



**Seme v Tonai & another (Environment & Land Case E022 of 2024)  
[2024] KEELC 13985 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13985 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND CASE E022 OF 2024  
EM WASHE, J  
DECEMBER 18, 2024**

**BETWEEN**

**LEONARD OLE SEME ..... PLAINTIFF**

**AND**

**KIJABE KUYA TONAI ..... 1<sup>ST</sup> DEFENDANT**

**JOHN KIRONGAI LEPEINE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff (hereinafter referred to as “the Applicant”) filed a Notice of Motion Application dated 27.08.2024 (hereinafter referred to as “the present application”) against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (hereinafter referred to as “the Respondents”) seeking for the following orders; -
  - a. That this Application be certified urgent and service be dispensed with in the first instance. (spent)
  - b. That pending the hearing and determination of the instant Application inter-partes, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents either by themselves, agents, servants, employees and/or anyone claiming under the Defendants/Respondents from entering upon and/or trespassing onto, and/or interfering with or dealing with the parcel of land parcel LR.NO.33014 or any of its portion thereof. (spent)
  - c. That pending the hearing and determination of the Plaintiff’s suit, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants/ Respondents either by themselves, agents, servants, employees and/or anyone claiming under the Defendants/Respondents from entering upon and/or trespassing onto, and/or interfering with or dealing with the parcel of land parcel LR.NO.33014 or any of its portion thereof.



- d. That the costs of and incidental to this application be provided for; and
  - e. That this Honourable Court be pleased to make any other order and/or directions as to but not limited to the orders sought in the present application.
2. The prayers above are premised on the grounds contained the body of the present application as well as the Supporting Affidavit sworn by one LEONARD OLE SEME on the 27.08.2024 and are summarised as follows; -
- a. The Applicant herein pleaded that he is the registered owner of a property known as LR.NO.33014 as Contained in the Lease Agreement dated 22.03.2023 which was registered on the 20.11.2023 and produced as LOS 1.
  - b. Based on the Lease Agreement dated 22.03.2023, the Applicant was subsequently issued with a Certificate of Lease in his name which was produced as LOS 2.
  - c. The Applicant stated that the Lease Agreement dated 22.03.2023 produced as LOS 1 as well as the Certificate of Lease produced as LOS 2 were created based on a Deed Plan No. 453468 produced as LOS 3 and a Part Development Plan issued on 22.07.2002 which was produced as LOS 4.
  - d. The Applicant consequently states that he is the lawful and legitimate owner of the property known as LR.NO.33014 and is entitled to exclusive and sole use of the said property.
  - e. However, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the year 2024 purported to trespass and/or interfere with the Applicant's quite possession over the property known as LR.NO.33014 without any colour of ownership rights.
  - f. The Applicant is of the view that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's actions infringe on his ownership rights over the property known as LR.NO.33014 thereby infringing on his Constitutional Rights as provided for under Article 40 of the Kenyan Constitution, 2010 and Section 26 of the *Land Registration Act*, No. 3 of 2012.
  - g. It is therefore the Applicant's prayer that this Court do issue a temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to prohibit their actions of trespassing onto the property known as LR.NO.33014 failure to which the Applicant will suffer irreparable loss and injury.
3. The present Application was duly served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents but only the 1<sup>st</sup> Respondent responded to the same by filing a Replying Affidavit dated 03.09.2024 in which he pleaded as follows; -
- a. That the 1<sup>st</sup> Respondent is the lawful and legitimate owner of a property known as Plot.no. 6 Block 2 within Lolgorian Trading Centre as contained in the Letter of Allotment issued on the 03.08.2022 by the County Government of Narok and produced as KKT1.
  - b. The 1<sup>st</sup> Respondent pleaded that the Applicant herein had filed another suit before the Chief Magistrate's Court known as Kilgoris Chief Magistrate's Court ELC Case.E026 Of 2024 between himself and the County Government Of Narok seeking to take possession and/or occupation of the property known as LR.NO.265798 which seems to be at the same location as the 1<sup>st</sup> Respondent's property known as Plot. No.6 Block 2 within Lolgorian Trading Centre.
  - c. In the proceedings known as Kilgoris Chief Magistrate's Court ELC Case No. E026 of 2024, the Applicant herein was prohibited by way of a temporary injunction from constructing, developing and/or interfering with the quite possession and occupation of the property known



as Plot. No.6 Block 2 within Lolgorian Trading Centre as contained in Annexures KKT 2 and KKT 3.

