



**Eveready Security Guards Limited v Etseem Energy Limited (Environment & Land
Miscellaneous Case E205 of 2022) [2024] KEELC 7205 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7205 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E205 OF 2022
OA ANGOTE, J
OCTOBER 31, 2024**

BETWEEN

EVEREADY SECURITY GUARDS LIMITED APPLICANT

AND

ETSEEM ENERGY LIMITED RESPONDENT

RULING

1. Vide an Originating Notice of Motion dated 24th September, 2022, brought pursuant to the provisions of Articles 165(6) and (7) of *the Constitution* of Kenya, Section 3A and 18 of the *Civil Procedure Act*, and Order 51 Rules 1-3 of the Civil Procedure Rules, 2010, the Applicant is seeking for the following reliefs:
 - i. That this Honourable Court be pleased to withdraw from the Chief Magistrates Court at Nairobi, Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited and try it itself.
 - ii. That if prayer 3 above is granted, this Honourable Court be pleased to enjoin the Chief Land Registrar as the 2nd Defendant in the suit to be tried by this Honourable Court.
 - iii. That this Court be pleased to call for the record of the proceedings before the Chief Magistrates Court at Nairobi in Nairobi Commercial Courts Civil Case No. E3624 of 2022 Esteem Energy Limited vs Eveready Security Guards Company Limited for the purposes of determining the legality of those proceedings therein including issuing in the absence of the Applicant on 13th July and 15th July, 2022 orders which were on 5th September, 2022 used to evict the Applicant from its offices on L.R. No. 209/5924 of which it is and has been registered proprietor since 1997 and on 6th September, 2022 to start demolishing the permanent building housing the said offices and for the purposes of making any orders or giving any directions it considers appropriate to ensure the fair administration of justice including:



- a. Such orders and direction as to undo the consequences of the said interlocutory injunction which on 5th September, 2022 threw the Applicant's management into the streets; the said management has nowhere to operate; if the Applicant is restored into possession through a mandatory injunction, its management will operate from tents and temporary structures pending hearing and determination of the suit of which the court has jurisdiction.
 - b. Varying directions issued on 20th September, 2022 to entertain a determination of title to land for a suit property which was valued in 2016 at Kshs. 40 Million and declining timeously the Applicant's Notice of Motion dated 7th September, 2022 in which it is seeking among others the following orders:
 3. That this Honourable Court be pleased to restrain the Plaintiff whether by itself, its servants or agents from further demolishing the permanent building standing on L.R. No. 209/5924 until further orders from this Honourable Court.
 4. That this Honourable Court be pleased to restrain the Plaintiff whether by itself, its servants or agents or whatsoever from further demolishing the permanent building standing on L.R. No. 209/5924 pending the hearing and determination of this suit.
 5. That this Honourable Court be pleased to issue a mandatory injunction restoring the Defendant into possession of the said L.R. No. 209/5924 described by the Plaintiff as L.R. No. 209/22665 pending the hearing and determination of this suit.
 6. That this Honourable Court be pleased to strike out this suit with costs to be paid by the firm of Ashioya Mogire & Nkatha Advocates.
 - c. Obtaining from this Honourable Court such directions as will serve two major purposes immediately, namely:
 - i. To find a way as to show the said suit property L.R. No. 209/5924 is to be saved from alienation or material alteration pending the hearing and determination of the suit and a way of preserving the business with 808 employees which is carried on the same;
 - ii. To fashion a procedure to facilitate the attainment of the goal stated in (I) above whilst providing each party with an opportunity to be heard and to protect its interest.
 - d. Such orders as will prevent the Chief Land Registrar from abusing the process under Section 105 of the LRA of converting titles from RTA to LRA; in the case before the Court he has exercised a power which even the government itself does not have - of depriving private owners their land through a purported conversion where a person other than the proprietor gets a Certificate of Title thereby making Titles to land in the Republic of Kenya worthless.
- iv. That the costs of this application be provided for.
2. The Motion proceeded for hearing and was canvassed by way of Affidavit evidence and submissions. Vide its Ruling of 29th February, 2024, the Court granted prayer 3 of the Motion, and reserved



determination of other prayers pending its perusal of the proceedings of the Trial Court. The Court directed thus:

