



REPUBLIC OF KENYA



**Papiyo Investment Limited v Murero & 3 others (Environment & Land  
Petition E006 of 2024) [2024] KEELC 7201 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7201 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND PETITION E006 OF 2024  
CG MBOGO, J  
OCTOBER 29, 2024**

**BETWEEN**

**PAPIYO INVESTMENT LIMITED ..... PETITIONER**

**AND**

**WILLIAM MURERO ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL MURERO ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, NAROK ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before the court for determination is the notice of motion dated 28<sup>th</sup> May, 2024 filed by the petitioner/ applicant and it is expressed to be brought under Articles 22, 23, 40, 159 and 165 of *the Constitution* of Kenya, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* and Orders 40 & 51 of the Civil Procedure Rules, seeking the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the petition, a conservatory order does issue staying all the dealings and proceedings with relation to all that property known as title number CisMara/ Lemek/ 190.
  - d. That such further and other relief be granted to the applicant as this honourable court deems fit and expedient in the circumstances, and
  - e. That the costs of this application be in the cause.



2. The application is premised on the grounds inter alia that around the year 2022, the petitioner/ applicant received reports speculating that that the property was being sold, and that some prospective buyers had visited the premises prompting its directors to take the step of lodging a caution which was registered on 22<sup>nd</sup> November, 2022.
3. The application was supported by the affidavit of Patel Gopal Dhanji Velji, the director of the petitioner/ applicant sworn on even date. The petitioner/ applicant deposed that it is the registered proprietor of Cis Mara/ Lemek/ 190 measuring 20 hectares, and the 1<sup>st</sup> and 2<sup>nd</sup> respondent transferred the same to the petitioner/ applicant on 26<sup>th</sup> July, 2007. The petitioner/ applicant deposed that it has been in occupation of the suit property where a four-star hotel has been established since the year 2007. It was also deposed that in the year 2013, there was a fraudulent attempt to issue a new title deed for the suit property which had been gazzetted under Gazette Notice No. 12987 of 29<sup>th</sup> November, 2013 purporting to be petitioner/ applicant.
4. The petitioner/ applicant deposed that they lodged and registered a caution on 22<sup>nd</sup> November, 2022 after receiving reports that the suit property was being sold and some prospective buyers had visited the land. He went on to depose that in September, 2023 they received further speculation on selling of the land as a few buyers had visited the suit property which resulted in lodging another caution on 7<sup>th</sup> September, 2023 against the title. That they conducted another search and to their surprise, the 1<sup>st</sup> and 2<sup>nd</sup> respondent were registered as proprietors of the suit property.
5. The petitioner/ applicant further deposed that they discovered anomalies on the green card, and that they have never been informed of the transfer of the suit property from itself to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and neither was the petitioner/ applicant aware of any court order requiring them to transfer the suit property to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It was deposed that the petitioner/ applicant was surprised to receive a notice of intention to remove the caution placed on the property slating the caution hearing for 30<sup>th</sup> May, 2024. It was deposed that they are apprehensive that the respondents' actions have all been perpetrated in concert with the singular goal to deprive the petitioner/ applicant of its property, and that it will suffer irreparable loss and harm.
6. The 1<sup>st</sup> and 2<sup>nd</sup> respondents opposed the application vide the replying affidavit of the 1<sup>st</sup> respondent sworn on 10<sup>th</sup> June, 2024. The 1<sup>st</sup> respondent deposed that they have never had a personal interest in the suit property as they hold the same in trust for the beneficiaries of the estate of John Tupenet Murero (deceased). He deposed that together with the 2<sup>nd</sup> respondent, they are the trustees of the estate of their late father pursuant to a grant of letters of administration issued to them in Succession Cause No. 95 of 2006.
7. The 1<sup>st</sup> respondent deposed that the petition is grossly incompetent as it has pleaded allegations of fraud without any particulars which comprises an embarrassing averment. He went on to depose that they are not the registered proprietors of the suit property, and that they have been registered to hold the same in trust for the beneficiaries of the estate of the deceased, and that no lawful transfer of title has ever occurred between the estate of their late father and the petitioner/ applicant herein.
8. He deposed that there is no enforceable cause of action on the suit property as they have never conveyed the suit property to the petitioner/ applicant at any given time. He deposed that no sale agreement or deed of transfer has ever been executed in favour of the petitioner/ applicant by them as would transmit any interest in breach of Section 3(3) of the Law of Contract. He also deposed that there is no title vesting in them as individuals, and such title if any would be evidenced by a certificate of title under Section 26 (1) of the [Land Registration Act](#).



