



**Pamat Enterprises Limited v Shahbal & another (Environment & Land
Case E091 of 2024) [2025] KEELC 3016 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3016 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E091 OF 2024**

**YM ANGIMA, J
MARCH 27, 2025**

BETWEEN

PAMAT ENTERPRISES LIMITED PLAINTIFF

AND

SULEIMAN SHAHBAL 1ST DEFENDANT

HUSSEIN SHARRIF ALWY 2ND DEFENDANT

RULING

A. Plaintiff's Application

1. By a notice of motion dated 09.10.2024 brought under Article 40 of *the Constitution*, Sections 3 & 3A of the *Civil Procedure Act* and Order 40 and Order 51 of the Civil Procedure Rules and other enabling provisions of the law, the plaintiff sought a temporary injunction against the defendants restraining them from entering, demolishing, trespassing or interfering with plaintiff's right to quiet possession of Land Reference No. 1623/I/MN (Original No.1084/2 Section I MN as delineated on Land Survey Plan No.80421).
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Robinson Mbatha on 09.10.2024. It was contended that the defendants had without any right entered into the suit property, cleared vegetation and excavated the land. It was also contended that the defendants had assembled and addressed fishermen and some local residents on the land to support their invasion.

B. Defendants' Response

3. The defendants filed a replying affidavit sworn by Hussein Sharrif Alwy on 04.02.2025 in opposition to the application. It was contended that the defendants had no claim or interest in the suit property. They also denied that they had carried out any activities on the suit land. In addition, it was contended



that the suit property was owned by one, Hassan Sharrif Alwy who purchased it from Inns of Africa Limited. It was further deposed that the title documents held by the plaintiff were unlawful, irregular and could not be said to be indefeasible.

C. Plaintiff's Response

4. The plaintiff responded to the defendants' replying affidavit with two further affidavits sworn by Abdul Karim Hassan on 28.02.2025 and Robinson Mbatha on 28.2.2025 respectively. The plaintiffs contended that Hussein Sharrif Alwy and Hassan Sharrif Alwy are the same person, who invaded the suit premises in the company of Suleiman Shahbal. It was reiterated that the 2nd defendant brought in an excavator and cleared the vegetation on the land and later together with the 1st defendant called for a meeting with some fishermen and locals. The plaintiff denied the defendants' allegations of having no claim over the suit property.

D. Directions on Submissions

5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the plaintiff filed its submissions dated 6.3.2025 whereas the defendants were yet to file their submissions by the time of preparation of the ruling.

E. Issues for Determination

6. The court has perused the plaintiff's notice of motion dated 9.10.2024, the defendants' replying affidavit in opposition, the plaintiff's further affidavit as well as the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the plaintiff has made out a case for the grant of the interim injunction sought
 - b. Who shall hear the costs of the application

F. Analysis and Determination

a. Whether the plaintiff has made out a case for the grant of the interim injunction sought

7. The court has considered the material and submissions on record on this issue. The principles for the grant of an injunction were set out in the case of *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 as follows:
 - a. First, the applicant must demonstrate a prima facie case with a probability of success at the trial.
 - b. Second, an injunction will not be normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.
 - c. Third, if the court is in doubt on the second principle it shall determine the matter on a balance of convenience.
8. The material on record shows that the plaintiff was registered as the proprietor of Land Reference No. 1623/I/MN on 06.06.1999 as seen on the Certificate of Title CR No. 13721 and Certificate of Postal Search dated 16.04.2024. The plaintiff has also demonstrated that it has been in possession of the suit property hence they have demonstrated a prima facie case with a probability of success at trial. As such, the plaintiff is entitled, at this interim stage, to enjoy the rights accruing to a land owner until the court



holds otherwise. In *Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 it was held, inter alia, that;

“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.”

9. The court has also considered the material and submissions on record on the second principle. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR the Court of Appeal held that;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction...The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

10. Although the defendants have denied having any claim, right or interest in the suit property or ever undertaking any activity thereon, they urged the court to find that the plaintiff’s title is irregular, fraudulent and unlawful. They pleaded that Hassan Sharrif Alwy was the registered owner of the suit land as seen from the Certificate of title CR No. 46825 dated 15.09.2009. Having disclaimed any interest in the suit land, the court finds that the defendants no lawful justification or excuse to enter or remain on the suit property.

11. The plaintiff has produced photos to support its claim that the defendants moved excavators into the suit land, cleared the land and held meetings with locals in the suit land. At this juncture, the court cannot with certainty determine the kind of loss that the plaintiff has suffered following the invasion of the defendants into the suit land, and whether the said loss can be adequately compensated by an award of damages. The plaintiff has not demonstrated what kind of developments, if any, were on the land before the defendants’ invasion. As such, the court is in doubt as to whether or not the plaintiff stands to suffer irreparable loss or injury in the absence of an injunction.

12. The third issue to consider is the balance of convenience. In this case, the court is of the view that it tilts in favour of the plaintiff. Going by the material on record, the plaintiff has all along been in possession hence stands to suffer more inconvenience if the injunction is not granted. On the other hand, the defendants have appeared to have recently invaded the suit property hence a restraining injunction may not cause them any significant hardship.

b. Who shall bear the costs of the application

13. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. In the case of *Giella vs Cassman Brown & Co Ltd* (supra), it was held that the appropriate order to make in an application for injunction is for costs to be in the cause where the order



is granted. However, where the application is dismissed costs should be awarded against the applicant. The court finds no good reason to depart from the general rule. As a result, costs shall be in the cause.

G. Conclusion and Disposal Order

14. The upshot of the foregoing is that the court finds merit in the plaintiff's application for interim orders. As a consequence, the court makes the following orders for disposal thereof:
- a. That pending the hearing and determination of the main suit, an interim injunction is hereby granted restraining the defendants herein, their servants, agents and/or employees and anyone claiming through them from entering into, demolishing any part of, trespassing, alienating and/or interfering with plaintiffs rights to quiet possession of parcel of land known as Land reference number 1623/1/MN (Original number 1084/2) Section 1 Mainland North as delineated on land survey plan number 86421.
 - b. That the Kisauni sub-county police commander be ordered to implement the orders issued herein.
 - c. Costs of the application shall be in the cause.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 27TH DAY OF MARCH 2025.

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Y. M. ANGIMA

JUDGE

In the presence

Court assistant Gillian

Mr. Angaya for the plaintiffs

Mr. Gathuu holding brief for Mr. Onyango for 1st and 2nd respondents

