



**Karen Enterprises Limited v Okech & 2 others (Environment & Land Case
17 of 2019) [2023] KEELC 15686 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15686 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 17 OF 2019**

E ASATI, J

FEBRUARY 23, 2023

BETWEEN

KAREN ENTERPRISES LIMITED PLAINTIFF

AND

LAWRENCE MUSANGO OKECH 1ST DEFENDANT

PETER OPIYO 2ND DEFENDANT

JOYCE WANJAWA 3RD DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 13th April, 2022 stated to brought pursuant to the provisions of Order 40 Rule 2 and Order 51 Rule (2) *Civil Procedure Rules, 2010*, Section 1A, 3A and 63(e) of the *Civil Procedure Act* Cap 21 Laws of Kenya. The application seeks for orders that the 1st Defendant, his employees, agents and assigns including one Joyce Nyagwala be restrained by an order of injunction from purporting to enter upon, apportion, sub-divide, sell, lease, and construct upon, develop or otherwise alienate property known as Land reference number 16345 Kisumu or any portion thereof pending the hearing and determination of the suit. And secondly, that the 1st Defendant, his employees, agents and/or his employees, agents and/or assigns including specifically one Joyce Nyagwala be compelled by a mandatory injunction to demolish, bring down and/or remove from that property known as Land Reference Number 16345 Kisumu or any portion thereof all and any structures, buildings, barriers, walls or fences constructed and/or erected in or about July, 2021, pending the hearing and determination of the suit.
2. The application is based on the grounds that the Applicant is the registered proprietor of the suit property. That the 1st Respondent purported to alienate further a portion of the suit property and to sell the same to Joyce Nyagwala, that the said Joyce Nyagwala has erected illegal structures on that portion of the suit property without development permission from the County Government of



Kisumu in contravention of the provisions of Section 57 of the [Physical Planning and Land Use Act](#) (No 13 of 2019).

3. The application is supported by the contents of the Supporting Affidavit of Edwin Ndalo Wadore and the annexures thereto.
4. The application was opposed vide the undated grounds of opposition filed in court on 25th January, 2023.
5. The application was urged by way of written submissions. The Applicant filed written submissions dated 27th September, 2022 and the Respondent (1st Defendant) filed his dated 24th January, 2023.
6. I have considered the application, the grounds filed in opposition thereto, the submissions made and the authorities cited. I have also read the pleadings filed by the parties herein. It is not disputed that both the Applicant and the 1st Respondents claim to have interest in the suit land. While the Plaintiff claims to be the registered owner of the suit property, the 1st Respondent claims to be entitled to the suit land on account of the land being ancestral land which he inherited from his father.

The Applicant states that the Respondent has alienated and purported to sell a portion of the suit property to one Joyce Nyagwala who has trespassed there onto and erected temporary structures contrary to the law. Photographs annexed to the application show some structures constructed. Also annexed to the application was an enforcement notice marked ENW-3 from the County Government of Kisumu. The enforcement notice required that the development of the structures be stopped, that the structures (temporary) be removed and plans be submitted to CECM Huduma Centre within 14 days. The enforcement Notice was addressed to the developers, occupiers and owners of LR No 16345 near Ezra Gumbe Primary School/SDA Church. LR 16345 is the suit land herein.

The Respondent chose to respond to the application by way of grounds of opposition. The matters of fact raised in the Supporting Affidavit were therefore not controverted.

7. Mandatory injunction at an interlocutory stage can issue where there are special circumstances and the case is clear and which the court thinks it ought to be decided at once see case of [Kenya Breweries Limited & another v Washington O. Okeyo](#) [2002] eKLR. In the present case, the evidence presented to demonstrate the illegality of the structures and probably that the structures were erected in the pendency of this suit is the enforcement notice marked ENW-3. Perusal of the enforcement notice however reveals that the notice is not clear as to whether it was issued in the year 2020 or 2021. While it is dated 10th of December 2021, it is indicated that it was to expire on 10th of December 2020. Though the same was not signed, the stamp of the county government of Kisumu was affixed on it and dated 10th December 2020. There is an ambiguity on the dates. It is the applicant's case that the structures sought to be removed from the suit land were erected in the month of July 2021. It cannot be said to be a clear case for issuance of a mandatory injunction to demolish or remove the structures.

I find that the Applicant has demonstrated *prima facie* that it has an interest in the suit property, that it is important that the character and *status quo* of the suit property be preserved, pending the hearing and determination of the suit. I find further that a case has not been made out for issuance of a mandatory injunction as prayed.

I have noted that this is a suit which was filed in the year 2005, was heard and finalized, the judgement subsequently set aside by an order of the Court of Appeal and matter begun a fresh. It a matter whose hearing ought to be fast tracked.

I find that the application has merit and allow the same in the following terms;



- a. An order of temporary injunction is hereby issued restraining the 1st Defendant, his employees, agents and assigns including one Joyce Nyagwala from, apportioning, sub-dividing, selling, leasing, and constructing upon, developing or otherwise alienating property known as Land reference number 16345 Kisumu or any portion thereof pending the hearing and determination of the suit.
- b. Costs to the applicant to be borne by the 1st Defendant.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 23RD DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiff/Applicant

Machuka holding brief for Omondi T. Advocate for the 1st Defendants/Respondent