- d. Similarly, the Lower Court in the proceedings known as Kilgoris Chief Magistrate's Court ELC Case No. E026 of 2024 directed the District Land Registrar, the District Land Surveyor and the County Government of Narok to go and locate the Applicant's property known as LR.NO.265798 as contained in Annexure KKT 4.
  - e. Despite the above issues pending before the Chief Magistrate's Court, the Applicant has now filed this proceeding claiming to be the registered owner of a property known as LR.NO.33014.
  - f. The 1<sup>st</sup> Respondent pleaded that the Applicant's property known as LR.NO.33014 does not exist in the Records of the County Government of Narok and where it is purported to exist on the ground is the same place as the 1<sup>st</sup> Respondent's property known as Plot. No.6 Block 2 within Lolgorian Trading Centre contained in the Letter of Allotment dated 03.08.2022.
  - g. The 1<sup>st</sup> Respondent further stated that if indeed there was any trespass as alleged on the Applicant's property known as LR.NO.265798, then he would have been sued as one of the Defendant's therein.
  - h. The 1<sup>st</sup> Respondent's conclusion was that the Applicant herein was a fraudster holding fraudulent and illegal ownership documents to both LR.NO.265798 and LR.NO.33014 and is therefore not entitled to any equitable reliefs as sought in the present application.
4. The Replying Affidavit sworn by the 1<sup>st</sup> Respondent was duly served on the Applicant who filed a Further Affidavit sworn on the 27.09.2024 in which he stated as follows; -
- a. Indeed, the property known as LR.NO.33014 is located within Lolgorian Trading Centre.
  - b. The Applicant reiterated that he was allocated the property known as LR.NO.33014 by the defunct Narok County Council.
  - c. The Applicant is the one in occupation of the property known as LR.NO.33014 having constructed some temporary structures which were demolished by the Respondents when they trespassed into the said property.
  - d. Further to that, the Applicant pleaded that he began constructing a permanent fence around LR.NO.33014 but was hindered and/or obstructed by the Respondents therein.
  - e. The Applicant averred that the Respondents herein have never filed any legal proceedings to challenge the ownership and/or the ownership documents of the property known as LR.NO.33014.
  - f. Similarly, the Applicant denied any site visit by the District Land Registrar, District Land Surveyor and the County Government of Narok for resolve any ownership dispute over the properties known as LR.NO.33014 and Plot. No.6 Block 2 within Lolgorian Trading Centre.
  - g. The Applicant therefore sought this Court to grant the temporary injunctions sought herein.
5. Upon filing and service of the Further Affidavit hereinabove, the Court directed that the present Application be canvassed by way of written submissions.
6. The Applicant duly filed his written submissions dated 27.08.2024 while the 1<sup>st</sup> Respondent filed his submissions on 25.10.2024.



7. The issue for determination is whether or not the Applicant herein has satisfied the ingredients of granting an order of injunction.
8. In the case of *Nguruman Limited-versus- Jan Bonde Nielsen & 2 Others CA NO. 177 OF 2012 (2014) eKLR*, the Court of Appeal pronounced itself on the ingredients of an interlocutory injunction as follows; -

“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, if 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”.

9. Based on the above finding by the Court of Appeal, this Court will now discuss the three pillars of granting an Order of Injunction sequentially and make its findings on the same.

#### **Pillar 1- Establishment Of A Prima Facie Case**

10. The first pillar in considering an Application for Injunction is whether or not the Applicant has established a prima facie case.
11. According to the case of *mrao-versus- first american bank of kenya limited (2003) eKLR*, the threshold of what should be considered as a prima facie case is described as follows; -

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
12. The understanding of the above finding by the Court is that an Applicant must demonstrate that it actually has a legal right which has been infringed and therefore calls for an explanation or a rebuttal from the Respondent.
13. In the present Application, the Applicant pleads that he is the registered owner of the property known as LR.NO.33014 based on the Lease Agreement dated 22.03.2023 and registered on the 20.11.2024.
14. The Applicant presented the Lease Agreement dated 22.03.2023 as LOS 1 and the Certificate of Lease for LR.NO.33014 as LOS 2.
15. The 1<sup>st</sup> Respondent on the other side disputed the ownership and the ownership documents produced by the Applicant as LOS 1 and LOS 2.
16. The 1<sup>st</sup> Respondent pleaded that the Applicant’s documents and in particular the Lease Agreement dated 22.03.2023 and the subsequent Certificate of Lease for the property known as LR.NO.33014 were fraudulent and not procedurally acquired hence could not bestow any legal and/or ownership rights on the Applicant.
17. The 1<sup>st</sup> Respondent proceeded to state that he is the registered owner of a property known as Plot. No.6 Block 2 within Lolgorian Trading Centre having been issued with a Letter of Allotment on the 03.08.2022 by the County Government of Narok.



