agents at the suit property at all times during the pendency of this suit until it is heard and determined.
- c. That the OCS Kasarani Police Station do supervise compliance of the orders issued herein.
- d. Costs shall be in the cause.

29. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY JULY 2024.

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MOGENI J

JUDGE

In The Presence Of:

Mrs. Moindi for Plaintiff/Applicant

Ms. Atieno holding brief for Koceyo for 1st Defendant

Ms. Mwangi holding brief for Mr. Bake for the 2nd Defendant

Ms. C. Sagina Court Assistant
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**MOGENI J
JUDGE**

