



Maisha Mabati Mills Limited v Farm Auto Spares Limited & 2 others; Gregory and another their Capacity as the Joint Receivers and Managers of Nalin Nail Works Limited (In Receivership) (Interested Party) ((In their Capacity as the Joint Receivers and Managers of Nalin Nail Works Limited (In Receivership)) (Environment & Land Case E192 of 2023) [2025] KEELC 573 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E192 OF 2023
OA ANGOTE, J
FEBRUARY 13, 2025**

BETWEEN

MAISHA MABATI MILLS LIMITED PLAINTIFF

AND

FARM AUTO SPARES LIMITED 1ST DEFENDANT

LAND REGISTRAR NAIROBI 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

AND

**ANDREW DOUGLAS GREGORY AND ABDUL ZAHIR
SHEIKH INTERESTED PARTY**

**(IN THEIR CAPACITY AS THE JOINT RECEIVERS AND MANAGERS OF
NALIN NAIL WORKS LIMITED (IN RECEIVERSHIP))**

RULING

1. Before this court is a Notice of Motion application dated November 28, 2023 and filed pursuant to Articles 40, 159(2) and 162(2)(b) of the *Constitution* of Kenya; Section 13(7) of the *Environment and Land Court Act* 2011; Sections 23 and 68 of the *Land Registration Act*, 2012; Sections 28, 150 and 152F of the *Land Act* 2012 and Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules. The Plaintiff/Applicant has sought for the following reliefs:-

- i. Pending the hearing and determination of this suit, this Honourable Court be pleased to issue an Order of injunction restraining the 1st Defendant/Respondent by itself, its agents,



employees, assigns or any other person acting under its instructions from taking possession of, evicting and/or interfering with the Plaintiff's possession and ownership of its property known as LR No. 209/5443 together with the godowns and other developments thereon which were purchased by the Plaintiff from Kenya Commercial Bank through the Interested Parties by an Agreement for Sale dated 5th April 2005, a Transfer Instrument dated 23rd May 2005 and a handover certificate dated 22nd June 2005.

- ii. Any other orders in the interests of justice.
 - iii. The costs of this application be borne by the Defendants/ Respondents.
2. The application is based on the grounds on the face of the application and the Supporting Affidavit sworn by Kaushik Pandit, the Plaintiff's Managing Director. Kaushik Pandit deponed that the Plaintiff is the registered proprietor of the property known as LR No. 209/5443 Nairobi situate along Addis Ababa Road within Nairobi City County.
 3. He deponed that by a Transfer Instrument dated 23rd May 2005, the Plaintiff purchased the suit property from Kenya Commercial Bank pursuant to the bank's Statutory Power of Sale; that the Interested Parties sold the land to the Plaintiff in their capacity as receivers and managers of Nalin Nail Works Ltd (in Receivership) together with the Godowns on the said property and that the suit property was duly registered in favor of the Plaintiff on or about 31st May 2005 and the Plaintiff took possession of the land and the three godowns thereon on 22nd June 2005.
 4. The Plaintiff's Managing Director stated that the Plaintiff commenced conducting the business of manufacturing wire products on the said parcel of land and godowns on or about 31st August 2005 and that the Interested Parties showed him the three godowns and represented to the Plaintiff that they were all erected on LR No. 209/5443.
 5. It was deponed that in 2014, the Plaintiff leased the three godowns to Rods and Steel Limited, the Plaintiff's Lessee, who occupied and continued conducting business in the said godowns; that the Plaintiff subsequently contracted other Lessees who occupy the said warehouses to date and that the occupation of the aforesaid godowns was and continues to be clearly visible to passersby and is actual, open and exclusive.
 6. According to the Plaintiff's Managing Director, on 23rd December 2010, the 1st Defendant acquired the land known as Land Reference Number 209/5650 Nairobi, which is adjacent to its Land Reference Number 209/5443; that this was five years and 7 months after the Plaintiff had already taken occupation of LR No. 209/5443, and 12 years and 5 months following the Plaintiff's acquisition of the LR No. 509/5443 and that the Plaintiff received a letter dated 24th October 2017 from the 1st Defendant purporting that the Plaintiff had taken one of the 1st Defendant's Godowns and sub-let the same.
 7. The Plaintiff's Managing Director deposed that following receipt of the letter, the 1st Defendant moved to court in Nairobi ELC OS No. 762/2017 Maisha Mabati Mills vs Farm Auto Spares claiming that it was entitled to be registered as the owner by adverse possession of a portion of Land Reference Number 209/5650 although the precise portion was not scientifically measured.
 8. It is the Plaintiff's case that the Honourable court however found that the Plaintiff's occupation of the disputed portion extended for a period of 11 years, 3 months, and the Plaintiff's claim for adverse possession fell short by 9 months and that there was no claim by either party in respect to the godown referred to in the 1st Defendant's letter dated 24th October 2017, and as such, no evidence was led and the court made no finding on the godown.