- i. This Court withdraws from the Chief Magistrates Court at Nairobi Commercial Civil Case No E3624 of 2022, Esteem Energy Limited vs Eveready Security Guards Company Limited and try it itself.
 - ii. The Court shall issue directions on the remaining prayers upon consideration of the record/ and or proceedings of the Chief Magistrates Court in Nairobi, Commercial Courts Civil Case No E3624 of 2022-Esteem Energy Limited vs Eveready Security Guards Company Limited.
 - iii. The Costs of the Application be provided.
3. The Court thereafter directed that the matter would be mentioned for directions on the pending prayers. On 11th May, 2024, the Court directed that parties file submissions in respect of prayer number 5. The Court has since received the record of the subordinate court and will proceed to determine prayer number 5.
 4. Vide this prayer, the Applicant asks this Court to determine the legitimacy of the orders issued by the subordinate Court which formed the basis of its eviction from the suit property and to undo the consequences thereof by restoring it into the property. It also seeks to have the Court protect the suit property from material alteration pending determination of the suit. Essentially what are being sought are mandatory and temporary injunctive orders.
 5. The Applicant's case in this regard, as set out in the Affidavit of Lucy Gathoni Wachira, its Managing Director sworn on 24th September, 2022, is that it purchased the suit property in 1997 and was in occupation thereon until 5th September, 2022 when it was evicted therefrom pursuant to an order by the Chief Magistrate's Court which order was issued on 26th July, 2022.
 6. According to the deponent, the eviction orders were granted ex-parte and on the basis of a Plaint and Notice of Motion whose Verifying and Supporting Affidavits were not commissioned. Further, that it was never served with the pleadings or application in the suit yet a false Affidavit of Service was filed in Court averring that it was served and that it has gravely suffered as a result of the orders by being unable continue with its operations.
 7. The Applicant's Managing Director maintained that there was no material upon which any injunction could be granted ex parte; that the Applicant has never dealt with the Respondent Company and that the Respondent is now in possession of the land and has commenced demolition of the permanent building which has stood on the suit property for 25 years, forcing the Applicant to litigate whilst it has no place to operate from.
 8. Ms Wachira deponed that they filed a Defence and Counterclaim as well as an application dated 7th September, 2022 seeking the prayers set out at paragraph 1(e)(ii) above; that prayer 3 was granted and the application fixed for hearing on 20th September, 2022; that on the aforesaid date, the Respondent sought time to file responses and the application was not heard and that the lower Court issued status quo orders and further directed that a survey report be prepared to confirm on which title the property stood.
 9. She noted that upon being served with its Motion of 7th September, 2022, the Respondent changed Advocates, and then forwarded to the Applicant its pleadings with the Verifying and Supporting Affidavits duly sworn as well as with a Certificate of Title purportedly issued on 21st March, 2022.



10. She urged that the orders given on 20th September, 2022 did not seek to protect the subject matter or the integrity of the court, neither did the orders provide an expedited hearing of their Motion dated 7th September, 2022. Further, she opined, the orders of 26th July, 2022 vested the suit property in the Respondent, giving it all it wanted in the suit before the Applicant was heard and that it is apparent that the Applicant's title was illegally converted and a new title issued to a stranger, a scheme contrived through corruption.
11. The Respondent filed grounds of opposition, contesting the legitimacy of the Motion as well as a Replying Affidavit sworn by its Director, Hassan Ibrahim Issak on 12th October, 2022. He averred that they instituted a suit vide a Plaint seeking eviction orders, a permanent injunction and damages for trespass and that the Applicant filed a Motion on 7th September, 2022 and was granted orders restraining the demolition of the permanent buildings on the suit property on the 9th September, 2022.
12. According to the Respondent, the Applicant served them on 20th September, 2022 when the matter was due for hearing and cannot be heard to claim that it was denied a right to be heard; that it needed and was entitled to respond and that they were granted timelines by the Court.
13. The Respondent's Director deponed that the Court orders of 20th September, 2022 are good and it cannot be said that the same will occasion miscarriage of justice as parties duly presented their arguments and directions were issued by the Court.
14. He deponed that the allegations of fraud have not been substantiated; that the Applicant remains a trespasser until further orders of this Court and that the Motion is unmerited and should be dismissed.
15. In response, the Applicant, through its Managing Director, filed a Further Affidavit on 21st December, 2022 in which she deponed that on 6th September, 2022, after the Applicant was evicted from the suit property, she approached the police to lodge a complaint and was given OB No 0835/06/09/2022 and that she was further advised to approach the Ministry of Lands, City County and Director of Survey to find out what might have transpired.
16. It is the Applicant's case that the lands office confirmed that as per its records, the Applicant is the registered owner of the property and it was unaware of the title held by the Respondent. In response, the Respondent through its Director filed a Supplementary Affidavit sworn on 6th February, 2023.
17. He deponed that on 22nd December, 2022, their Counsel on record wrote to the County Secretary, Urban Planning and Department and the Chief Land Registrar, Ministry of Lands inquiring about the contents of the Further Affidavit and received a letter affirming their proprietorship and that the evidence tendered by the Applicant in this respect is misleading.
18. Despite the courts' directions, the parties did not file fresh submissions on prayer no 5 opting to rely on the original submissions filed in support of and in opposition to the Motion. In the circumstances, the court will only rely on the areas of the submissions relevant to the issues.