18. The 1<sup>st</sup> Respondent submitted that it was actually the Applicant that invaded his property known as Plot. No.6 Block 2 within Lolgorian Trading Centre sometime in 2023 and started developing the same by putting up a perimeter fence which was subsequently stopped.
19. The 1<sup>st</sup> Respondent therefore was of the view that the Applicant herein does not have any legal rights over the portion of land known as Plot. No.6 Block 2 within Lolgorian Trading Centre.
20. Clearly, based on the documentary evidence produced by the Applicant and the 1<sup>st</sup> Respondent, there is an issue about the legality of the ownership documents possessed by the Applicant.
21. To be able to determine whether or not the Applicant has a legal right over the property known as LR.NO.33014, the Applicant has presented a Lease Agreement dated 22.03.2023 marked as LOS 1 as well as Certificate of Title marked as LOS 2.
22. The 1<sup>st</sup> Respondent in his Replying Affidavit sworn on the 03.09.2024 submitted that these two documents namely the Lease Agreement dated 22.03.2023 and the Certificate of Title were both fraudulent and not procedurally acquired.
23. The Applicant in his Further Affidavit sworn on the 27.09.2024 reiterated that the said documents namely the Lease Agreement dated 22.03.2023 and the Certificate of Lease were both valid documents having been created on the basis of a Letter of Allotment issued by the defunct Narok County Council.
24. To begin with, it is important to ascertain the physical location of the property known as LR.NO.33014.
25. According to the Paragraph 4 of the Further Affidavit dated 27.09.2024, the property known as LR.NO.33014 is located within Lolgorian Trading Centre.
26. Based on the above admission by the Applicant, the property known as LR.NO.33014 is located within a trading centre which constitutes what is known as Public Land as provided for under the [Land Act](#), No. 6 of 2012.
27. In the Interpretation part of the [Land Act](#), No. 6 of 2012, Alienation of Public Land means the follows;  
-  
“Alienation of land by either the National Government or the County Government as the case may be, by way of issuance of a letter of allotment by the National Land Commission to any person to hold the land either under Leasehold or Freehold.”
28. The above proviso expressly states that any alienation of public land must begin with the issuance of a Letter of Allotment which would then form the foundation of any further documentation in favour of an allottee including the Applicant herein.
29. Further to that, Section 14 of the [Land Act](#), No.6 of 2012 provides for the methodology and/or stages that the National Land Commission must undertake in the allocation of public land and the participation of the County Governments within the location where these allocations are taking place.
30. The Applicant pleaded that he was issued with a Letter of Allotment by Narok County Government in the year 2002.
31. However, the Applicant did not present the said Letter of Allotment issued in the year 2002 by the defunct Narok County Council before the Court to confirm that such a document exists.



32. Nevertheless, this Court also takes Judicial Notice that the town known as Lolgorian is within what was formerly known as Transmara District which was created in 1994 therefore all towns within Transmara District were under the administration of the defunct Transmara County Council and not Narok County Council.
33. Secondly, the Applicant also presented a Lease Agreement dated 22.03.2023 marked as LOS 1 and the subsequent Certificate of Title marked as LOS 2.
34. It is important to point out that the issuance and registration on both a Lease Agreement and the Certificate of Title under the [Land Registration Act](#), No.3 of 2012 should be in line with the Land Registration (Registration Units) Order of 2017 published through [Legal Notice No. 277/2017](#).
35. The First Schedule in the Land Registration (Registration Units) Order of 2017 provides the Land Registration Units, the Land Registries to Register the Leases and Issue the Certificates of Titles and the relevant liaison Counties.
36. According to the First Schedule of the Land Registration (Registration Units) Order of 2017, all land within Transmara should be under the Land Registration Unit known as TRANSMARA and registered at the Kilgoris Land Registry with the consultation of the County Government of Narok.
37. A careful perusal of the Lease Agreement dated 22.03.2023 presented by the Applicant shows the Registration Unit of LR.NO.33014 is Nairobi Central and not TRANSMARA as provided under the Land Registration (Registration Units) Order of 2017.
38. In addition to the above, registration of the Lease Agreement dated 22.03.2023 was done at the Land Titles Registry – Nairobi Registry yet the Land Registration (Registration Unit) Order of 2017 required the said Lease Agreement to be registered at the Kilgoris Land Registry within Narok County.
39. On the execution part of the Lease Agreement dated 22.03.2023, the same has been executed by a Land Administration Officer on behalf of the Cabinet Secretary.
40. However, the Land (Allocation of Public Land) Regulations of 2017 published under [Legal Notice 284 of 2017](#) provides as follows under Regulation 36; -
  1. The Commission shall prepare and execute leases emanating from allocation of public land.
  2. In order to facilitate the preparation of leases on public land, the Commission shall request for three copies of sealed cadastral plan and cadastral map in Form LA 12 set out in the schedule from the office or authority responsible for surveys.
  3. Upon receipt of the sealed cadastral plan and cadastral map, a lease document in Form LA 13 set out in the schedule shall be executed by designated officers of the commission duly designated by notice in the gazette, on behalf of the national government or county government.
  4. The executed Lease document and the cadastral map and plan shall be forwarded to the Chief Land Registrar for registration and issuance of Certificate of Lease to the proprietor.
  5. The Commission shall forward the documents in paragraph (4) to the Chief Land Registrar in Form LA 14 set out in the schedule.”



