



REPUBLIC OF KENYA



Suleiman & 9 others v Land Registrar, Mombasa & 5 others (Environment & Land Case 62 of 2022) [2023] KEELC 15668 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 62 OF 2022**

**NA MATHEKA, J
FEBRUARY 21, 2023**

BETWEEN

**HALIMA RAMADHAN SULEIMAN 1ST PLAINTIFF
ALI RAMADHAN SULEIMAN 2ND PLAINTIFF
FATUMA RAMADHAN SULEIMAN 3RD PLAINTIFF
HAWA RAMADHAN SULEIMAN 4TH PLAINTIFF
SULEIMAN RAMADHAN SULEIMAN 5TH PLAINTIFF
OMARI RAMADHAN SULEIMAN 6TH PLAINTIFF
MUSA RAMADHAN SULEIMAN 7TH PLAINTIFF
ABDULRAHMAN RAMADHAAN SULEIMAN 8TH PLAINTIFF
ADAM RAMADHAN SULEIMAN 9TH PLAINTIFF
JUMA RAMADHAN SULEIMAN 10TH PLAINTIFF**

AND

**LAND REGISTRAR, MOMBASA 1ST DEFENDANT
-MOMBASA COUNTY LAND ADJUDICATION AND SETTLEMENT
OFFICER 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT
SHABAN RAMADHAN SULEIMAN 4TH DEFENDANT
RAMADHAN MOHAMED RAMADHAN 5TH DEFENDANT
AMINA MOHAMED RAMADHAN 6TH DEFENDANT**



RULING

1. The application is dated May 31, 2022 and is brought under Sections 1A and 34 of the Civil Procedure Act and Order 40 Rule 1 of the Civil Procedure Rules seeking the following orders;
 1. This application be certified urgent and service of the same be dispensed with in the first instance.
 2. Pending hearing and determination of this application, there be and is hereby issued and an order of injunction to restrain the defendants jointly and severally from selling, disposing of, leasing, charging, transferring, occupying, developing or in any other manner dealing or interfering with the suit properties known as Mombasa/Ziwa la Ngombe Scheme/702, Mombasa/Ziwa la Ngombe Scheme/703, Mombasa/Ziwa la Ngombe Scheme/704, Mombasa/Ziwa la Ngombe Scheme/708, Mombasa/Ziwa la Ngombe Scheme/710, Mombasa/Ziwa la Ngombe Scheme/711, Mombasa/Ziwa la Ngombe Scheme/712, Mombasa/Ziwa la Ngombe Scheme/713 and Mombasa/Ziwa la Ngombe Scheme/713 4.
 3. Pending hearing and determination of this suit, there be and is hereby issued and an order of injunction to restrain the defendants jointly and severally from selling, disposing of, leasing, charging, transferring, occupying, developing or in any other manner dealing or interfering with the suit properties known as Mombasa/Ziwa la Ngombe Scheme/702, Mombasa/Ziwa la Ngombe Scheme/703, Mombasa/Ziwa la Ngombe Scheme/704, Mombasa/Ziwa la Ngombe Scheme/708, Mombasa/Ziwa la Ngombe Scheme/710, Mombasa/Ziwa la Ngombe Scheme/711, Mombasa/Ziwa la Ngombe Scheme/712, Mombasa/Ziwa la Ngombe Scheme/713 and Mombasa/Ziwa la Ngombe Scheme/714.
 4. Costs of this application be provided for.
2. The application is based on the grounds that the Plaintiffs together with the 1st Defendant are children of one Ramadhan Suleiman Mwake while the 2nd and 3rd Defendant are grandchildren of the said Ramadhan Suleiman Mwake. The said Ramadhan Suleiman Mwake (hereinafter the “Deceased”) died on July 23, 2013. On November 5, 2002, before his demise, the Deceased was allocated an unsurveyed plot measuring approximately 0.459 hectares situate in Ziwa la Ng'ornbe in Mombasa County. The plots in Ziwa la Ng'ombe Settlement Scheme including the Deceased's plot were surveyed for purposes of titling in 2010. Due to the requirements of the Settlement Scheme, the Deceased's plot could not be surveyed as one whole plot but was rather subdivided into nine (9) distinct plots.
3. The Deceased shared the above plots among his family members including the Deceased himself, the Deceased's wife, Amin Ali Mulei, the Deceased's children who included the Plaintiffs herein and the 4th Defendant and the Deceased's grandchildren who are the 5th and 6th Defendants herein. *Vide* a letter dated May 26, 2010 addressed to Mombasa District Land Adjudication and Settlement Officer, the Deceased communicated how he had shared the said plots among his family members and instructed the Mombasa District Land Adjudication and Settlement Officer Mombasa District Land Adjudication and Settlement Officer to allocate the said plots and issue the respective title deeds.
4. Despite having been instructed by the Deceased on how to share the plots and issue the title deeds, the 1st and 2nd Defendants ignored the Deceased's instructions and instead issued the title deeds in a manner that was at variance with the Deceased's instructions. As a result, the Plaintiffs were allocated



plots that were not assigned to them by their Deceased father while some of the Plaintiffs have been denied opportunity to own the plots as assigned by their father. The Plaintiffs further aver that the decision by the 1st and 2nd Defendants to issue titles deeds contrary to the Deceased's instructions was in violation and breach of the Plaintiffs' constitutional right to own property as guaranteed by Article 40 of the Constitution of Kenya, 2010. Vide a letter dated May 5, 2022, the Mombasa County Land Adjudication and Settlement Officer acknowledged that the titles were not issued in accordance with the instructions of the Deceased as they ought to have been issued and that the allocation and titling of the plots was not a representation of the interest of the Plaintiff's father.