Analysis and determination

19. This Court has considered the Motion herein, the Affidavits filed in support of and opposition and annexures thereto as well as the submissions of the parties. The only issue that arises for determination is whether the Applicant has met the threshold for the grant of mandatory and temporary injunctions.
20. The Applicant has asked this court to issue a mandatory injunction returning it onto the suit property. It opines that its removal from the suit property, pursuant to an order by the Magistrates Court was unfounded and constituted a gross violation of its rights.



21. On its part, the Respondent asserts that the Orders by the Magistrate Court were proper and that in any event, there are heavily disputed facts and as such this is not a clear case warranting the grant of a mandatory injunction.
22. This being a Motion, what the Applicant is seeking is a temporary mandatory injunction. It has been held that whereas the court can grant mandatory injunctions at an interlocutory stage, it can only do so under special circumstances. Speaking to this, the Court of Appeal in *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002]eKLR stated as follows;

“The test for grant of a mandatory injunction was as correctly stated in VOL 24 of Halsbury’s Laws of England 4th Edition paragraph 948 that:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application.

In the English case of *Locabail International Finance Ltd vs Agro Export & Another* (1986), ALI ER 901 which the Court of Appeal in Kenya has followed with approval in many decisions, the court held that:-

A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

23. This position was re-affirmed by the Court of Appeal in *Joseph Kaloki t/a Royal Family Assembly vs Nancy Atieno Ouma* [2020] eKLR as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”

24. Persuasive judicial pronouncements by Indian courts have also affirmed that great circumspection is called for before awarding a mandatory injunction at an interlocutory stage. In *Bharat Petroleum Corp Ltd vs Haro Chand Sachdeva*, Air 2003, cited in *INN vs NK* (Civil Case 97 of 2020) [2020] KEHC 10343, it was observed as follows:

“While courts power to grant temporary mandatory injunction on interlocutory application cannot be disputed, but such temporary mandatory injunctions have to be issued only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship. If a mandatory injunction



has to be granted at all on interlocutory application, it is granted only to restore status quo and not to establish a new state of things.”

25. The court has considered the matter. The Respondent herein instituted a suit in the subordinate court- CMCC 3624 of 2022 vide a Plaint dated the 13th July, 2022 wherein it sought, inter-alia, eviction orders removing the Applicant from the suit property, permanent injunctive orders restraining the Applicant from any interference with the suit property, and general damages for trespass.

26. Contemporaneously with the Plaint was a Motion of an even date seeking, inter-alia, for an order compelling the Applicant to vacate the suit property pending determination of the suit as well as permanent injunctive orders. Upon ex-parte consideration of the Motion, the subordinate Court issued orders on the 15th July, 2022 directing that:

“

That pending the hearing and determination of the Application, an order of temporal injunction is issued restraining the Respondent either by itself, its agents, servants or otherwise from entering upon, remaining upon, dumping, offering security, trespassing, alienating, leasing, putting up public notices, or otherwise interfering with the Plaintiffs’ quiet possession of land reference number 209/22665.”

27. The matter came up for inter-partes hearing on 26th July, 2022. Neither the Applicant nor its Counsel was present and upon hearing Counsel for the Respondent, the Court granted prayer 4 of the Motion to wit:

“That an order be and is hereby issued restraining the Defendant whether by himself, agents, servants or otherwise from entering upon, remaining upon, dumping, offering security, trespassing, alienating, leasing, putting up public notices or otherwise interfering with the Plaintiff’s quiet possession of Land Reference Number 209/22665 pending the hearing and determination of the suit.

