



**Magena Coffee Farmers Society Limited v Blushift Company Limited & 5 others (Environment & Land Case E004 of 2024) [2024] KEELC 6196 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6196 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E004 OF 2024**

**M SILA, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**MAGENA COFFEE FARMERS SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**BLUESHIFT COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**THE COUNTY COMMISSIONER GUCHA ..... 2<sup>ND</sup> DEFENDANT**

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING & URBAN  
DEVELOPMENT ..... 3<sup>RD</sup> DEFENDANT**

**KISII COUNTY GOVERNMENT ..... 4<sup>TH</sup> DEFENDANT**

**KISII COUNTY LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

(Application for injunction; principles to be applied; plaintiff claiming to own the disputed land and complaining that the defendants have taken it over and wish to put up a Government Affordable Housing Project without first undertaking a compulsory acquisition; respondents response being that the suit land is public land; no title exhibited by the plaintiff in his own name; title showing a different entity with no proof of incorporation; without demonstrating ownership of the suit land cannot be said that the plaintiff has established a *prima facie* case; application dismissed)

1. The application before me is that dated 25 March 2024 filed by the plaintiff. The substantive order sought is for injunction to restrain the 1<sup>st</sup> defendant/respondent from constructing, entering, trespassing, or carrying out any preparatory work of construction on the applicant’s land parcel Majoge/Boochi/1495 (the suit land). The application is opposed.



2. The case of the applicant as discernible in the plaint and in the supporting affidavit to the application. She contends to be the proprietor of the suit land through its affiliate, Nyamonyo Coffee Factory, and thus entitled to its full benefits. She avers that on the land she has a factory house, offices, and various machinery used for coffee processing for the benefit of farmers who deliver coffee therein. She has filed suit because the Government, through the 2<sup>nd</sup> defendant/respondent, that is the Ministry of Lands, Public Works, Housing and Urban Development, wishes to construct housing units on the suit land under the Government affordable housing initiative. The 1<sup>st</sup> defendant/respondent is the contractor engaged to undertake the project. The applicant asserts that she has never given out her land for this project and the same has never been compulsorily acquired. It is pleaded that officers from the Government visited the suit land on 21 February 2023 without prior notice to the management of the applicant. That on 5 March 2024, the Chairman of the applicant, one Nyatwori Nyakwae, who is also the deponent, received a letter from the Deputy County Commissioner, Gucha, inviting him to a public participation meeting on affordable housing project in Ogembo Municipality which meeting was scheduled for the following day, i.e 6 March 2024 at 2.00pm. He deposes that following the said meeting, on 8 March 2024, agents of the 1<sup>st</sup> respondent sealed off the suit land and commenced ground clearing in readiness for the launch of the affordable housing project without the permission or consent of the applicant. It is averred that the 1<sup>st</sup> respondent, aided by the 2<sup>nd</sup> respondent, has now completely blocked the factory premises from being accessed by farmers and staff. The applicant contends that this is an illegal blockade and occupation, a forcible detainer of her land, and violates her right to property.
3. In the suit, the applicant seeks orders for a declaration that she is the owner of the suit land; that the forceful takeover of her land is not in compliance with the law and is illegal; a permanent injunction to restrain the defendants from the suit land; a declaration that she is entitled to full compensation for the value of the property as provided under Article 40 (3) of the *Constitution*; special and general damages for loss occasioned by the illegal acts of the defendants; general damages for forcible detainer; costs and interest.
4. The 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, and 6<sup>th</sup> defendants have opposed the motion through a replying affidavit sworn by Linnet Akinyi Nyakiti, the County Director of Housing, Kisii County. She contends that there is no nexus between the plaintiff/applicant and the suit land and the applicant has no *locus standi*. She deposes that during adjudication in 1968, the suit land was first set aside for public purpose and reserved for Nyamonyo Coffee Factory, and being public land was registered in name of Gusii County Council to hold in trust for the yet to be established Nyamonyo Coffee Factory. She deposes that the National and County Government through collaboration have identified public land for construction of affordable housing within Ogembo Municipality. She deposes that following elevation of Ogembo Town into a Municipality, the County Government of Kisii embarked on replanning of the town in compliance with the *Physical Planning Act*, and pursuant thereto, the *Ogembo Town Local, Physical, and Land Use Development Plan (2018 – 2038)* was developed and approved on 21 July 2021. As a result several parcels of land within Ogembo Town were affected including the suit land and they were accordingly replanned. She proceeds to state that the suit land which had been set aside for Nyamonyo Coffee Factory to assist coffee farmers was redesignated following this 2021 plan and was set aside as public land to host the proposed Ogembo Municipality Fire Sub-Station, and that members of Nyamonyo Coffee Factory were consulted, relocated, and given 4 acres from the land parcel Majoge/Boochi/1514. She has annexed an extract of the 2021 Plan.
5. She avers that the replanning of Ogembo Town was a participatory exercise where every person was engaged and all outstanding issues sorted before approval. She deposes that the suit land was identified as a good site for construction of affordable housing in Kisii County and public participation forums were undertaken after which the suit land was handed over to the 1<sup>st</sup> respondent to commence clearing