9. Consequently, it was argued, the Plaintiff continued to occupy the godowns sold to them under the agreement for sale of LR No. 209/5443; that the Plaintiff was surprised that on 11th September 2023, it was served with a demand letter from the 1st Defendant, threatening to evict it unlawfully and illegally from the portion of land on which one of the Plaintiff's warehouses stands, which portion of land was not specified nor was the specific warehouse specified.
10. It was deposed that the Plaintiff responded to the 1st Defendant's demand letter through a letter dated 15th November 2023 which stipulated that during the proceedings of Civil Suit 762 of 2017, the 1st Defendant's appointed Surveyor L.K. Gitau, did not ascertain any encroachment by the Plaintiff on the 1st Defendant's land and that the surveyor highlighted the complexities of delineating boundaries due to beacon placements underneath existing walls leading to an inconclusive determination on his part.
11. It is the Plaintiff's case that the go-downs in the Plaintiff's possession were acquired from the previous owners seven years before the 1st Defendant's engagement in the locality; that the Plaintiff proposed a resolution of the dispute through the reparation process detailed in Section 23 of the [Land Registration Act](#), and that through a letter dated 17th November 2023, the 1st Defendant's advocates declined the invitation to reparcel the land and indicated that they had instructions to receive court process and awaited the Plaintiff to commence litigation.
12. The Managing Director deposed that unless this court urgently intervenes by granting the orders sought, the Plaintiff may suffer irreparable harm because it may be unlawfully and irregularly evicted from its property and godowns which it purchased eighteen years ago and has occupied free from any interruptions for the said eighteen years.
13. The application was opposed by the 1st Defendant who filed Grounds of Opposition dated 30th November 2023 and a Replying Affidavit dated 19th April 2024 sworn by Kiram Patel, the 1st Defendant's Managing Director.
14. In the Grounds of Opposition, the 1st Defendant averred that Section 23 of the [Land Registration Act](#) and Section 152F of the [Land Act](#) are not applicable in this matter; that the Plaintiff's application has not demonstrated any impropriety in the process of issuance of the eviction notice to warrant the grant of orders sought under Section 23 of the [Land Registration Act](#) and that this application is res judicata as the issues raised herein, including ownership, were conclusively determined by the court in ELC case No. 767 of 2017 OS.
15. Mr. Kiram Patel averred that the 1st Defendant is the registered owner of the property known as LR 209/5650 having purchased it from A.H. Mawani and Co. Limited on 1st September 2006. He deposed that the application is fatally defective, incompetent, premature and a gross abuse of court process. He contended that the provisions of Section 23 of the [Land Registration Act](#) and Section 152F of the [Land Act](#) are not applicable in this matter.
16. Kiram Patel asserted that the 1st Defendant issued to the Plaintiff a demand letter dated 1st September 2023 requiring it to:
 - a. immediately stop/cease any further activities, business transactions and/or operation on the 1st Defendant's property i.e. a portion of Land Reference Number 209/5650 measuring 0.0925 hectares;
 - b. to remove any obstructing walls, buildings or other improvements erected thereon that may be occasioning the encroachment, including bringing down



the walls in the internal area of the two adjacent godowns that is LR No. 209/5650 and LR No. 209/5443.

- c. Instruct and inform their tenant More Metal Limited, Badar Hardware Ltd and/or Ms. Abdi Yusuf not to occupy and/or to vacate the 1st Defendant's property i.e a portion of LR No. 209/5650 measuring 0.0925 hectares within three months from the date of the notice, and
- d. Pay to the 1st Defendant the sum of Kshs. 23,731,719.95 together with interest at the rate of 14% per annum on account of mesne profits from the years 2018 to 2023 on account of unlawful occupation of the portion of the 1st Defendant's property."

