



**Dee-Em Investments Ltd v Siimbol Investments Ltd & 7 others; Jashani
(Interested Party) (Environment & Land Case 306 of 2018 & 139 & 145 of 2019
(Consolidated)) [2023] KEELC 16025 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 16025 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 306 OF 2018 & 139 & 145 OF 2019 (CONSOLIDATED)
JG KEMEI, J
FEBRUARY 27, 2023**

BETWEEN

DEE-EM INVESTMENTS LTD PLAINTIFF

AND

SIIMBOL INVESTMENTS LTD 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

MINISTRY OF LANDS AND PHYSICAL PLANNING 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

KARSAN MEGHJI RABADIA 5TH DEFENDANT

NARAN MEGHJI RABADIYA 6TH DEFENDANT

BLUE NILE ROLLING MILLS LTD 7TH DEFENDANT

NATIONAL LAND COMMISSION 8TH DEFENDANT

AND

PREMJI JASHANI INTERESTED PARTY

RULING

1. Before court is the plaintiff/applicant’s application dated 7/2/2023 seeking orders that;
 - a. Spent.
 - b. Spent.



- c. The Court be pleased to issue an order of injunction against the 5th and 6th Defendants, the Interested Party and any other party from trespassing, encroaching, fencing and dealing with the LR No. 4953/1796 in any manner whatsoever pending the hearing and determination of this suit.
 - d. The Officer Commanding Station (OCS) Thika Police Station be served with orders of the Court, commanding him to assist the Plaintiff/Applicant in the service of the Orders upon the 5th, 6th Defendants and the Interested Party.
 - e. Costs of this Application be in the cause.
2. The Application is based on the grounds on the face of it which are reiterated in the Supporting Affidavit of even date of David Mukii Mereka, the Plaintiff's Director. He deponed that vide an Application dated 3/2/2021 this Hon. Court ordered that Thika ELC No 139 of 2019 and ELC 145 of 2019 be consolidated with the instant suit with this file being the leading file. That the subject matter of the dispute is the ownership of LR No. 4953/1796 owned by the Plaintiff and the 1st Defendant was illegally allocated vide an alleged allotment letter No 23130/XXXIX/78 dated 27/6/1991 as plot 'N' which is the same suit property, LR No. 4953/1796. That the suit land was resurveyed and given new no. LR 4953/5879 and deed plan No. 41398 dated 8/2/2018 and which the 1st Defendant later sold to the 5th and 6th Defendants. Copies of the two titles relating to the suit property are annexed as DMM-1. That on 6/2/2023 he received a phone call from Mr. Paul Kinuthia of Celini Holdings Ltd who owns a neighboring parcel of land LR 4393/2976 informing him that there was activity on the suit property whereby a contractor was delivering materials to fence off the property.
 3. The Plaintiff further averred that he requested Mr. Paul Kinuthia for the Contractor's (Mr. Premji Jashani) phone number and photographs of the site activity annexed as DMM2. That he later got in touch with the contractor who said he had been sent by a Mr. Rabadia, one of the 5th and 6th defendants to fence off the property. That the next day the deponent received a similar phone call from Mr. Rao, the 7th defendant concerning the intended fencing on the suit property. That he is now apprehensive that the 5th and 6th defendants and Interested Party are usurping the Court process touching on the suit land and upcoming hearing on 7/3/2023 hence the instant Application.
 4. The Application is opposed by the 5th Defendant only.
 5. The 5th Defendant, Karsan Meghji Rabadia swore his Replying Affidavit on 13/2/2023 and averred that he and the 6th Defendant are the registered owners of LR 4953/5879 as shown by copy of title marked KMR1 whilst the Applicant is the registered owner of LR 4053/1796 as shown by copy of Certificate of Lease marked KMR2. That on 29/4/2019 this Court granted them an interim injunction; marked KMR3 against the Applicant pending the hearing and determination of the suit. That land parcels LR 4953/5879 and LR 4953/1796 are two distinct parcels of land and the Applicant has no proprietary interests in LR 4953/5879. The deponent conceded that they are fencing LR 4953/5879 to keep strangers and urged the Court to dismiss the Application with costs.
 6. The Application was argued orally in court on 15/2/2023.
 7. Learned Counsel Mola for the applicant submitted that on 14/10/2019 this court issued an injunction on LR 4953/1796 as deponed in their Supporting Affidavit. That however the said injunction order did not bind the 5th and 6th Defendants because it was issued before consolidation of the suits.
 8. Opposing the Motion Ms. Kiarie was emphatic that the property in dispute is LR 4953/5879 and confirmed that this court (Gacheru, J) issued an injunction against the 7th Defendant. That the



Application herein does not establish the connection between LR 4953/5879 and LR 4953/1796 thus no prima face case has been proven.

9. The 7th Defendant through its Counsel Mr. Bundotich supported the Motion and pointed out that the suit land has two titles; one held by the applicant and the other held by the 5th & 6th defendants.
10. The main issue for determination is whether Applicant's Application is merited.
11. Before delving into the merits of the Motion, it is important to highlight on the existing orders in this suit.
12. Initially, the Court record in ELC 145 of 2019 shows that on 4/3/2020, ELC 145 of 2019 was consolidated with ELC 139 of 2019 with the latter being the lead file. As a result, the consolidation order made on 4/5/2021 was essentially in respect of the instant file, ELC 306 of 2018 and ELC 139 of 2019. At the material time, the Hon. Court had already considered an application dated 22/8/2019 (filed by the Plaintiffs therein – Karsan & Naran Meghji in ELC 139/2019) for temporary injunction against the Defendant (Blue Nile Rolling Mills Ltd) from interfering with LR 4953/5879 IR 203757. The Application was opposed and the Ruling delivered on 29/4/2021 allowing prayers no. 3 and 5 only. The Court granted temporary injunction against Blue Nile Rolling Mills Ltd from interfering with LR No. 4953/5879 IR 203757 pending determination of that suit. – See copy of Ruling by Gacheru J on record.
13. Earlier on in this suit (ELC 306/2018) the Court had considered the Plaintiff's Notice of Motion dated 14/12/2018 which sought an injunction against 4 Defendants; Stimpol Investments Ltd, Chief Land Registrar, Ministry of Lands and Physical Planning and National Land Commission. The Application was unopposed (see proceedings of 8/5/2019) and allowed in terms of Prayer 3 – interim injunction against the Defendants from interfering with LR 4953/1796 IR 46015.
14. From the above it is clear that there are interim orders pending hearing of the suit touching on the suit property by whatever description it goes i.e. LR No. 4953/5879 IR 203757 and/or LR 4953/1796 IR 46015. There is no evidence on record of appeal/review to challenge the said orders thus they remain valid and enforceable.
15. The issue of whether the descriptions refer to the same property or not, can only be determined upon evaluation of evidence. To that end and to preserve the subject land, I order that the Application be allowed in terms of Prayer 3 and 4 of the motion against all the current defendants and the interested party.
16. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED AT THIKA THIS 27TH DAY OF FEBRUARY, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Mr. Mola for the Plaintiffs/Applicants

Ms. Kiarie HB Ndungu Mwaura for 1st, 5th and 6th Defendants

Mr. Mola HB Bundotich for the 7th Defendant

Court Assistants – Esther / Kevin