9. Further, he deposed that this court cannot venture to re-allocate the suit property to the petitioner/ applicant, and that this court cannot exercise its discretion in equity to further an illegality by issuing an injunction over the suit property. He deposed that there are no orders revoking their administration of the suit property, and that they remain the lawful registered proprietors of the same. The 1<sup>st</sup> respondent deposed that they have no knowledge of the allegations contained in the application and they denied that the petitioner/ applicant acquired proprietary rights over the suit property, and that the purported search is consequently an illegality. He deposed that they could not lawfully dispose the suit the property to anyone as they lack authority from the beneficiaries of the estate.
10. The 1<sup>st</sup> respondent deposed that the purported sale agreement in favour of the petitioner/ applicant was a fraud and forgery, and that the petitioner/ applicant and the 3<sup>rd</sup> respondent must have colluded to defraud them of the suit property, as they never made any application to the relevant Land Control Board as it would apply in a land transaction. He deposed that the petitioner/ applicant has been unlawfully trespassing on the suit property in breach of the *Trespass Act* without his consent and that of his co-respondent. Further, he maintained that Nairobi High Court Succession Cause No. 95 of 2006 remains undetermined, and by a letter dated 30<sup>th</sup> November, 2023, the Deputy Registrar, Family Division forwarded the file to the High Court registry for hearing and determination. He denied that they moved the 3<sup>rd</sup> respondent to secure transfer of the suit property in their private capacity as they have never acquired any certificate of title to the suit property as alleged or at all.
11. The application was canvassed by way of written submissions. The petitioner/ applicant filed its written submissions dated 9<sup>th</sup> July, 2024. The petitioner/ applicant while relying on the cases of *Invesco Assurance Co. versus MW (Minor suing through next friend and mother (HW))* [2016] eKLR and *Mrao Ltd versus First American Bank of Kenya Ltd* [2003] eKLR, submitted that they have a prima facie case with a probability of success as it has demonstrated that it was registered as proprietor of the suit property on 27<sup>th</sup> July, 2007 and issued with a title deed. It was also submitted that the entry as per the green card has never been cancelled or transferred to any other entity including the 1<sup>st</sup> and 2<sup>nd</sup> respondents. They went on to submit that it has emerged that a number of actions have been undertaken by the respondents as detailed in entries 9, 10 and 11 of the green card which indicates double registration of the 1<sup>st</sup> and 2<sup>nd</sup> respondent as owners of the suit property. Reliance was further placed in the case of *Stanley Munga Githunguri versus Republic* [1986] eKLR and *Nguruman Limited versus Jan Bonde Nielsen & 2 Others* [2014] eKLR.
12. The petitioner/ applicant further submitted that it has set out the rights violated by the respondents under Articles 27, 40, 47 and 50 of *the Constitution*, and that the grant of conservatory orders in the circumstances would maintain the status quo, and ensure no further violations occur which would water down the constitutional values and objects of *the Constitution*. Further, the petitioner/ applicant submitted that the conservatory orders sought seeks to stop further transactions as the 3<sup>rd</sup> respondent seeks to invariably alter the register of the suit property to its detriment, and which would open flood gates for the respondents to freely deal with the suit property.
13. The petitioner/ applicant submitted that in granting the orders, they would serve public interest by enhancing the right to property which requires certainty of proprietorship details as set out in the documents and records of the 3<sup>rd</sup> respondent. Reliance was placed in the cases of *David Kipkemoi Bett & Another versus Joseph Rono* [2022] eKLR.
14. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed their written submissions dated 4<sup>th</sup> October, 2024. The 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that no prima facie case exists where the root of the petitioner's title is illegal. While relying in *re Estate of Jamin Inyanda Kadambi (deceased)* [2021] eKLR and *Morris Mwiti*