5. Despite acknowledging that the allocation and titling of the plots was not executed in accordance with the wishes and instruction of the Plaintiffs' father who was the owner of the land, the 1st and 2nd Defendants have adamantly declined, ignored, neglected and refused to rectify the titles and issue proper title deeds that are compliant with the instructions of the Plaintiffs' father. The 4th, 5th and 6th Defendants are beneficiaries of the erroneous allocation and titling which is the subject of complaint in this case. Despite knowing that their titles were issued in error, the 4th, 5th and 6th Defendants have adamantly declined, refused and neglected to return the same for rectification and re-issuance of new titles as appropriate. There is a real danger that the 4th, 5th and 6th Defendants are likely to use, develop, transfer, sell, charge, lease or in any other manner deal with the properties registered in their names since there is nothing stopping them from doing so because the title deeds are already in their names.
6. The 5th Respondent stated that the entire suit and the application as well as the orders on a misapprehension of the law and facts relating to this case. That the Plaintiffs have misapprehended the facts and the law. That the Plaintiffs and the 4th Defendant are all siblings and the children of the Late Ramadhan Suleiman Mwake and his wife the late Amina Ali Mulei. The 5th and 6th Defendants are the children of the Late Mohamed Ramadhan Suleiman the first born son of the Late Ramadhan Suleiman Mwake and the Late Amina Ali Mulei. The late Ramadhan Suleiman Mwake and his late wife Amina Ali Mulei had Fourteen (14) children. They lived at Mkunguni Village as squatters on Government Land, where they developed their homes and brought up their children.
7. The late Ramadhan Suleiman Mwake attempts to acquire the title to his homestead from the Government of the Republic of Kenya, by way of allotment of land was not successful. The Government of the Republic of Kenya converted the area into Ziwa la Settlement Scheme sometime in the year 2007. The late Ramadhan Suleiman Mwake and his children were allocated a total of Nine (9) plots. The late Ramadhan Suleiman Mwake had already developed a home which fell on Plot No Mombasa/Ziwa la Ngombe Scheme/704. The late Mohamed Ramadhan Suleiman his late father had developed a home on Plot No Mombasa/Ziwa la Ngombe/711. The 4th Defendant had already developed houses on what ultimately became Plot No Mombasa/Ziwa la Ngombe Scheme/ 713 and Mombasa/Ziwa la Ngombe Scheme 708. The late Mohamed Ramadhan Suleiman was issued with a Title for Plot No Mombasa/Ziwa la Ngombe Scheme/711, where he built a house for his family and his rentals.
8. This court has considered the application and submissions therein. The power of court in an application for interlocutory injunction is discretionary, the discretion is judicial and is exercised on the basis of law and evidence. The principles which guide the court in deciding whether or not to grant an interlocutory injunction are well settled. *Giella v Cassman Brown & Co Ltd* (1973) EA 358, set out the three requirements that has to be satisfied in an interlocutory injunction application. The applicant has to establish his case only at a *prima facie* level, demonstrate irreparable injury if a temporary injunction is not granted, and where the court has any doubts, it will be decided on a balance of convenience.



10. The court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) KLR 125 defined a *prima facie* case is. It held

So what is a *prima facie* case? I would say that 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 right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.” The court went further to hold that “A *prima facie* case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant case upon trial. That is clearly a standard which is higher than an arguable case.”

11. The Plaintiff/Applicants are aggrieved by the 1st and 2nd Defendants' decision to issue title deeds in a manner that is contrary to the father's instructions as doing so has denied the Plaintiff's an opportunity to rightfully own the properties as assigned to the Plaintiffs. The Respondents state that the issuance of titles to the beneficiaries followed a procedure of identification of squatters as well as verification involving the Provincial Administration and the Local Land Committee. Upon issuance of titles the 1st, 2nd and 3rd Defendants' role was spent. To ask the 1st, 2nd and 3rd Defendants to review or rectify the titles is misplaced. The application is made after expiry of Nine (9) years from 8th August, 2012 when the titles were issued. They also state that some of them had already developed their plots. I find that the parties are family members. the Plaintiffs together with the 1st Defendant are children of one Ramadhan Suleiman Mwake while the 2nd and 3rd Defendant are grandchildren of the said Ramadhan Suleiman Mwake. The said Ramadhan Suleiman Mwake (hereinafter the “Deceased”) died on July 23, 2013. On November 5, 2002, before his demise, the Deceased was allocated an unsurveyed plot measuring approximately 0.459 hectares situate in Ziwa la Ng'ornbe in Mombasa County which is the suit property in this case.
12. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR the court 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, is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. 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.”

13. The applicants/plaintiffs have proved that they would suffer irreparable damage and the balance of convenience is in their favour. The court in *Nguruman Limited* (supra), found that the three conditions and stages have to be applied as separate, distinct and logically. It was held that:

If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If *prima facie* case is not established, then



irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

14. Be that as it may, I find that the Plaintiffs/Applicants have established a *prima facie* case and order that the *status quo* be maintained pending the hearing and determination of this matter. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 21ST DAY OF FEBRUARY 2023.

N.A. MATHEKA

JUDGE

