



Ndaro & 4 others (Suing on behalf of 158 Others) v Bindo & 2 others (Environment & Land Case 34 of 2023) [2024] KEELC 7221 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7221 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 34 OF 2023
FM NJOROGE, J
OCTOBER 31, 2024**

BETWEEN

**WISTON HARIRI NDARO 1ST PLAINTIFF
ADI MOHAMED YUSUF 2ND PLAINTIFF
JOHANA SALIMU MWAMUNGA 3RD PLAINTIFF
JOSPHAT SHIKOLI MASHETI 4TH PLAINTIFF
MACMILLAN KONDE MDOE 5TH PLAINTIFF
SUING ON BEHALF OF 158 OTHERS**

AND

**RAMA HAMISI BINDO 1ST DEFENDANT
LAND OFFICE - MOMBASA 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The notice of motion application dated 19/10/2023 has been placed before this court for determination. In it the Plaintiffs seek orders of a temporary injunction restraining the 1st Defendant by himself, agents, employees, servants, and/or assigns from developing, alienating, subdividing, transferring, selling and/or dealing with parcel of land known as Plot Number CR 80173 MN/IV/1408 measuring approximately 12.05 Ha situated in Kilifi County (“the suit property”) in any manner whatsoever pending the hearing and determination of this suit herein together with costs. The application is brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and Order 40 rules 1, 2 and 3 of the Civil Procedure Rules.



2. The Application is premised on the grounds appearing on the face of it together with the joint supporting affidavit of the five Plaintiffs sworn on 19/10/2023 wherein they stated that they are the beneficial owners of the suit property having inherited the same from their forefathers; that they have been in physical occupation of the suit property for more than 100 years without any interference until sometime around early 2023 when the 1st Defendant laid claim thereon by virtue of a 99-year lease. The Plaintiffs averred that the 1st Defendant has since been using the DCIO Mtwapa to harass them by unlawful detention and threats. According to the Plaintiffs, they have developed the suit property by constructing permanent structures and the National Land Commission recommended that they be given the suit property.
3. In opposition, the 1st Defendant filed a replying affidavit he swore on 21/11/2023 wherein he stated that he is the registered owner of the suit property, having acquired a certificate of title on 2/8/2022 following a letter of allotment Ref No. 75894/VI/116 dated 15/1/2014. He alleged that the suit property was vacant when he acquired it and that the Plaintiffs have not demonstrated their interest in the suit property. He added that the Plaintiffs should not be granted the reliefs sought since they have failed to disclose that they had filed another suit at the Kilifi Magistrates Court as SPM Land Case No. E016 of 2023 which they withdrew on grounds of lack of pecuniary jurisdiction. To the 1st Defendant, the present suit is therefore an abuse of the court process.
4. The 2nd and 3rd Defendants filed grounds of opposition dated 21/11/2023 wherein they averred that the suit is sub judice Kilifi SPM Land Case No. E016 of 2023; that the application is an abuse of the court process; and that the Applicants have approached the court with unclean hands by failing to disclose that they filed a similar matter in Kilifi which was later withdrawn.
5. In a supplementary affidavit jointly sworn by the Plaintiffs on 23/11/2023, they averred that the matter in Kilifi was marked as closed on 1/11/2023. They equally annexed a copy of the alleged report from the National Land Commission.

Disposition.

6. The application was canvassed by way of written submissions which I have carefully taken into consideration. The issue for determination is whether or not to grant a temporary injunction. To determine this issue, I wish to rely on the precedent set out in the case of *Giella v Cassman Brown* (1973) EA 358 where the conditions for the grant of an interlocutory injunction were settled as follows:

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 be normally 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.”

7. This position was restated in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR, where the Court of Appeal held that in an interlocutory injunction application the Applicant has to satisfy the triple requirements, wit, establish his case only at a prima facie level, demonstrate irreparable injury if a temporary injunction is not granted and allay any doubts as the possibility of such injury aforesaid by showing that the balance of convenience is in his favour. The court in *Nguruman Limited* (supra) also held that all the three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.



8. The first question therefore is, have the Plaintiffs established a prima facie case? What amounts to a prima facie case” In *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR the court of appeal held that a prima facie case in civil cases “is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
9. In this case, the Plaintiffs have based their claim of ownership over the suit property on the basis that they have been in occupation thereof having inherited the same from their forefathers. They annexed copies of photographs of developments thereon, and a copy of a ground status report by the National Land Commission County Co-ordinator for Kilifi County dated 14/11/2023. I have perused the said report and noted its contents.
10. It is not disputed that the Plaintiffs are in occupation of the suit property and have conducted some developments thereon. It is also averred that there are public amenities: two churches and a mosque a school and two boreholes on the suit land. It is also claimed that some of the plaintiffs have buried their ancestors on the suit land.
11. Having wholistically considered the documentation filed and the statement in the applicants’ affidavits I am satisfied that the Plaintiffs have established a prima facie case to warrant a rebuttal from the Defendants and that they may suffer loss that not be compensable by way of damages if the orders sought are not granted in the event that the court finds in their favour in final judgment in the main suit.
12. Consequently, I order that the status quo prevailing regarding the suit land on the ground and as per the land register as at the date of this ruling be maintained by all the parties herein without exception pending the hearing and determination of this suit.
13. The parties shall ensure compliance with the Civil Procedure Rules by filing (or, if filed, perfecting) their duly indexed and paginated trial bundles, witness statements and lists of witnesses, the plaintiff within 30 days and the defendants within 60 days from the date of this ruling. This matter shall be mentioned on 16/1/2025 for the fixing of a hearing date for the main suit.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 31ST DAY OF OCTOBER, 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