- Mburungu versus Denis Kimathi M'Mburungu [2016] eKLR, the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the petitioner/ applicant seeks to protect an illegal interference with the property of the deceased, and this court cannot countenance an illegality as it is purported.
15. The 1<sup>st</sup> and 2<sup>nd</sup> respondents further submitted that their capacity as respondents is not pleaded in the petition, and therefore they are not suited pursuant to Order 4 Rule 4 of the Civil Procedure Rules. To buttress on this submission, the 1<sup>st</sup> and 2<sup>nd</sup> respondents relied on the case of Ngunyumu Housing Co. Ltd versus Njambi Angela Gathecha; Gachui Kinyanjui Gathecha and Dominic Gathecha Kinyua (Sued as joint Administrators of the Estate of the late Dominic Gathecha Kinyanjui) & 3 Others [2024] KEELC 6412 (KLR).
  16. The 1<sup>st</sup> and 2<sup>nd</sup> respondent further submitted that conservatory injunction orders cannot be issued to protect an illegality, and no prima facie case can be founded on an illegality. That the purported sale of the suit property to the petitioner amounted to intermeddling, and it cannot be protected by this court. They relied on the cases of Mrao Ltd versus First American Bank of Kenya Ltd [2003] eKLR, Morris Mwiti Mburungu versus Dennis Kimathi M'Mburungu [2016] eKLR and In re Estate of Barasa Kanenje Manya (Deceased) (Succession Cause 263 of 2002) [2020] KEHC 1 (KLR) (30 July 2020) (Ruling). Further, they submitted that there is nothing in the nature of a public interest pleaded in the petition, and the claim ought to have been lodged as a suit and not a constitutional petition. They relied on the case of Gatirau Peter Munya versus Dickson Mwenda Kithinji & 2 Others [2014] eKLR.
  17. I have considered the application, replying affidavit and the written submissions filed by the petitioner/ applicant and the 1<sup>st</sup> and 2<sup>nd</sup> respondents. In my view, the issue for determination is whether conservatory orders can or ought to issue pending the hearing and determination of the petition.
  18. The petitioner/ applicant contended that they purchased the suit property from the 1<sup>st</sup> and 2<sup>nd</sup> respondent in the year 2007, and that they have since established a hotel on the premises. They also contended that there was speculation that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were intending to sell the suit property to other parties which necessitated placing a caution against the title. The petitioner/ applicant averred that later, they were shocked to learn upon conducting a search that the 1<sup>st</sup> and 2<sup>nd</sup> respondents had obtained a title deed registered in their name. While disputing the claim by the petitioner/ applicant, the 1<sup>st</sup> and 2<sup>nd</sup> respondents contended that they have never had the suit property registered in their name, as they hold it in trust for the beneficiaries of the estate of their late father. Also, they contended that there has never been any agreement for the sale of the suit property between them and the petitioner/ applicant. They argued that the purported sale to the petitioner/ applicant was a fraud as they had no capacity to sell the land. In addition, they argued that there is nothing in the nature of a public interest to warrant issue of the conservatory orders sought in the application.
  19. I have perused the instant application, and the documents relied upon in support thereof. I have also perused the documents relied on by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. From the pleadings and upon analysis, it is clear that there are two title deeds in existence over the same property. At this stage, I would not want to delve into the legality of the title held by either party as that is a preserve for the hearing of the petition. However, and as I may agree with the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the very nature of what is to be cured by conservatory orders are not clear to this court. The Supreme Court in Civil Application No 5 of 2014 Gatirau Peter Munya versus Dickson Mwenda Kithinji & 2 others (2014) eKLR, the court discussed, at paragraph 86, the nature of conservatory orders as follows: -

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike



interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.”

20. In *Katiba Institute versus Judicial Service Commission & 2 others; Kenya Magistrates and Judges Association & 2 others (Interested Parties)* (Constitutional Petition E128 of 2022) [2022] KEHC 438 (KLR) (Constitutional and Human Rights) (3 June 2022) (Ruling), Mrima J in granting conservatory orders observed as follows: -

“The nature of conservatory orders was further discussed in *Judicial Service Commission v Speaker of the National Assembly & another* [2013] eKLR where the court had the following to say: -Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *the constitution*, the supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.

84. Conservatory orders are, therefore, aimed at preserving the substratum of the matter pending the determination of the main issues in dispute.

85. Given the interlocutory nature of conservatory orders, it is argued, that there is need for a court to exercise caution when dealing with any request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the main petition ought not to be dealt with finality at the interlocutory stage.”

21. While I place reliance on the above cited authorities and in view of the circumstances of this case, there is need to preserve the subject matter of the suit for the court to effectively determine the issues in dispute. In this case, the orders of status quo would suffice. In the case of *Republic versus National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] e KLR, Odunga J. (as he then was) stated: -

“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”

22. The upshot of the foregoing is that I find merit in the notice of motion dated 28<sup>th</sup> May, 2024, and I hereby issue an order of status quo pending the hearing and determination of the petition with relation to all that property known as title number CisMara/ Lemek/ 190. Costs in the cause. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**29/10/2024.**

**In the presence of: -**

Mr. Meyoki Pere – C. A

