



**Ethics and Anti-Corruption Commission v Chepkwe Holdings Limited & 2 others; Ministry of Land, Public Works, Housing and Urban Development (Interested Party) (Environment & Land Case E041 of 2024) [2024] KEELC 7150 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7150 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E041 OF 2024  
NA MATHEKA, J  
OCTOBER 30, 2024**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**CHEPKWE HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ABDULKARIM SALEH MUHSIN ..... 2<sup>ND</sup> DEFENDANT**

**SAMMY KOMEN MWATA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**MINISTRY OF LAND, PUBLIC WORKS, HOUSING AND URBAN  
DEVELOPMENT ..... INTERESTED PARTY**

**RULING**

1. The application is dated 5<sup>th</sup> September 2024 and is brought under Sections 1A, 1B 3. 3A & 63(c) and (e) of the *Civil Procedure Act*, Order 40 Rules 7 & 4 of the *Civil Procedure Rules 2010*, Sections 68 & 69 of the *Land Registration Act* 2012; Section 11(1)(i) of the *Ethics & Anti-Corruption Commission Act* 2011. Sections 51, 53 & 56C of the *Anti-Corruption and Economic Crimes Act* seeking the following orders;
  1. This application be certified as urgent and fit for admission to hearing on a priority basis.
  2. The Honourable Court be pleased to issue interlocutory orders of inhibition to restrain the 2<sup>nd</sup> Defendant/Respondent whether by itself or through his agents, servants or assigns from alienating, transferring, charging, leasing, sub-dividing, consolidating, disposing of, wasting, or undertaking any construction or development of any nature thereon or any part thereof of parcel of land described as Mombasa Municipality Block XXII/255 (hereinafter referred to



as the suit property) or from howsoever dealing with the said property pending hearing and determination of the Plaintiff/Applicant's present application and suit.

3. Costs of the Application be provided for.
2. It is based on the annexed affidavit of Lydia Ong'era, an investigator with the Ethics and Anti-Corruption Commission (EACC) and on the grounds that the Plaintiff /Applicant is a body corporate mandated under sections 3 and 11 (1) (j) of the *Ethics & Anti-Corruption Commission Act*, No 22 of 2011 to institute and conduct proceedings in Court for purposes of recovery or protection of public property, confiscation of proceeds of corruption and payment of compensation. That pursuant to the Plaintiff/Applicant aforesaid mandate, investigation was undertaken regarding corrupt, fraudulent and illegal alienation of suit property and the following primary facts established: Vide a letter of allotment dated 6<sup>th</sup> December, 1996 referenced 75892/XX the 3<sup>rd</sup> Defendant acting in purported powers vested upon him under the *Registered Land Act*, Cap 300, *Government Land Act* Cap 280, the *Registration of Titles Act* (Cap 281) (all now repealed) and other written laws, caused to be demarcated, alienated and allocated in favour of the 1<sup>st</sup> Defendant an unsurveyed parcel of land described as "Unsu Residential Plot- Mombasa Municipality" and measuring 0.0376 hectares more particularly identified in a purported Part Development Plan N012.2.CT.99.96 dated 9<sup>th</sup> September 1996 on a lease basis for a period of 99 years from 1<sup>st</sup> January 1997. Vide another letter of allotment dated 8<sup>th</sup> January, 1997 referenced 75892/XX the 3<sup>rd</sup> Defendant acting in purported powers vested upon him under the *Registered Land Act*, Cap 300, *Government Land Act* Cap 280, the *Registration of Titles Act* (Cap 281) (all now repealed) and other written laws, caused to be demarcated, alienated and allocated in favour of the 1<sup>st</sup> Defendant an unsurveyed parcel of land described as "Unsu Residential Plot Mombasa Municipality" and measuring 0.0376 hectares more particularly identified in a purported Part Development Plan N012.2.CT.99.96 dated 9<sup>th</sup> September 1996 on a lease basis for a period of 99 years from 1<sup>st</sup> January 1997. The suit property was wholly excised from a built-up portion of Mombasa Block XII/27 which comprised of government of Kenya houses built by the Government of Kenya and let out to civil servants/government employees in different ministries through the Interested Party. The houses mentioned were constructed way back in 1928 and have all along and continue to be let out to civil servants who pay rent from their salaries through a check off system. As the houses are old and run down, the estate, along with several other estates are due for redevelopment with modern highrise development for rental and sale to civil servants. It is the Plaintiff's case that the suit property comprises of a portion of a parcel of land identified, alienated, allocated in favor of and developed by the Interested Party using public funds and resources to provide affordable urban housing for civil servants/government employees.
3. The Plaintiff contends that the Part Development Plant No 12.2. CT.64.96 dated 9<sup>th</sup> September 1996 that was used to survey, alienate, and allocate the suit property to the 1<sup>st</sup> Defendant was a forgery, fraudulent and any process initiated through its use was and remains null and void and of no legal effect. That that survey plan FR 324/81 dated 11<sup>th</sup> June 1997 and authenticated on 17<sup>th</sup> February 1998 leading to the creation of the suit parcel of land was null, void ab initio. That on 27<sup>th</sup> July, 1997 the Registry Index Map was amended to reflect the suit property and thereafter a lease dated 9<sup>th</sup> October, 2000 issued to the 1<sup>st</sup> Defendant by the 3<sup>rd</sup> Defendant. That the procedure for amendment of the Registry Index Map was null, void ab initio as the same was done before survey. The subsequently on 25<sup>th</sup> October, 2000 the 1<sup>st</sup> Defendant/Respondent transferred to the 2<sup>nd</sup> Defendant the suit property at a consideration of Kshs 2,500,000. The suit property is currently registered in the name of the 2<sup>nd</sup> Defendant.



