



**Sakaja v Nyangwesa & 16 others (Environment & Land Case
E007 of 2022) [2023] KEELC 15815 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15815 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E007 OF 2022
EM WASHE, J
FEBRUARY 23, 2023**

BETWEEN

SAMUEL PANYAKO OLE SAKAJA APPLICANT

AND

WILLIAM OCHOMO NYANGWESA 1ST RESPONDENT

CHRISTOPHER B OSEKO AKUMU 2ND RESPONDENT

NYAOSI NYAMWARO 3RD RESPONDENT

MOMANYI BIYOGO ANUNDA 4TH RESPONDENT

ZACHARIA O MORIAS 5TH RESPONDENT

ALFRED MAISIBA ONSANDO 6TH RESPONDENT

PETER NYOBENDO MONDA 7TH RESPONDENT

ISAYA OMETE ANCHINGA 8TH RESPONDENT

JOHNSON ONGERI NDUKO 9TH RESPONDENT

ZABLON MASARA NYANGENA 10TH RESPONDENT

ZAKARI MONDA NYANGENA 11TH RESPONDENT

GIDEON NYACHAKI RAGIRA 12TH RESPONDENT

SELLAH WANJIRU KARANJA 13TH RESPONDENT

DANIEL NYANGAU MOKUA 14TH RESPONDENT

LAND REGISTRAR TRANSMARA WEST SUB-COUNTY 15TH RESPONDENT

**LAND ADJUDICATION & SETTLEMENT OFFICER TRANSMARA
WEST 16TH RESPONDENT**



RULING

1. The Plaintiff (hereinafter referred to as “the Applicant”) herein has filed a Notice of Motion Application dated June 24, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
 - a. That the application be certified as urgent and the same be heard ex-parte in the 1st instance.
 - b. That an order of temporary injunction be issued restraining the Defendants, their officers, servants, agents or any other person/entity affiliated/associated with them from acting through or under their instructions from selling, transferring, leasing, charging, mortgaging, disposing, alienating, surveying, fencing, entering and or interfering in any manner whatsoever with the property known as Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510 until the hearing and final determination of this application.
 - c. That an order of temporary injunction be issued restraining the Defendants, their officers, servants, agents or any other person/entity affiliated/associated with them from acting through or under their instructions from selling, transferring, leasing, charging, mortgaging, disposing, alienating, surveying, fencing, entering and or interfering in any manner whatsoever with the property known as Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510 until the hearing and final determination of this suit.
 - d. That the costs of this application be provided for.
2. The prayers pleaded hereinabove have been supported by the grounds adduced in the body of the present application and further collaborated by the affidavit of the Applicant sworn on the 24th of June 2022.
3. The summary of the grounds adduced in support of the prayers in the present Application can be stated as follows; -
 - i. The Applicant was allocated a parcel of land known as Transmara/Moyoi/25 during the adjudication of Moyoi Group Ranch and has been living on the same to date.
 - ii. Due to fraudulent and illegal sub-divisions done by the 15th and 16th Respondents herein, a substantive portion of the said parcel of land known as Transmara/Moyoi/25 was alienated to the 1st to 14th Respondents who do not reside on the said parcel of land.
 - iii. The 1st to the 14th Respondents are now in the process of soliciting for potential purchasers and any further disposition of the said sub-divisions would defeat the Applicants claim over the said sub-divisions.
 - iv. The Applicant further states that he is in occupation of the entire property known as LR No Transmara/Moyoi/25 which covers the entire area including the area demarcated for parcels LR No Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510 which are the subject matter of this suit.
 - v. Consequently, the Applicant is therefore seeking for a temporary injunction in order to preserve the suit property pending the hearing and determination of this suit.



