



REPUBLIC OF KENYA



KENYA LAW
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**Maritim & 4 others v Samoei & 4 others (Environment & Land Case
E053 of 2022) [2023] KEELC 92 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 92 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E053 OF 2022
EO OBAGA, J
JANUARY 19, 2023**

BETWEEN

**PHILIP K MARITIM 1ST PLAINTIFF
KIPKURGAT KIBOT KIBIEGO 2ND PLAINTIFF
ROBERT KIPKEMEI KETER 3RD PLAINTIFF
WILLIAM KIPNGETICH BITOK 4TH PLAINTIFF
EDNA JEPLETING 5TH PLAINTIFF**

AND

**PAUL KIRWA SAMOEI 1ST DEFENDANT
TAMAR CHEPTOO BIRGEN 2ND DEFENDANT
JULIUS KIPKOSGEI 3RD DEFENDANT
COUNTY LAND REGISTRAR, UASIN GISHU 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. This is a ruling in respect of notice of motion dated October 11, 2022 in which the plaintiffs/applicants seek the following orders:-
 1. Spent
 2. Spent
 3. That the Officer Commanding Eldoret Central Police Station do ensure compliance of the orders.



4. That that an injunction do issue restraining the defendants/respondents either by themselves or through their servants, agents and/or employees from sub-dividing, disposing of, transferring, threatening, trespassing into fencing, ploughing, putting up any structure/ building, invading into and or in any other way dealing or doing any other acts inconsistent with the proprietary rights of the Plaintiffs in that land namely Pioneer/Ngeria Block 1 (EATEC)/1980 measuring approximately 8.094 HA pending the hearing and determination of the main suit.
5. That the costs of this application be provided for.
2. The property in issue in this case is LR No Pioneer/Ngeria Block 1 EATEC)/1980 measuring 8.094 hectares. This property which I shall hereinafter refer to as the suit property is situate to the South of Eldoret International Airport. It was initially according to the Applicants known as Provisional Plot No A27.
3. The applicants contend that the suit property was purchased by the 1st and 2nd Applicants from Lonrho East Africa Limited in 2001. The 1st and 2nd Applicants thereafter sold all their interest to the 3rd to 6th Applicants who are said to have in turn sold part of their interest to various persons.
4. The Applicants contend that as they were waiting to process title, the 1st to 3rd defendants/respondents started laying claim to the same land based on a title which was issued to them on August 25, 2008. The Applicants further contend that the Respondents went and filed Eldoret Chief Magistrate Misc No 18 of 2022 against the County Land Registrar Uasin Gishu seeking to compel the County Land Registrar to re-construct a file which was said to be missing from the land registry.
5. When the applicants became aware of the proceedings before the lower court, they applied to be joined as interested parties. The 5th defendant/respondent also made a similar application to be joined on behalf of the 4th defendant/respondent. This miscellaneous application was however withdrawn by the Respondents before a ruling could be made on it.
6. The Applicants further contend that the title held by the Respondents is a forgery and that they are lawful owners of the suit property. In support of their contention, they provided copies of receipts which the 1st and 2nd Applicants were allegedly issued by Lourho East Africa Limited and some sale agreements between them and the 5th and 6th Applicants.
7. On the Applicants' allegations of forgery, they annexed a number of correspondence exchanged between the office of the Deputy Public Prosecution, Directorate of Criminal Investigations Eldoret and the Office of the Land Registrar as well as pleadings in Misc E&L No E018 of 2022.
8. The respondents opposed the applicants' application based on a replying affidavit sworn on October 31, 2022. In this affidavit, the respondents contend that they are the owners of the suit property as per the title deed which was issued on August 25, 2008. They further state that they filed Eldoret Chef Magistrate E& L case No 027 of 2022 which was fully heard and judgment given. They applied for eviction orders which were granted, they further came to court where they sought Police assistance to go and evict the trespassers. This was done and they managed to evict the trespassers and put in place a security firm to guard the property. The respondents further state that the 6th applicant has since disowned the suit filed herein and categorically stated that she has no interest in the suit property which belongs to the respondents.
9. In a Supplementary affidavit sworn on November 14, 2022 the applicants state that none of the applicants were served with the eviction proceedings in respect of Eldoret CMC ELC case No E027 of 2022 and they maintain that they are the lawful owners of the suit property.



10. The parties were directed to file written submissions. The applicants filed their submissions on November 14, 2022. The respondents filed theirs on November 21, 2022. On October 27, 2022, this court directed the Deputy Registrar of this court to visit the suit property and file a status report on the same. The suit property was visited on November 11, 2022 and a report dated November 23, 2022 filed in court.
11. I have carefully considered the applicants' application as well as the opposition to the same by the Respondents. I have also considered the report of the Deputy Registrar of this court. The only issue for determination herein is whether the Applicants have demonstrated that they have a prima facie case with probability of success toward issuance of an injunction in the manner prayed for.
12. The principles for grant of an interlocutory injunction were well set out in the case of *Giella v Cassman Brown & Co Ltd* 1973 EA 358.

“Firstly, an applicant must show that he has a prima facie with probability of success. Secondly, an injunction will not issue unless it is shown that the applicant will suffer loss which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
13. In the instant case, it is the Respondents who have title to the suit property. Some of the documents on which the Applicants are relying on have been disowned by one of the Applicants, specifically the 6th Applicant. The investigations which were carried out on the receipts held by the 1st and 2nd Applicants show that the same may not have been issued by the company which is alleged to have issued to them. It is therefore clear that the applicants have not demonstrated that they have a prima facie case with probability of success.
14. The Deputy Registrar's report shows that the applicants were all evicted from the suit property. There are pictures which show flattened structures. This being the case, no injunction can issue in the manner prayed for as to do so will amount to allowing the applicants back to a property which the Respondents have shown that they have title. I am aware that in deciding whether to grant an injunction or not I am not expected to make final findings at interlocutory stage as I am not conducting a mini trial.
15. As the applicants were evicted through a court process to which I do not want to delve into much for the reason stated hereinabove, I will only state that should it turn out that the suit property was purchased by the applicants as they allege, its value can be ascertained and they will be compensated in damages.
16. There is no contention that it is the respondents who are in possession. I therefore have no doubt in my mind so as to consider deciding the case on a balance of convenience. Otherwise the convenience tilts in favour of the respondents who are in possession after the applicants were evicted.
17. All in all, I find that the applicants' application is devoid of merit. The same is dismissed with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF JANUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;



Mr. Warigi for 1st to 3rd Defendants/Respondents.

Court Assistant – Akidor

E. O. OBAGA

JUDGE

19TH JANUARY, 2023