4. Subsequently, after the purchase of the suit property the 2<sup>nd</sup> Defendant/Respondent unprocedurally and without any color of right demolished government houses MOM/HOU/MG2(A-D) which had been constructed upon the suit parcel of land. That the allocation of suit property which is public land was contrary to the provisions of the Government Lands Act, Cap 280(now repealed) and other provisions of the law. That the Interested party has never surrendered or relinquished the suit property to the Government for alienation or allocation to the 1<sup>st</sup>, 2<sup>nd</sup> Defendant/Respondent or any other person neither had the Minister responsible for Housing and Urban Development given consent to the said or any allocation as required by the provisions of the Government Lands Act, Cap. 280 and the Government Financial Regulations and Procedures. The Plaintiff/Applicant is apprehensive that unless the orders sought herein are granted pending the hearing and determination of the Notice of Motion application and the suit, the 2<sup>nd</sup> Defendant/Respondent will transfer or dispose off the land sought to be prohibited in order to defeat the cause of justice.
5. This court has considered the application and the submissions therein. The applicant contends that the allocation of the suit property to the 1<sup>st</sup> Defendant was a forgery, fraudulent and any process initiated through its use was and remains null and void and of no legal effect. That the same ought to be preserved pending the hearing and determination of this matter. In the case of *Dorcas Muthoni 2 others v Michael Ileri Ngari* (2016)eKLR the court held that;

"An order of inhibition issued under Section 68 of the *Land Registration Act* is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed off. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial

Guided by the principle that the Court should always take the course that carries the lower risk of injustice *Films Rover International & others v Cannon Films Sales Ltd* 1986 3 ALL E.R 772 it is my view that the injustice that would be caused to the defendant/respondent if the plaintiff/applicants were granted the prayer of inhibition and later failed at the trial outweighs the injustice that would be caused to the plaintiff/applicants if the prayer for inhibition was dismissed and they succeed in proving their case. Balancing the two competing interests, the cause of justice will best be served if the order of inhibition is granted. "

6. In the case of *Victoria Wangui Oganga Ogada v Mwangi Kibara 2 others* (2018) eKLR the court stated that;

8. "Pursuant to paragraph 32 of Gazette Notice No 5178 titled "Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts", this court has jurisdiction to order maintenance of status quo so as to preserve the suit property pending hearing and determination of the main suit. The said paragraph provides:

During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order



for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.

9. So as to preserve the suit property and to maintain status quo pending hearing and determination of the suit, I order that an inhibition be registered in respect of Nakuru Municipality Block 2/114 pending hearing and determination of this suit. Costs in the cause."

7. On the issue of maintenance of status quo to preserve the property the court held in the case of [Joel Mugambi Mukira & 2 others \(for and on behalf of Kimathi tenants welfare group\) v County Government of Nyeri](#) (2019) eKLR that;

"In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugah v Kunga* [1988] KLR 748, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No 5178/2014 Practice direction No 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case."

8. Further in the case of the case of [Joel Kipkurui Arap Koech v Alice Wambui Magandu 3 others](#) (2018)eKLR the court held that;

In that case, the court granted an injunction on the general principle that 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 an interlocutory injunction and after hearing the case, 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.

Both the plaintiff and the I St Defendant are claiming the suit property. In my view, it is only fair to make orders that safeguard and maintain the status quo until the suit is heard and determined.

Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, it is clear that the Plaintiff has established a prima facie case with a probability of success against the Defendants.

In my view, it is clear that the plaintiff has shown his right over the suit property. As regards irreparable damage, I take the view that should the suit land be alienated, the Plaintiff will have lost what he regards as his land and which may not be quantified in damages. The balance of convenience would tilt in favour of the plaintiff in order to safeguard the subject matter of the suit pending hearing and determination."

9. It should also be noted that on 25<sup>th</sup> October, 2000 the 1<sup>st</sup> Defendant/Respondent transferred to the 2<sup>nd</sup> Defendant and the suit property is currently registered in the name of the 2<sup>nd</sup> Defendant. The Applicant submitted that subsequently, after the purchase of the suit property the 2<sup>nd</sup> Defendant/Respondent unprocedurally and without any color of right demolished government houses MOM/HOU/MG2(A-D) which had been constructed upon the suit parcel of land.

10. I find that it would be in the interest of justice to order for an inhibition, restricting the registration of any disposition in the register of the land parcel Mombasa Municipality Block XXII/255 until this suit is heard and determined. The application is therefore allowed as prayed with costs to be in the cause.



It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 30<sup>TH</sup> DAY OF OCTOBER 2024.**

**N.A. MATHEKA**

**JUDGE**

