



**Keresheu v Kosai & 8 others (Environment & Land Case 6 of 2018)
[2024] KEELC 6306 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6306 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 6 OF 2018
LC KOMINGOI, J
SEPTEMBER 26, 2024**

BETWEEN

PARSAPIYO OLE KERESHEU PLAINTIFF

AND

TIOTE ENE KOSAI 1ST DEFENDANT

SOKORTE ENE KOSAI 2ND DEFENDANT

OLTETIA OLE KONTE 3RD DEFENDANT

SIMON OLE KONTE 4TH DEFENDANT

KIPINO OLE S KASOI 5TH DEFENDANT

THE NATIONAL LANDS COMMISSION 6TH DEFENDANT

THE LAND REGISTRAR, KAJIADO NORTH 7TH DEFENDANT

LETINA SUYA MASIN 8TH DEFENDANT

DAVID KONDE OLE KISERAI 9TH DEFENDANT

RULING

1. This is the Notice of Motion dated 11th October 2023 brought under; (Orders 50 (1) 40 (1,2) SS Sections 1 1B, 3, 3 A & 63 of the civil procedure rules, Article 50 & 159 of the New Constitution of Kenya 2010)
2. It seeks Orders;
 1. Spent.



2. There be orders directed to the 1st, 2nd, 3rd, 4th, 5th, 8th and 9th defendants or their agents to stop encroaching, interfering or trespassing into L.R. No. 1273 described herein as the disputed property and further stop committing acts of illegal logging or cutting of trees on the disputed land belonging to the applicant pending the hearing of this application as the main suit.
 3. There be an order of Status quo interms of occupation of L.R. No. 1273 to the extent that the plaintiff in occupation of L.R. 1273 pending the hearing of the main suit.
 4. There be orders directed to the Area Forest Officer, the Police and the Area Chief to ensure that orders 2,3 and 4 are complied with to the letter and in particular to stop encroachment and deforestation on L.R. No. 1273 occupied by the Plaintiff/Applicant pending the hearing and determination of this suit.
 5. The Honourable court do order stopping of subdivision of L.R. No.1271 & 1272 for the purposes of the ease of the surveyor making a report of survey of L.R. No. 1273 and file a report in court within 30 days of the orders of the Honourable court to enable this matter to be fixed for pre-trial, hearing and final determination.
 6. The Land Registrar to stop any activities of subdivision involving L.R. Nos. 1271, 1272, 1273 and 1274 for ease of determination of boundary dispute in respect of this suit in the meantime and that this order do serve as a caution to be registered at the respective land registry by the 7th defendant pending the determination of the main suit.
 7. These orders be served upon the Area Chief, Sub-county Commissioner Kajiado West, the Area OCS and Forest Officer to enforce.
 8. Costs of this suit be on the cause.
3. The grounds are on the face of the Application are set out in paragraphs 1 to 11.
 4. The Application is supported by the Affidavit of Parsapiyo Ole Keresheu, the Plaintiff/Applicant herein, sworn on the 11th October 2023.
 5. The Application is opposed. There is a Replying Affidavit sworn by Oltetia Ole Konte, the 3rd Defendant/Respondent herein, sworn on the 24th January 2024.
 6. On the 1st February 2024, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

The Plaintiff's/Applicant's Submissions.

7. They are dated 3rd June 2024.
Counsel submitted that the Plaintiff/Applicant has been in occupation of LR. NO. 1273 for more than forty (40) years while the Defendants reside elsewhere. It is further submitted that the suit property was irregularly issued to the Defendants and hence the registration be reversed.
8. Counsel further submitted that the Plaintiff was member No.494 and was entitled to allocation in phase 1. That there is need to maintain the status quo pending the hearing and determination of this suit. He has put forward the cases of; Douglas Musa Machage v Samuel Ngigi Karuri & Another Nakuru ELC 43B of 2016; Nyali Beach Cycads Ltd v Francis Kamau Guchu &2 Others Machakos ELC E002 of 2020.

He prays that the Application be allowed.



The 1st-5th, 8 & 9th Defendants Submission.

9. They are dated 13th February 2024.

Counsel submitted that the suit property belongs to the Defendants who have been able to process a title deed hence the Plaintiff is an impostor who wants to acquire title fraudulently.

10. It is further submitted that the Application is bad in law, mis - conceived and an abuse of the court process as the Defendants were allocated the suit property by Ewaso Group Ranch.

He has put forward the cases of *Giella v Cassman Brwon* (1973) EA 358; *Yego v Tuyya* (1986) KLR 726 to reiterate that the Plaintiff has not met the conditions for grant of injunction.

11. It is further submitted that the court should be alive to the fact that the court is not required to make final findings of contested facts but to weigh the relative strength of the parties cases. He has put forward the case of *American Cyanamid Co. v Ethicon Limited* (1975) 1 ALL ER 506; (1975) A.C. 396 HL at 510.

12. Counsel further submitted that the Plaintiff has not demonstrated how he came into possession of the suit property and has not exhibited any other documents to support this case.

13. It is also submitted that the Plaintiff has not demonstrated what injury he will suffer that cannot be compensated by an award of damages. He prays that the Application be dismissed.

14. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination:

- i. Whether the Plaintiff/Applicant's Application meets the threshold for grant of orders of temporary injunction.
- ii. Who should bear costs of the Application?

15. In their submissions, counsel have substantiated their clients' respective positions stated in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.

16. The principles were laid down in the precedent setting case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. In the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125 the court of Appeal in determining what amounts to a prima facie case stated;

“So what is a prima facie case? I would say that in a civil application 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”.

17. It is the Plaintiff/Applicant's case that he has been in occupation of the suit property for over forty (40) years. He further stated that the 3rd, 4th Defendants were fraudulently registered as the owners of the suit property.

18. In his replying affidavit the 3rd Defendant/Respondent admits that the Plaintiff was a member Number 494 Ewaso Kedong Group Ranch. The 3rd Defendant at Paragraph 10 of the Replying Affidavit stated;

“That the Applicant was in Phase 2 Group and was No.167 on the phases register list and was allocated parcel number 2726. Attached and marked OOK2 in the Phase 2 register”.



19. I have gone through the said register which starts from No.165 to 193. There is nothing to show what this was the register for Phase 2. No. 167 is Parsapiyo Ole Keresheu Register No. 494.
20. There are other numbers like 170 and 176 which are indicated to be in Phase 1. The said register is not signed by any of the officials. This court cannot rely on it.
21. Finally, the 3rd Defendant/Respondent admits that “the Plaintiff refused to move to his allocated land stay put to date---“. This confirms that the Plaintiff is on the suit property.
22. I agree that by issuing orders in terms of Prayer No. 2 of Notice of Motion may amount to the eviction of the 1st and 2nd Defendants from their respective portions. I therefore decline to grant such an order.
23. In conclusion I find merit in this application and I grant the orders namely;
 - a. That an Order is hereby issued that the Plaintiff/Applicant remains in occupation of the land known as Kajiado/Ewaso Kedong/1273 pending the hearing and determination of this suit.
 - b. That an Order is hereby issued stopping the sub-division of Kajiado/Ewaso Kedong/1271 and 1272 until the surveyor finalizes the report to be filed in this court within 45 days from the date of this ruling.
 - c. That costs of this application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF SEPTEMBER 2024.

L. KOMINGOI
JUDGE.

In the presence of:

Mr. Ogeto for the Plaintiff.

Mr. Omondi for Mr. Ario for the 1st – 5th Defendants.

N/A for the 6th – 9th Defendants.

Court Assistant – Mutisya.

