



James v Mami’s Motor World Limited & 4 others (Environment & Land Case E30 of 2022) [2023] KEELC 96 (KLR) (19 January 2023) (Ruling)

Neutral citation: [2023] KEELC 96 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E30 OF 2022
FM NJOROGE, J
JANUARY 19, 2023**

BETWEEN

JANE NJERI JAMES PLAINTIFF

AND

MAMI’S MOTOR WORLD LIMITED 1ST DEFENDANT

MINISTRY OF DEVOLUTION 2ND DEFENDANT

MINISTRY OF LANDS & PHYSICAL PLANNING 3RD DEFENDANT

COUNTY GOVERNMENT OF NAKURU 4TH DEFENDANT

DISTRICT LAND REGISTRAR, NAKURU 5TH DEFENDANT

RULING

1. This is a ruling in respect of the plaintiffs notice of motion dated May 25, 2022 which seeks the following orders:
 1. ...Spent
 2. That this honourable court be pleased to issue an order prohibiting the 2nd - 5th defendant either by themselves, their agents, servants, employees, or otherwise howsoever from entering, remaining upon, taking possession, interfering with the plaintiff’s quiet possession of all that land known as Nakuru Municipality Block 20/111 or dealing with Nakuru Municipality Block 20/111 in any way whatsoever prejudicial to the interests of the plaintiff pending the hearing and determination of this application.
 3. That this honourable court be pleased to issue an order prohibiting the 2nd - 5th defendant either by themselves, their agents, servants, employees, or otherwise howsoever from entering, remaining upon, taking possession, interfering with the plaintiff’s quiet possession of all that



land known as Nakuru Municipality Block 20/111 or dealing with Nakuru Municipality Block 20/111 in any way whatsoever prejudicial to the interests of the plaintiff pending the hearing and determination of this suit.

4. That this honourable court be pleased to issue an order of inhibition, inhibiting the registration of any disposition by the 5th defendant in the register of land parcel Nakuru Municipality/Block 20/111 pending the hearing and determination of this suit.
 5. That costs of this application be provided for.
2. The application is supported by the affidavit sworn by Jane Njeri James the plaintiff herein where she deposed that in 2014 she purchased the property known as Nakuru Municipality Block 20/111 (hereinafter “the suit property”) from the 1st defendant for Kshs 29,500,000; that she got registered as the proprietor and charged it to Kenya Commercial Bank to secure financing to pay the purchase price; that she is in occupation of the suit property; that in 2020 she was informed by her neighbors that unknown persons in a government vehicle took photographs and recorded videos of the property; that as informed by her employees, on March 18, 2022 about 15 officers of the 2nd -5th defendants stormed into her property and purported to value it on the pretext that it was government property; that the valuation exercise was carried out pursuant to an institutional framework for the valuation and transfer of assets of the defunct Local Authorities and Assets of the National Government; that unless the court intervenes, the 2nd – 5th defendants may storm her property and repossess it.

Response

3. The 4th defendant in response to the application filed its replying affidavit dated October 5, 2022 sworn by Elijah M Omambia where he deposed that the plaintiff’s assertion of an illegal valuation of the suit property is false; that vide the Kenya Gazette Notice 5711 dated June 21, 2019, the Inter-Government County Committee was established and mandated to identify, verify and validate the inventories of existing assets and liabilities of the devolved functions; that a report was submitted and the suit land was identified as belonging to the Ministry of Livestock and Fisheries Development to be occupied by senior veterinary officers; that if at all the plaintiff purchased the suit property as alleged, the same was done fraudulently and illegally; that the search the plaintiff is relying on indicates that a restriction had been registered against the suit property by the Ministry of Housing; that the transfer exercise is yet to be done and the suit property is still being held by the Ministry of Housing, Ministry of Livestock and Fisheries Development and National Treasury.
4. The plaintiff in response filed a further affidavit dated October 18, 2022 where she deposed that the averments by the 4th defendant are hearsay and argumentative; that the 4th defendant has no locus to speak for or produce documents on behalf of National Government institutions; that having not been involved in the valuation process, the same was in violation of her right to fair administrative action; that she did not rely on any official search indicating that a restriction had been registered against her property; that she remains a *bona fide* purchaser for value without notice.

Submissions

5. The plaintiff/applicant filed her submissions dated October 26, 2022 on the same day while the 4th defendant/respondent filed its submissions dated November 9, 2022 on the same day.
6. The plaintiff identified one issue for determination, whether the orders sought should issue. She relied on numerous cases including *Nyanza Fish Processors Limited v Barclays Bank of Kenya Limited & 3 others* [2016] eKLR on the law on grant of temporary injunctions.



7. The 4th defendant also identified one issue for determination, whether based on the facts disclosed the plaintiff/applicant is entitled to the interim orders as prayed. It relied on several cases including the case of Henry Muthee Kathurima v Commissioner of Lands & another [2015] eKLR where it submitted that the suit land is public land reserved for the public purpose of housing senior government officers.

Analysis And Determination

8. This court has considered the application, replying affidavit and submissions and the main issue for determination is whether the plaintiff/applicant is entitled to the orders as sought in her application.
9. I am guided by the holding in the cases of Giella v Cassman Brown (1973) EA 358 and Nguruman Limited v Jan Bonde Nielsen & 2 others CA No 77 of 2012 [2014] eKLR. It was held that to succeed in an application for injunction, the applicant needs to demonstrate a *prima facie* case with a probability of success, show that he stands to suffer irreparable harm unless the injunction is granted and where the court is in doubt, it will decide the application on a balance of convenience.
10. In the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, a *prima facie* case was defined as follows:
- “In civil cases, a *prima facie* case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
11. This court notes that both the plaintiff and 4th defendant claim ownership to the suit property. The plaintiff contends that she purchased the suit property from the 1st defendant and that she has since been in occupation. The 4th defendant on the other hand contends that the suit land belongs to the Ministry of Livestock and Fisheries Development under the National Government meant for senior veterinary officers.
12. It is a fact that none of the parties have annexed any title documentation to the suit property despite both of them claiming ownership. The plaintiff annexed a title showing that the suit land was owned by the 1st defendant while the 4th defendant annexed a County Government report dated March 27, 2020 indicating that the suit land belonged to the Ministry of Livestock and Fisheries Development hence public property. That being the case, this court is of the view that it is best that this application be decided on a balance of convenience. The balance of convenience tilts in favour of the plaintiff/applicant who is in possession of the suit property and not the 4th defendant/respondent.
13. In view of the foregoing discourse, this court is not persuaded that the plaintiff/applicant has established any *prima facie* case and in the upshot, this court makes the following orders:
- a. The current *status quo* be maintained until the case is heard and finalized. The status quo is that it is the plaintiff/applicant who is in possession of the suit land and she may retain possession.
 - b. In addition, no party should sell, charge, lease, or in any other way enter into dealings over the disputed land until this case is finalized.
 - c. Costs of the application shall be in the cause.
 - d. The suit shall be mentioned on February 9, 2023 for directions as to hearing.



**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19TH
DAY OF JANUARY, 2023.**

MWANGI NJOROGE

JUDGE, ELC, NAKURU

