



**Seroney & 5 others v County Government of Nandi (Environment & Land Case E017 of 2024) [2024] KEELC 6922 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6922 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E017 OF 2024**

**MN MWANYALE, J  
OCTOBER 17, 2024**

**BETWEEN**

**SAMWEL KIPKEMBOI SERONEY ..... 1<sup>ST</sup> PLAINTIFF  
SOLOMON KIPYEGO BIWOTT (SUING ON BEHALF OF THE ESTATE OF  
JOSHUA K KOGO – DECEASED) ..... 2<sup>ND</sup> PLAINTIFF  
TERESA CHEMATIA KEMBOI ..... 3<sup>RD</sup> PLAINTIFF  
DISMAS KIPKOECH ..... 4<sup>TH</sup> PLAINTIFF  
RODGERS ROP ..... 5<sup>TH</sup> PLAINTIFF  
TRANS-ELITE COUNTY SAVINGS & CREDIT CO-OPERATIVE SOCIETY  
LIMITED (FORMERLY KNOWN AS NANDI TEACHERS SAVINGS AND  
CREDIT COOPERATIVE SOCIETY LIMITED) ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF NANDI ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated 17/9/2024. The motion was filed under a Certificate of Urgency and directions at the Exparte stage were issued on 18/9/2024 as follows; -
  - i. Application was certified as urgent
  - ii. Service was to be effected by close of business on 18/9/2024 and Respondents to file their responses within 3 days from the said date 18/9/2024.
  - iii. Interparty hearing set for 25/9/2024.



2. When the application came up as scheduled for the interparty on 25/9/2024 only Ms. Koech Learned Counsel for the Applicant was present, there was no representation on behalf of the Respondent and neither had the Respondent filed grounds of opposition nor Replying Affidavit.
3. The Court thus sought to find out from Ms. Koech whether service had indeed been done and the Court's attention was drawn to the affidavit of service of Kemei Cheptei deponed on 24/9/2024 and upon being satisfied as to proper service upon the Respondent and there being no grounds of opposition nor response, the Court deemed the application unopposed, but nonetheless directed Ms. Koech to argue the same so as to determine whether the application was merited.
4. This is in line of with parity of reasoning with the decision in *Karugi & Others v Kabiya & 3 others* [1983] eKLR where the Court held as follows; -

“The burden on a Plaintiff to prove his case remains the same throughout the case even through the burden may become easier to discharge where the matter is not validity defended. The burden of proof is not way lessened because this is heard by way of formal proof.”

5. The Notice of motion seeks a temporary injunction to restrain the Defendant, its servants' employees and assigns whatsoever from encroaching and/or evicting the Plaintiffs from the suit properties known as Kapsabet Municipality/390, Kapsabet Municipality/405, Kapsabet Municipality/403, Kapsabet Municipality/441, Kapsabet Municipality/391, Kapsabet Municipality/416 herein after referred to as suit properties. In order to put up the purported housing units under the affordable housing programme units under the affordable housing programme thereon, pending the hearing and determination of the suit.
6. On 25/9/2024, when the came up for interparty hearing the Court after hearing the submissions of Ms. Koech Learned Counsel for the Applicants, granted an interim order, for the maintenance of status quo of the ground and on the register till delivery this ruling.
7. Turning back to the application, the grounds in support of the same are interalia; -
  - i. That the Plaintiffs/Applicants are the registered and/or beneficial are the registered and/or beneficial owners of their respective suit properties which had been gazetted as unsurveyed plots, 59,56,53,54,60 and N respectively on or about 1988.
  - ii. That the properties were allocated to interested parties who sold to the Applicants, and the Applicants were later issued with leases and certificate of leases
  - iii. The Defendant/Respondent had threatened the Plaintiffs/Applicants with eviction from the suit parcels so as to pave way for the construction of the housing units under the affordable housing programme.
  - iv. The Applicants were thus at risk of being evicted from their parcels of land, and the were apprehensive of the destruction their properties.
  - v. The Applicants had subjected themselves to the County Physical Planning and Land use Liaison Committee and their grievances have not received any consideration thereof, hence this suit.
  - vi. That they had established a prima facie case and were entitled to protection of the law and no irreparable loss would be occasioned to the Respondents.



- vii. In support of the application was an affidavit deponed by Samwel Kipkemboi Seroney on behalf of the Applicants.
  - viii. He reiterated the grounds in support of the application and exhibited as annexures 2a, b, c, d, e, f, g, h, I and j copies of certificates of lease and official searches in respect of the suit properties.
8. In respect of the 2<sup>nd</sup> Plaintiff, he was indicated to be a beneficial owner of Kapsabet Municipality/405, the same having been purchased by his late father Joshua Kiberenge A. Kogo, (Deceased) and in respect of whose Estate, the 2<sup>nd</sup> Plaintiff had taken out letters of Administration Ad Litem.
  9. Being satisfied of service, the Court allowed the Applicants Counsel to proceed with the application orally in Court. It was Ms. Koech, submissions that her clients had established prima facie case entitling them to the reliefs sought as they were the bonafide registered owners and/or beneficial owners of the suit premises; yet they had received notices to vacate the suit promises within 2 months.
  10. That the balance of convenience tilted in their favour for the grant of the orders sought; and urged the Court to allow the application.