4. The present Application has been opposed by the 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents through their Replying Affidavit sworn on their behalf by the 2nd Respondent on the November 12, 2022.
5. The grounds opposing the present Application advanced in the Replying Affidavit sworn on the November 12, 2022 can also be summarised as follows; -
 - i. The 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents informed the Court that they are bonafide registered owners of the properties known as Transmara/Moyoi/394, 198, 532, 537, 541, 396 and 395.
 - ii. The 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents hold valid title deeds to their properties known as LR No Transmara/Moyoi/394, 198, 532, 537, 541, 396 and 395.
 - iii. The said properties known as LR No Transmara/Moyoi/394, 198, 532, 537, 541, 396 and 395 registered in the names of the 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents from the adjudication of Moyoi Adjudication Section by the 15th Respondent.
 - iv. The 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents also confirm to have taken possession of the properties known as LR No Transmara/Moyoi/394, 198, 532, 537, 541, 396 and 395.
 - v. The Applicant has not presented any ownership document including a title deed for the property known as LR No Transmara/Moyoi/25 to confirm proprietorship of the same.
 - vi. The 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents instead accuse the Applicant was taking advantage of the ethnic clashes which usually occur during the electioneering period to trespass on to their properties with the help of his family members and illegally occupying the same.
 - vii. Thereafter, the Applicant purports to express an interest to purchase back the portions he is in occupation at his own terms which are usually below the market price.
 - viii. Consequently therefore, the 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents averred that the present application is geared towards arm twisting them to accept the terms proposed by the Applicant.
 - ix. The 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents further alleged that the is bad in law, an abuse of the court process and should be dismissed forthwith.
6. The Court after service of the Replying Affidavit filed by the 2nd, 3rd, 6th, 7th, 8th, 10th, 11th and 13th Respondents on the Applicant's Counsel directed that the present application be canvassed by way of written submissions.
7. The Applicant filed his submissions on the 1st of December 2022 while the Respondents filed their submissions on the 16th of January 2023.
8. The Court having perused the prayers in the present Application, the Replying Affidavit and the submissions of the parties, the issue for determination is rather straight forward.
9. The issue is whether or not the Applicant has satisfied the ingredients for the granting of a temporary injunction.
10. The Applicant has invoked the provisions of order 40 rules 1, 2 and 3 of the *Civil Procedure Rules, 2010* which essentially grant powers for a Court to exercise its discretion and grant a temporary injunction.



11. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* Civil Application No 77 of 2012 (2014) eKLR, the Court of Appeal held that;

“in an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, if in any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. it is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

12. In another case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR, the Court expressed itself as follows; -

“irreparable injury means that the injury must be one that cannot be adequately In compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

13. In the same case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR the Court went further to discuss the principle of balance of convenience as:

‘The meaning of balance of convenience ill favor of the plaintiff’ is that if an injunction is not granted and the Suit is ultimately decided in favour of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiff’s’ to show that the inconvenience caused to them be greater than that which ma)’ be caused to the defendant’s inconvenience be equal, it is the plaintiff who suffer.

In other words, the plaintiff have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater which is likely to arise from granting”

14. The Court having established the three ingredients required for the Court to grant an injunction, the same will now be discussed in line with the facts of the present application and appropriate determinations made thereof;

A. Establishment Of Prima Facie Case By The Applicant.

15. Indeed, the first ingredient for the granting of a temporary injunction is the establishment of a *prima facie* case by the Applicant therein.



16. In the case of *Mrao Ltd v first American Bank of Kenya Ltd* (2003) eKLR the Court of Appeal held as followings of what a prima facie case should be; -

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
17. In the present application, the applicant has made a claim that he is the owner of the property known as LR No Transmara/Moyoi/25 which he was allocated through an adjudication process undertaken by the 15th Respondent.
18. The Applicant has placed before the Court a Copy of an Adjudication Record No 73425 issued in his favour in the year 1977.
19. The Applicant states that the Respondents herein either jointly and/or severally fraudulently and/or through misrepresentation hived of a portion his property known as LR No Transmara/Moyoi/25 and created other properties namely LR No Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510 thereby infringing on his ownership rights thereof.
20. The Applicant has further submitted before the Court that the 1st to 14th Respondents do not reside on the said new sub-divisions and are now in the process of alienating the same to innocent purchasers thereby completely making it impossible for the recovery of the same.
21. The Respondents on the other hand have stated that the properties known as LR No Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510 legally belong to them and produced official Searches to confirm the same.
22. The Respondents further alleged that they are in occupation and it is the Applicant and his relatives who have trespassed on the said properties with a view of forcing a sale in their favour on terms dictated by them.
23. In essence therefore, the Respondents submission is that the present Application is meant to force a sale of their properties to the Applicant which they resist.
24. The Court takes note that the Applicant did not rebut these allegations by the Respondents.
25. Be as it may, the Applicant has presented an Adjudication Record No 73425 as the basis of his ownership over the property known as Transmara/Moyoi/25.
26. The Adjudication Record No. 73425 refers to the property known as Parcel No 25 within Moyoi Adjudication Section and not LR No Transmara/Moyoi/25.
27. The creation of the property known as LR No Transmara/Moyoi/25 can only be done through the opening of a Green Card by the 16th Respondent and thereafter issuance of a Title Deed thereof.
28. There is no evidence placed before this Court that indeed the property allocated to the Applicant through the Adjudication Record No 73425 was finally registered and issued with a Title Deed which bestowed exclusive ownership rights.
29. An Adjudication Record under section 24 of the *Land Adjudication Act*, Cap 284 is usually a record held by the Government of Kenya for purposes of ascertaining land rights over a property held by the Government.