17. The 1st Defendant's Director deposed that in compliance with the provisions of Sections 152A, 152B, 152C, 152E and 152G of the Land Act, the 1st Defendant duly served the Plaintiff with a three-month eviction notice via the Standard Newspaper published on 29th September 2023.
18. It was stated that the title over the 1st Defendant's property was discovered lost and a provisional title was processed through Gazette Notice No. 6882 of 1st August 2008 from 1st September 2006 until registration of the provisional title on 18th February 2010.
19. The 1st Defendant asserted that the company he knew to have possession of the Plaintiff's suit property was Devki Steel Mills Limited and that the Plaintiff and Devki Steel Mills Limited are related companies that operate under the same group of companies, with Kaushik Pandit serving as the Managing Director of both companies.
20. It is the 1st Defendant's case that on 1st September 2006, it wrote to Devki Steel Mills Limited offering to rent out the go down situated on LR No. 209/5650 as they were occupying the adjoining plot LR No. 209/5443; that Devki Steel Mills wrote to its advocates on 19th September 2006 indicating its interest in leasing the 1st Defendant's property situate on LR No. 209/5650 and that all that remained was execution of the letter of offer.
21. According to the 1st Defendant's Director, the letter of offer was however never signed; that he spoke to the Company Secretary of Kenya Commercial Bank who confirmed through a letter that the godown in question was never part of KCB's assets nor was it sold to Devki Steel Mills Limited and that the Plaintiff thereafter indicated through a letter dated 13th June 2006 that they were handing over the keys of the godown to KCB, which they contend was an admission that Devki Steel Mills Limited had no interest in the assertion of possession of the subject matter godown.
22. It was deposed that the Plaintiff then removed their shelves from the subject godown, effectively ceding possession of the godown; that they sealed part of the godown which was encroaching upon the 1st Defendant's property and that the 1st Defendant subsequently leased the subject godown to Elite Tools Limited and handed over the keys delivered to them by A.Z. Sheikh to the new tenant.
23. The 1st Defendant director stated that he instructed Development Survey Services to mark the beacons, identify the boundaries and establish the size of the 1st Defendant's property and that Development Survey Services conducted a site visit on 29th January 2018 and the report concluded that the unmarked godown sharing the boundary with Noor Bhai Hardware is part of LR No. 209/5650.
24. The deponent averred that all the annexed correspondence indicates that Devki Steel Mills took and retained possession of the Plaintiff's property being L.R. No. 5443 and not the godown situated on LR



No, 209/5650 and that the Plaintiff's assertion that it took possession of LR No. 209/5443 together with all the developments and the three godowns thereon was patently false.

25. According to the 1st Defendant, the Plaintiff's application is res judicata by virtue of the fact that the issues raised herein, including issues surrounding the ownership and encroachment on the 1st Defendant's property, have been heard and conclusively determined in ELC Case No. 767 of 2017 (OS) Maisha Mabati Mills Ltd v Farm Auto Spares Ltd delivered on 25th January 2023.
26. The 1st Defendant assert that the Plaintiff has refused to cede the encroached portion of its property which prompted it to issue the demand letter dated 1st September 2023 and eviction notice dated 29th September 2023 and that the Plaintiff has since rented the trespassed portion of the 1st Defendant's property to More Metal Limited and more recently to Badar Hardwares Limited.
27. According to the 1st Defendant, on the proposed reparcellation, the suggestion is preposterous because the two titles are adjacent to each other and that the deed plans, boundaries and co-ordinates of the two properties are not in conflict.
28. This application was canvassed by way of written submissions. Both parties filed submissions and lists of authorities which I have considered.

Analysis and Determination

29. Upon careful consideration of the application, Replying Affidavit and submissions filed by the parties herein, the issue for the determination by this court is whether the court should issue injunctive orders in the Plaintiff's favor, pending hearing and determination of the suit herein.
30. This application has duly been made under Order 40 Rule 1 of the Civil Procedure Rules, 2010, which provides for applications for interlocutory injunctions 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 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.”