**Issue for Determination: -**

11. As observed earlier in the ruling this application was unopposed and the only issue for determination would be whether the application is meritorious.
12. I have perused the application before Court as well as the affidavit in support and the annexure thereto, and considered both the oral and the written submission filed by the Applicants Counsel.
13. The Applicants have exhibited through annexures 2a – g copies of certificate of lease in respect of Dismas Kipkoech on Kapsabet Municipality/441 with a copy of an official search, copy of an official search, copy of certificate of lease, in respect of Kapsabet Municipality/390 registered in the name of Samuel Kipkemboi Seroney together with a copy official search confirming the same.
14. A copy of certificate of lease one Kapsabet Municipality/40, in the name of Teresa Chematia Kemboi, and a corresponding certificate of official search confirming registration to the said Teresa Chematia Kemboi, copy of certificate of lease of Kapsabet/municipality/391 registered in the name of Rodgers Rop and a certificate of official search confirming registration to the said Rodgers Rop, a copy of certificate of title registered in the name of Nandi Teachers Co-operative Society over Kapsabet Municipality/415 and a copy of certificate of official search over the said parcel and a copy of certificate of lease Pauline Jeptarus Barngetuny over Kapsabet Municipality/405 as well as a copy of certificate of search.
15. A copy of agreement for sale over Kapsabet/municipality/405 between Pauline Jeptarus Barngetuny as vendor and Joshua K. Kogo as purchaser was also exhibited.
16. No response not grounds of opposition has been filed, hence the facts are uncontroverted. Equally no defence has been filed and the Court cannot discern the reasons, at this moment for inclusion of the Applicants suit properties, in the eviction Notice dated 1<sup>st</sup> August 2024. Which clearly lists the Applicants properties together with other properties requiring them to vacate the suit properties under Section 58 (7) and (8) of the [Physical and Land Use Planning Act](#) 2019.
17. The Applicants submit they have established a prima facie case and cite the case of *Geilla v Cassman Brown*, as well as the case of [Nguruman Limited](#).



18. On the material placed before Court, which are the copies of certificate of leases, and corresponding copies of official searches as well as the eviction notice, and without the benefit of a response by the Respondent, the Court is convinced that the Applicant has established a prima facie case, under the provisions Section 26 of the Land Registration Act, “the certificate of title shall be taken as prima facie evidence that the person names is a proprietor.... Except
  - a. On ground or misrepresentation or fraud
  - b. Where the certificate had been acquired illegally, unprocedurally or through corrupt scheme.”
19. The certificate of official search exhibited in Court having been issued under the Land Registrar, are deemed under Section 26(2) of the Land Registration Act to have been adduced in the same manner as the original.
20. Having exhibited the certificate of leases and thus established prima facie, at this stage and without the benefit of a response or a defence the Applicants are entitled to the interests and rights of the proprietors under Section 24 & 25 of the Land Registration Act.
21. The Court shall now examine the other aspects to be proven as established of the *Giella v Cassman Brown*.
22. In the supporting affidavit the Applicants have deponed living on the suit premises and/or carrying Business thereon and have exhibited as annexures SK6 a – d, photographs showing the Applicants to be possession of the suit properties. They would thus stand to suffer inseparably if the notice was effected against them and the balance of convenience equally tilts in their favour.
23. The Court did ask Ms. Koech to address it, on whether injunction can issue against a County Government necessitating the filing of written submissions by Ms. Koech on the issue; on this issue, Ms. Koech Learned Counsel for the Applicants. While citing the decisions in the cases, of James Mugai Thungu v County Government of transNzoia and 2 others 2017, as well as Lawrence Ogaro Onyiego & Another v Samuel Minika & Another where the Courts, faced with the predicament as this Court, found that injunctions against County Government were not prohibited by either county Governments Act or the Government Proceedings Act. I am equally persuaded by the said reasonings in the above cases.
24. Having found that there is no material placed before Court to challenge the certificate of titles issued to the Applicants, and having exhibited certificate to leases in respect of their portions of the suit properties, I find that the application have established prima facie case and the application before Court is merited and accordingly I proceed to issue a temporary injunction restraining the Defendant/Respondent, its agents, servants, employees and assigns whatsoever from encroaching and/or evicting the Plaintiffs/Applicants from Kapsabet Municipality/390, Kapsabet Municipality/391, Kapsabet Municipality/403, Kapsabet Municipality/405, Kapsabet Municipality 441 and Kapsabet Municipality/416.
25. Costs of the application shall be in the cause.

**RULING DELIVERED, AND DATED AT KAPSABET THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**HON. M. N. MWANYALE,**

**JUDGE**

In the presence of;

1. Ms. Koech for the Applicants



2. Ms. Chebet for the Respondents