That the OCS Industrial Area Police Station to ensure compliance of the order.”

28. The Applicant avers that the aforesaid orders were used by the Respondent to evict it from the suit property. It questions the legality of these orders opining that first, the Verifying Affidavit and Supporting Affidavits were not commissioned, and secondly, that it was never served with the pleadings as alleged and the affidavit of service in that regard was false.

29. Ultimately, the Applicant avers, there was no basis or indeed material upon which the Court could grant the mandatory injunctive orders that it did.

30. Starting with the issue of service, it is undisputed that when the matter was brought before the subordinate court on July 26, 2022, it was scheduled for the inter-partes hearing of the Respondent’s Motion. During the hearing, the Respondent informed the Court that proper service had been effected, and no appearance had been entered by the other party. The court, after confirming that a return of service had indeed been filed, deemed the Motion unopposed and subsequently delivered the impugned Ruling.

31. In these circumstances, given that a return of service had been filed, the court had sufficient grounds to proceed with its determination on the basis that the Motion was uncontested. A duly filed return of service is presumed valid unless and until it is challenged. Once such a challenge is made, it may provide grounds for seeking to have the court set aside its orders. However, in the absence of such a challenge,



- the court cannot be faulted as the Applicant seeks to do. Further still, the court orders cannot in the circumstances be deemed to be ex-parte orders.
32. Moving to the contention that the affidavits in support of the Plaintiff and the Motion were not commissioned, having considered the pleadings in the subordinate file, it is immediately clear that indeed neither the Verifying Affidavit nor the Supporting Affidavit were commissioned. What is the effect of this?
33. The 10th Edition Black's Law Dictionary at page 68 defines an affidavit as follows:
- “A voluntary declaration of facts written down and sworn to by a declarant before an officer authorised to administer oaths.”
34. The law on commissioning of affidavits is the [Oaths and Statutory Declarations Act](#), which, at Section 5, states as follows:
- “Every Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”
35. Speaking to this, the Supreme Court of Kenya in the case of *Gideon Sitelu Konchellah vs Julius Lekakeny Ole Sunkuli & 2 Others* [2018] eKLR observed thus:
- “We have no hesitation in finding that the purported Replying Affidavit filed by the 1st Respondent is fatally defective as the same contravenes all the legal requirements for the making of an affidavit. Hence it has no legal value in the matter before us. We have checked all the eight copies of the Replying Affidavit as filed in the Court Registry and confirmed that none of the copies was signed, commissioned and dated. Consequently, as the same is defective, it is deemed that there is no Replying Affidavit on record filed by the 1st Respondent.”
36. Similarly, the Court in *Z-U-DG vs SJK-U* [2021] eKLR held as follows:
- “An Affidavit is a statement made on oath. It is the jurat which elevates a written statement to the status of an Affidavit. Without a jurat and in absence of commissioning by a Commissioner of Oaths, a Magistrate or a Notary public the statement remains a mere unsworn written document and does not have the legal value of an Affidavit.”
37. It is clear from the foregoing that an affidavit must state the place and date the oath was taken and it should be in the presence of a Magistrate or Commissioner for Oaths. While this misstep is ordinarily curable where it is undertaken before the main suit is heard in the case of a Verifying Affidavit, there can be no reliance on the averments in an un-commissioned affidavit in support of a Motion.
38. In the circumstances, and as a result of the foregoing, there was no evidence in support of the Motion of 13th July, 2022 and consequently, there was no basis for the grant of the orders of 26th July, 2022 or indeed the ex-parte orders of 15th July, 2022. Further, in its Ruling of 29th February, 2024, this court found that the lower court did not have pecuniary jurisdiction to determine the dispute. That being so, all the orders that were issued by the court are a nullity.
39. The Respondent states that there are heavily conflicting facts in this matter and the same does not warrant the mandatory injunctive orders sought. Indeed, the facts are heavily disputed and require further interrogation. The Court cannot venture into the same at this interlocutory stage.



40. However, in view of the Courts' finding above, there being insufficient basis for the removal of the Applicant from the suit property in the first place, the Court considers that special circumstances exist warranting its return thereon.

41. Moving to the grant of a temporary injunction, the law thereof is provided for in Order 40 Rule 1 of the Civil Procedure Rules, 2010. The same provides as follows;

“Where in any suit it is proved by affidavit or otherwise-

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution if any decree that may be passed against the defendant in the suit,

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.”