41. The interpretation of the above Regulation 36 is that the person with the powers to execute Leases over public land are designated officers of the National Land Commission and not the Cabinet Secretary in charge of Lands and thereafter the said Lease Agreement is registered by the Chief Land Registrar.
42. As regards the Certificate of Title produced as LOS 2, the Court observes that the copy before Court is incomplete as it does not have the part of execution by the Registrar of Titles.
43. The Court may overlook this omission on the basis that it was a human error, but the Applicant had a duty under Section 107 of the *Evidence Act*, Cap 107 to prove that he was the lawful registered owner of the property known as LR.NO.33014 located within Lolgorian Trading Centre.
44. The easiest way to have provided this evidence would be through presenting an Official Search under Section 35 (3) of the *Land Registration Act*, No. 3 of 2012.
45. Unfortunately, the Applicant did not deem it necessary to provide any Official Search of the property known as LR.NO.33014 to confirm whether he had been lawful registered and who is the legitimate owner of the said property.
46. Based on all these inconsistencies in the Lease Agreement dated 22.03.2023 and the incomplete Certificate of Title relating to the property known as LR.NO.33014, this Court hereby makes a finding that the Applicant has not established a prima facie case over the ownership and existence of the property known as LR.NO.33014.

### **Pillar 2- Irreparable Loss & Harm**

47. The second pillar to be surmounted is whether the Applicant stands to suffer irreparable loss and harm if the said temporary injunction is not issued.
48. In this pillar, the Applicant is required to present persuasive evidence to demonstrate the violation of the legal rights and/or the injuries that have occurred pursuant to the actions of the Respondents.
49. In the present application, the Applicant did not present any documentary evidence to persuade the Court that indeed either the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents have encroached, trespassed and/or interfered with his quiet possession and/or occupation his portion of land.
50. In fact, the Applicant stated that he had taken possession and was actually in the process of fencing his property known as LR.NO.33014 when the same was stopped by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
51. However, the Applicant failed to disclose that the perimeter fence was actually stopped by virtue of a Court Order which was issued by the Lower Court in the proceedings known as KILGORIS CHIEF MAGISTRATE'S COURT ELC CASE.E026 OF 2024.
52. It is said that he who comes to equity must come with clean hands.
53. In essence, this Court does not have any grounds upon which it can issue an order of injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as no evidence of infringement of the Applicant's legal rights has been demonstrated let alone one which cannot be compensated by way of damages.

### **Pillar 3- Balance Of Convenience**

54. The last pillar for determination is in whose favour the balance of convenience should tilt.



55. In the present case, the Applicant has not successfully persuaded this Court on the issue of a prima facie case and irreparable damage hence the balance of convenience will definitely tilt in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

### **Conclusion**

56. In conclusion, this Court hereby makes the following Orders in determination of the Notice of Motion application dated 27.08.2024; -

- A. The application dated 27.08.2024 is not merited and therefore dismissed forthwith.
- B. The applicant will bear the 1<sup>st</sup> defendant's costs relating to the present application.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 18<sup>TH</sup> DECEMBER 2024.**

**EMMANUEL.M.WASHE**

**JUDGE**

In the presence of:

Court Assistant: Mr. Emmanuel

Advocates For The Applicant: Mr. Owuor For

Plaintiff/applicant

Advocates For The Defendant: Mr. Kamwaro For

Defendant/respondent