31. Courts have established that there are three elements which an applicant must satisfy in seeking for an interlocutory injunction. As set out in the locus classicus case of *Giella vs Cassman Brown* (1973) EA 358 and by the Court of Appeal in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR, an applicant seeking an interlocutory injunction must satisfy the court that:
 - a. They have a prima facie case with a probability of success;
 - b. They will otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; and



c. If the court is in doubt, it will decide an application on the balance of convenience.”

32. The first requirement is for the Plaintiff to satisfy this court is that it has a prima facie case. A prima facie case was defined in *Mrao Ltd vs First American Bank of Kenya and 2 Others*, (2003) KLR 125 as: -
- “ A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
33. In *Kenleb Cons Ltd vs New Gatitu Service Station Ltd & Another* [1990] K.L.R 557 Bosire J held that:
- “To succeed in an application for injunction, an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction.”
34. In the *Plaint*, the Plaintiff asserted that when it purchased LR No. 209/5443 on 23rd May 2005, it was made to understand that there were three godowns on the said property. It asserts that it has been in occupation of LR No. 209/5440 and the three godowns for more than eighteen years.
35. The Plaintiff asserts that the 1st Defendant thereafter acquired the land known as Land Reference Number 209/5650 Nairobi on 23rd December 2010, and that on 24th October 2017, it received a letter from the 1st Defendant stating that it had taken one of the 1st Defendant’s Godowns and had sub-let the same.
36. According to the Plaintiff, the 1st Defendant further published a three-month eviction notice via the *Standard Newspaper* of 29th September 2023.
37. The Plaintiff asserts that it filed Nairobi ELC OS No. 762 of 2017 *Maisha Mabati Mills vs Farm Auto Spares* where it sought to be registered as the owner by adverse possession of a portion of Land Reference Number 209/5650.
38. The court however found that the Plaintiff’s claim fell short of the twelve-year statutory limit by 9 months. It contends that the earlier suit was not with respect to the godown and no finding was made with respect to the said godown.
39. It is further averred by both parties that the Plaintiff has leased out the godown situate on the 1st Defendant’s property to a new tenant who has begun repairing and repainting the premises, including the 1st Defendant’s portion.
40. In the *Plaint*, the Plaintiff has sought for judgment against the 1st Defendant for cancellation of the eviction notice dated 1st September 2023; a permanent injunction restraining the 1st Defendant from taking possession or interfering with its possession and ownership together with the godowns and developments thereon.
41. The Plaintiff has further prayed for an order of reparation with or without compensation to any party of Land Reference Numbers 209/5443 registered in the name of the Plaintiff and L.R. 209/5650 registered in the name of the 1st Defendant taking into account the terms of the Agreement of Sale Agreement dated 5th April 2005.



42. The Plaintiff has annexed a copy of title to LR 209/5440; a copy of the Survey Report prepared by Development Survey Services on 17th October 2017, and the judgment in ELC OS No. 762 of 2017 delivered on 25th January 2023, where the Honourable Lady Justice Mogeni dismissed the suit for lack of merit. In the Judgment, the court found that not only was the Plaintiff's occupation of the suit property below the statutory twelve years, but the Plaintiff also failed to call evidence for adverse possession.
43. The 1st Defendant asserts that it lawfully issued the eviction notice published on 29th September 2023 against the Plaintiff, and that the Plaintiff has not demonstrated any impropriety in the process of issuance of the eviction notice.
44. The 1st Defendant has given a detailed history between the Plaintiff and the 1st Defendant which began when the 1st Defendant purchased the suit property in 2006, and not 2010 as stated by the Plaintiff. The Defendant also deponed that it engaged in negotiations with the Plaintiff's sister company, Devki Steel Mills Ltd, to lease the 1st Defendant's property to the Plaintiff and that these negotiations were not fruitful.
45. The 1st Defendant also contended that this application is res judicata because the issues raised herein, including issues surrounding the ownership and encroachment on the 1st Defendant's property, have been heard and conclusively determined in ELC Case No. 767 of 2017 (OS).
46. As admitted by the 1st Defendant, the Plaintiff has been in possession and occupation of a portion of the suit property since 2005. The court in ELC Case No. 767 of 2017 (OS) found that although the Plaintiff's claim fell short of the statutory limit, the Plaintiff had attempted to get title by wrongdoing. The court found that the Plaintiff was not aware that it had encroached on the 1st Defendant's property until 2017, when it was presented with a survey report.
47. That being the case, it can then only be concluded that the judgment of the court in ELC Case no. 767 of 2017 conclusively settled the Plaintiff's adverse possession claim. Indeed, the fact that the Plaintiff filed a claim for adverse possession as against the 1st Defendant shows that it had admitted that it was in occupation of a portion of land registered in favour of the 1st Defendant, being LR No. 209/5650.
48. I say so because adverse possession is a legal mechanism under which a person who does not have title to a piece of land may acquire legal ownership based on continuous possession or occupation without the permission of its legal owner. That is the concession the Plaintiff made when it filed ELC Case no. 767 of 2017.
49. The 1st Defendant has also argued that reparation, as provided for under Section 23 of the [Land Registration Act](#), requires that the land owners execute a consent in writing, which consent has not been presented by the Plaintiff. Section 23 states that:

“(1) Subject to section 15 and authentication of the cadastral map, on the application of the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in the parcels is registered and of any cautioner, the Registrar may—

- (a) cancel the registers relating to those parcels and prepare new registers in accordance with the new edition of the cadastral map;
- or



(b) refuse to effect the reparation if the Registrar considers that the proposed reparation involves substantial changes of ownership, which should be effected by transfers without invoking this section, in which case, the Registrar shall direct the proprietors accordingly.

(2) Upon reparation, the new parcels shall vest in the persons in whose names they are registered.”

50. Where one party is unwilling to undertake reparation, it would be prudent for the court to be slow to order reparation, unless there are exceptional circumstances, which have not been proven in this case. This was held in the case of *David A. Langat & another vs Arap Sigirai & Another* [2016] KEHC 4846 (KLR) as follows;

“It will be observed that a Land Registrar has power to reparcel. However, this is subject to consent being given by the land owners. I think it is the same principle that the court ought to apply. Where one party insists on its rights and has no interest in reparing, the court ought to be slow to order a reparation. It does not mean that a reparation can never be ordered by the court, unless with consent, but I think it will need exceptional circumstances, before the court orders a reparation despite the objections of one land owner.”

51. Furthermore, the Plaintiff has not presented any evidence to show that the three months eviction notice served upon it pursuant to Section 152E of the *Land Act* was unprocedural or unlawful. Section 152E(1) of the *Land Act* provides that:

“If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.”

52. On the basis that there is a judgment that has found that the Plaintiff did not gain title to the portion of the 1st Defendant’s land known as LR No. 209/5650 by adverse possession, which judgment has not been set aside, and in view of the fact that there is no consent in writing for reparation submitted by either the Plaintiff or the 1st Defendant, and the Plaintiff having not presented any evidence of illegality or failure by the 1st Defendant to follow procedure in the service of the eviction notice, then the court must find that the Plaintiff has failed to establish that it has a prima facie case.

53. Further, although the Plaintiff is seeking for an injunction relating to its property known as LR No. 209/5443 together with the godowns and other developments, the evidence before this court shows that this land is distinct from LR No. 209/5650.

54. The portion that the 1st Defendant is seeking to be put in possession, and which was the subject of litigation in an earlier suit, is a portion on LR No. 209/5650 measuring 0.0925 Ha and not LR No. 209/5443 as pleaded in the application.

55. The Plaintiff has asserted that he will suffer irreparable harm because it may be unlawfully and irregularly evicted from its property and godowns which it purchased eighteen years ago and has occupied free from any interruptions for the said eighteen years. It is however clear that the interest of the Plaintiff in the portion of the suit property is monetary in nature, the same having been leased to a tenant.



56. Such harm or loss is therefore quantifiable, if the 1st Defendant effects its notice of eviction against the Plaintiff and its tenants, and can be remedied by way of damages in the event the Plaintiff's suit succeeds.
57. In these circumstances, having found that the Plaintiff does not have a prima facie case and will not suffer injury that cannot be compensated in damages, I find the Plaintiff's application dated 28th November 2023 to be unmeritorious.
58. The application dated November 28, 2023 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Mwangi and Njihia for 1st Defendant/Respondent

Ms Gichaga for Karungo for Plaintiff/Applicant

Mr. Allan Kamau for 2nd and 3rd Defendant

Court Assistant: Tracy