42. Therefore, under Order 40 Rule 1 of the Civil Procedure Rules, an order of temporary injunction may issue where the court is satisfied that there is a likelihood of the suit property being wasted or alienated before the suit is heard and determined.

43. Being an application for injunctive orders, the same shall be weighed against the requisite essentials set out in the celebrated case of *Giella vs Cassman Brown* (1973) EA 358 thus:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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.”

44. An Applicant is expected to meet those three principles and surmount them sequentially. This was stated by the Court of Appeal in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR as follows:

“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) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical



hurdles which the applicant is expected to surmount sequentially. (See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86) If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between."

45. The Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR defined prima facie thus:

"...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."

46. More recently, the Court of Appeal in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others*(supra) while agreeing with the definition of a prima facie case in the *Mrao Case* (supra) went ahead to further expound as follows;

"We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. 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."

47. The Court is alive to the fact that in determining whether or not to grant temporary injunctive orders, it must be cautious not to conduct a mini trial to establish the merits of the case. All it needs to do is to ascertain, whether from the facts of the case before it, there is a right infringed or about to be violated so as to form a basis for the need to protect it through issuance of an order of injunction.

48. The suit revolves around the ownership of the property which both the Applicant and the Respondent lay claim to. It is the Applicant's contention that it is the duly registered proprietor of the suit property,



its assertion in this respect being that it purchased the same sometime in 1997 and has enjoyed quiet possession thereof until its eviction in 2022.

49. The Applicant has adduced a certificate of title issued on 22nd September, 1997. On its part, the Respondent too claims the property and has a certificate of title indicating it was registered as its owner on 21st March, 2022. Both parties have adduced correspondence from the Ministry of Lands each affirming their proprietorship.

50. It need not be restated that there cannot be two titles over the same property. Faced with such a situation, the obtaining jurisprudence has been that where there are two competing titles, the first in time will prevail, unless it is shown, prima facie, that the same was unlawfully acquired. This position was emphasized in the case of Wreck Motors Enterprises vs The Commissioner of Lands and others civil appeal civil appeal No. 71 of 1997, where the court held that:

“Where there are two competing titles the one registered earlier is the one that takes priority.”

51. This position was further reiterated in the case of Gitwany Investment Ltd & 3 others vs Commissioner of Lands, HCCC No 1114 of 2002, where the court held that:

“The first in time prevails so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail.”

52. In the circumstances, the Applicant’s title being first in time, the same must prevail at this stage. It is however important to emphasise that by stating that the Applicant’s title deed should prevail does not mean that this court has conclusively decided on the issue of proprietorship of the suit property.

53. All the court is saying is that evidence must be called to confirm how the second title, came into being, because, prima facie, the suit property was not available for alienation. That being so, the court finds that the Applicant has demonstrated that there exists a right which has apparently been infringed as to call for an explanation.

54. Further, it is the Applicant’s case that it has been on the property for more than 20 since its acquisition thereof, where it has constructed offices for its senior management. This is not disputed considering that the Respondent’s claim to the property based on its acquisition arose in March 2022.

55. It is noted that the Respondent has already caused significance disruption on the property having initiated demolitions. The destruction of offices and other key facilities, which serve as the nerve center of the Applicant’s operations cannot be adequately quantified in monetary terms.

56. Such losses extend beyond physical destruction to include severe disruptions to business continuity, loss of goodwill, and potential displacement of key personnel. As such, the court is convinced that the Applicant is likely to suffer irreparable injury that cannot be compensated in damages unless the order of injunction is issued.

57. For those reasons, the court grants the following reliefs:

- i. A Mandatory injunction does hereby issue restoring the Applicant into Land Reference Number 209/22665 original 209/5924, forthwith pending the hearing and determination of this suit.



- ii. A temporary injunction does hereby issue prohibiting any dealings by any of the parties with the title to L.R No 209/22665 original number 209/5924, that is charging, leasing, selling, transferring and/or in any other way interfering with the status of the title to the suit property pending the hearing and determination of this suit.
- iii. That the OCS Industrial Area Police Station to ensure compliance of order(i)above.
- iv. The costs of the Motion shall be paid by the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Dr. Kamau Kuria for Applicant

Mr. Shikanda for Osundwa for Respondent

Court Assistant: Tracy

