



Green Vine Heights Limited & 4 others v Kazungu & 63 others (Environment & Land Case E069 of 2024) [2024] KEELC 14012 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14012 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E069 OF 2024
NA MATHEKA, J
DECEMBER 19, 2024**

BETWEEN

**GREEN VINE HEIGHTS LIMITED 1ST PLAINTIFF
MAIMUNA MZEE KHAMIS 2ND PLAINTIFF
KHAMIS MZEE KHAMIS 3RD PLAINTIFF
SALAMA KHAMIS MZEE 4TH PLAINTIFF
REHEMA HAJI IDDI 5TH PLAINTIFF**

AND

**KAHINDI KITSAO KAZUNGU & 63 OTHERS & 63 OTHERS & 63
OTHERS DEFENDANT**

RULING

- 1 The application is dated 29th July 2024 and is brought under Section 1A, 1B, 3, 3A and 63 (e) of the [Civil Procedure Act](#), Order 51 Rule 1, Order 40 Rules I, 2, and 3 of the Civil Procedure Rules seeking the following orders;
1. That pending the hearing and determination of this application inter partes, this Honourable court be pleased to grant an interim injunction restraining the Defendants {}by themselves, their family, agents, proxies, servants, employees and/or otherwise {}whatsoever. from encroaching, trespassing, constructing, fencing, cultivating, grazing, obstructing the applicants' right of ingress and/or egress into and/or out of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN, or in any manner whatsoever interfering with the plaintiffs' peaceful and quiet possession, occupation, use and enjoyment of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN.



2. That this Honourable Court be pleased to order that the Officer in charge of Mbungoni Police Post or any other officer acting under their direction do maintain law and order during the enforcement of the orders issued herein.
3. That pending the hearing and determination of this suit, this Honourable court be pleased to grant a temporary injunction restraining the Defendants by themselves, their family, agents, proxies, servants, employees and/or otherwise whatsoever, from encroaching, trespassing, constructing, fencing, cultivating, grazing, obstructing the applicants' right of ingress and/or egress into and/or out of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN, or in any manner whatsoever interfering with the plaintiffs' peaceful and quiet possession, occupation, use and environment of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN.
2. It is based on the grounds that the Plaintiffs were at all material times the legal owners entitled to exclusive possession, enjoyment and use of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN situate in Mombasa. That on or about June, 2024, the Defendants, wrongfully and without any colour of right forcibly trespassed into the plaintiffs' properties and took possession of parts of the suit property by erecting semi-permanent houses made from wattle. That the invasion was reported at Mbungoni Police Post and on or about 3rd of July, 2024, before the defendants could complete building their structures and occupying them- the plaintiffs with the help of the police from Mbungoni Police Post, local administration and community members drove the defendants out of the suit properties. That again on 17th July, 2024 at around 9.30 am the defendants who were armed forcibly entered the plaintiffs' property and started slashing grass, clearing bushes and erecting semi-permanent houses but were similarly driven out of the property with the assistance of police officers from Mbungoni Police Station. That during the invasion, the defendants blocked access roads to the properties and pelted the plaintiffs and their family members with stones, some of whom sustained bodily injuries. That the defendants have threatened and intend, unless restrained by this Honourable Court, to wrongfully re-enter and re-occupy the suit property and thereby trespass thereon and deprive the plaintiffs of their peaceful use and enjoyment of the property.
3. This court has considered the application, supporting affidavit and annexures therein. The defendants who are over 60 people were served by way of advertisement but failed to file any response. The prayer for temporary injunction is well discussed in the celebrated case of *Giella vs Cassman Brown (1973) EA 358*. In *Nguruman Limited vs Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR* the Court of Appeal held that;

in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.
4. On the first pillar, the plaintiffs state that they were at all material times the legal owners entitled to exclusive possession, enjoyment and use of PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN situate in Mombasa. That on or about June, 2024, the Defendants, wrongfully and without any colour of right forcibly trespassed into the plaintiffs' properties and took possession of parts of the suit property by erecting semi-permanent houses made from wattle. They attached is copies of the searches



of the suit properties PLOT Nos. 20953/1/MN, 20959/1/MN and 20960/1/MN respectively. I find that they have established a prima facie case. Section 26 of the *Land Registration Act* states as follows;

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

5 On the 2nd pillar of temporary injunctions, the plaintiff is required to show irreparable injury and I am guided by Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR where court held;

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

6 The Plaintiffs state that on or about June, 2024, the defendants, forcibly trespassed into the plaintiffs' properties and took possession of parts of the suit property by erecting semi-permanent houses. The matter was reported at Mbungoni Police Post and on or about 3rd of July, 2024 and the defendants were driven out of the suit properties. That again on 17th July, 2024 at around 9.30 am the defendants tried to reenter and were again driven out of the property with the assistance of police officers from Mbungoni Police Station. I find that the plaintiffs would suffer irreparable damage if the defendants were allowed to stay erect semi-permanent houses and occupy the suit land.

7 The 3rd pillar which is the balance of convenience. In Pius Kipchirchir Kogo case (Supra) the court held;

The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

8 It is clear from the annexed photos that the defendants are not in occupation save for some structures which seem to have been pulled down. I find the balance of convenience falls in the favour of the plaintiffs who are still in occupation as the defendants have threatened to occupy but have been unable to do so. I find that the plaintiffs have established a prima facie case and I order that the status quo be



maintained pending the hearing and determination of this matter. Costs of this application to be in the cause. Parties are advised to comply with order 11 and fix the matter for hearing.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