of the suit in readiness for construction. She avers that the 3<sup>rd</sup> respondent engaged various stakeholders in the initiation of the project including the County Survey office which confirmed that the suit land is public land and she has annexed a letter to that effect dated 12 March 2024. She contends that the suit land was initially set aside for a public purpose to assist coffee farmers but through the 2021 plan, the land was replanned for a fire substation and this clarifies that it is public land. She asserts that there is no correlation between the applicant and the initial owner, Nyamonyo Coffee Factory, and that the applicant came into existence in 2011, which is 43 years after the land was reserved for the Factory. She presses that the documents adduced by the applicant in no way demonstrate that Nyamonyo Coffee Factory is an affiliate of the applicant as alleged. She does not believe that the applicant has met the threshold set in the case of *Giella vs Cassman Brown* (1973) EA 358 in order to obtain an order of injunction.

6. The applicant filed a supplementary affidavit again sworn by Nyatwari Nyakwae. He reiterates that Nyamonyo Coffee Factory is an affiliate factory of the applicant. He states that during registration the suit land was registered under the name of Gusii County Council but only as trustees for the yet to be established Nyamonyo Coffee Factory. He states that it is settled that the suit land was reserved for coffee farmers from Nyamonyo area for purposes of processing their coffee and the same is not public land as contended. He adds that the suit land does not belong to the Ogembo Municipality nor the County Government of Kisii but is owned by a public entity only subject to the control of the National Land Commission. He claims that the alleged replanning of Ogembo over the suit land was in breach of her property rights protected under the Constitution and that the applicant was never engaged in any consultative meeting nor stakeholder engagements. He adds that the conclusion in the letter dated 12 March 2024 is not in favour of the respondents thus the more reason that the intended construction must stop. She has denied that Nyamonyo Coffee Factory was given alternative land as claimed and adds that there is no evidence of the existence of such allocation. He stated that the elevation of Ogembo town into a Municipality does not entitle the acquisition of private property without following the law on compulsory acquisition.
7. Nothing was filed by the 1<sup>st</sup> and 4<sup>th</sup> respondent.
8. I directed that the application be canvassed through written submissions and I have taken note of the submissions filed by Mr. Begi, learned counsel for the applicant, and Mr. Wabwire, learned State Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents. I have taken these into account before arriving at my decision.
9. If I am to summarize the applicant's case, it is that she is the owner of the suit property, and therefore the respondents cannot commence the proposed affordable housing project without first undertaking the process of compulsory acquisition. The position of the respondents is that the applicant does not own the suit land. I need therefore, at this preliminary stage, hold whether, *prima facie*, the applicant has demonstrated ownership of the suit land. This, I must emphasise, is only a preliminary assessment for purposes of determining whether the applicant has established a *prima facie* case, and the holding thereof is not binding on the court upon hearing the case on its merits.
10. I have looked at the register and Certificate of title of the suit land. I can see that the suit land was reserved for Nyamonyo Coffee Factory and was registered in name of Gusii County Council on 17 May 1968. On 24 December 2007, Nyamonyo Coffee Factory became the registered proprietor and was issued with a title deed on 12 March 2008. The million dollar question is, who is Nyamonyo Coffee Factory? Is it a company? Is it a business entity? What is its legal status?
11. I have nothing before me to inform me that there is any company registered known as Nyamonyo Tea Factory. I also have nothing before me to affirm that Nyamonyo Coffee Factory is a business name