30. The contents in the Adjudication Records can be varied, altered and/or redefined either through objection proceedings and/or Minister's Appeals filed against the person recorded as the beneficial owner therein.
31. In the Adjudication Record No 73425, it is clear that there was an objection No.206 & 201 which was filed and upon conclusion, the Land Adjudication & Settlement Officer made a determination that Parcels No Moyoi 194, 198, 199, 210, 237, 238, 239, 240, 393, 394, 395, 396, 504, 510, 532, 537, 538 & 541 be excised from Parcel No. 25 within Moyoi Adjudication Section.
32. It is the determination of the Land Adjudication & Settlement Officer done between 7/03/1986 to 16/07/1986 which gave rise to the Respondents properties known as LR No Transmara/Moyoi/239, 394, 198, 240, 238, 532, 537, 541, 487, 396, 395, 237, 220 and 510.
33. The Adjudication Record is a public document which is usually open for inspection by the public.
34. Section 26(2) of the [Land Adjudication Act](#), Cap 284 gives powers to the Land Adjudication & Settlement Officer of an Adjudication Section to hear and make determination of objections filed under Section 26(1) of the [Land Adjudication Act](#), Cap 284.
35. The issue of whether or not the Respondent's properties were created from a fraudulent and/or illegal sub-division is a matter for determination at the full hearing but so far, the Court of the considered opinion that the Title Deeds held by the Respondents are valid in law.
36. Consequently therefore, although the Applicant has an arguable case, the Court is of the considered view that it is not one that can be deemed to have reached the threshold of a prima facie case as required in this ingredient.

B. The Applicant Must Demonstrate Irreparable Injury If A Temporary Injunction Is Not Granted.

37. The second ingredient requires an applicant to plead facts and/or place tangible evidence before the Court to demonstrate the manner and nature in which they would suffer irreparable injury if the temporary injunction is not issued.
38. In the present Application, the applicant has simply alleged that he is in occupation of the suit properties and is apprehensive that the Respondents may dispose of the same to other persons during the pendency of this suit.
39. On the other hand, the Respondents also state that they are in occupation of the suit properties and the applicant together with his relatives are simply trespassing and arm twisting them to sale.
40. First and foremost, the Applicant has not placed any evidence before the Court to prove his occupation of the Respondent's properties.
41. Secondly, the Applicant has not placed before the Court any documentary evidence to confirm that the Respondents properties fall within the boundaries of the property known as Parcel No 25 with Moyoi Adjudication Section.
42. In essence therefore, the Applicant has not demonstrated any form of harm let alone irreparable harm if this Court does not grant the order of an injunction as sought for in the present application.
43. The claim that the Respondents are likely to dispose off the properties to innocent third parties is not something this Court is unable to deal with.
44. Such a likelihood can simply be cured by the registration of an inhibition of the Green Cards pending the heading and determination of the suit.



C. If In Doubt As To B, By Showing That The Balance Of Convenience Is In His Favour.

45. The third and last principle is usually applied in instances where the Court is in doubt of the amount of harm caused from the second principle, then it would look at the balance of convenience thereof.
46. In the present application, the Court is satisfied that the Applicant stands to suffer no injury by the Court not granting the injunction sought for and therefore the balance of convenience actually tilts in favour of the Respondents herein.
47. In conclusion therefore, the Court hereby makes the following Orders as appertains the Application dated June 24, 2022; -
- A. The application Dated June 24, 2022 be and is hereby dismissed.
- B. The applicant shall pay the costs of the application dated June 24, 2022 to the respondents herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELCCOURT ON THE 23RD FEBRUARY 2023.

EMMANUEL M WASHE

JUDGE

In The Presence Of:

Court Assistant: Ngeno

Advocates For The Applicant: Shira

Advocates For The Respondents: Ambachi For 2nd, 3rd, 6th, 7th, 8th, 10th, 11th, & 13th Respondents