owned by certain individuals. Neither do I have anything to suggest that Nyamonyo Coffee Factory has any legal status that would enable it own property and hold it in that name. I can see that the applicant is a registered Farmers Society and as such can hold land in her own name. The applicant says that Nyamonyo Coffee Factory is her affiliate but what in legal terms does this mean? Is it saying that Nyamonyo Coffee Factory is her subsidiary company or that she owns the business name? That is not elaborated and I am afraid that this term “affiliate” in the context of what has presented itself herein does not hold much of a meaning.

12. It would appear to me, at least at this stage of the proceedings, and from the limited material before me, and this is subject to change upon full hearing, that the suit land was placed in the hands of Gusii County Council to enable for the establishment of a Coffee Factory to serve the coffee farmers living in the surrounding area. The land, from what I can see, remained in the hands of Gusii County Council. I assume that the County Council could proceed to allocate it to a private individual by way of lease if they wished to allot it but I have absolutely no evidence of any allotment letter issued to the applicant or to any other person for that matter. If it was the intention of Gusii County Council to allocate land to the applicant there would have been nothing easier than to issue the applicant with an allotment letter in her own name, since she has legal capacity to own property. I am actually at a loss as to how a title was ever issued in name of Nyamonyo Coffee Factory given that it is an unincorporated entity that is devoid of any legal capacity. My assessment at this stage is that the Gusii County Council may have allowed the applicant to use the suit land and operate a factory but devoid of any ownership status. I am skeptical about the alleged ownership of the suit land by an unincorporated entity and I will need convincing at the hearing of the suit. In essence, I am not persuaded that the applicant has at this stage, demonstrated that she owns the suit land. Without demonstrating ownership of the suit land it cannot be said that the applicant has demonstrated a *prima facie* case with a probability of success, and without demonstrating such *prima facie* case the applicant is not entitled to an order of injunction.
13. I am aware that many other issues were raised such as relocation of the factory to another parcel which was contested, and also it was contested that there was proper re-planning of the town. It was also raised in the submissions of Mr. Begi that the letter dated 12 March 2024 written by the County Surveyor does not favour the respondents. I need not go into all these because the applicant has failed to demonstrate *prima facie* ownership of the suit land. But let me just mention something about the letter of 12 March 2024. In that letter the County Surveyor opines that the project as planned does not fully fit in the suit land but spills over to a road reserve and riparian reserve. I do not think that the applicant can hinge on that letter to help them get an injunction because their cause of action is not based on the extension of the project to other land but is based on the contention that she owns the suit land. Going into the issue whether the project is squarely going to be on the suit land or extends out of its boundaries would be to venture into a dispute that is not before this court.
14. The long and short of it is that for reason that the plaintiff has not convinced court that she owns the suit land, it is my holding that she fails the test of a *prima facie* case, and her application is hereby dismissed with costs. In essence the plaintiff will need to prove her case without the benefit of an injunction. The interim orders issued are hereby vacated.
15. Orders accordingly.

**DATED AND DELIVERED THIS 25 DAY OF SEPTEMBER 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**



Delivered in the presence of :

Mr. Begi for the plaintiff/applicant

Mr. Wabwire for the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> & 6<sup>th</sup> respondent

Mr. Mokaya for the 4<sup>th</sup> respondent

No Appearance for 1<sup>st</sup> respondent

Court Assistant – David Ochieng<sup>2</sup>

