



Ethics and Anti-Corruption Commission v Maywood Limited & 2 others (Environment & Land Case E090 of 2024) [2025] KEELC 2858 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2858 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E090 OF 2024**

**SM KIBUNJA, J
MARCH 26, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

MAYWOOD LIMITED 1ST DEFENDANT

BAYCLIFF INVESTMENTS LIMITED 2ND DEFENDANT

WILSON GACANJA 3RD DEFENDANT

RULING

Notice Of Motion Dated 9th October 2024

1. The plaintiff filed the notice of motion dated 9th October 2024 seeking for inter alia interlocutory orders of inhibition to restrain the 2nd defendant whether by itself or through its agents, servants or assigns from alienating, transferring, charging, leasing, sub-dividing, consolidating, disposing of, wasting, or undertaking any construction or development of the nature thereon or any part thereof of parcel of land described as MN/V1/2588, suit property, or from howsoever dealing with the said property pending the hearing and determination of the suit. the application is premised on the ten (10) grounds marked (1) to (10) on its face and supported by the affidavit of Paul Kinyua, sworn on the 9th October 2024, among others deposing that the suit property was part of the land parcel MN/V1/2550, CR. No. 13627 belonging to Kenya Ports Authority, KPA; that a portion thereof was hived off in 1971 vide survey plan FR No. 122/6 and allocated number MN/V1/2586, and later renamed MN/V1/2588, the suit property; that on 26th November 1971, a deed plan No.88612 was prepared and KPA entered into a lease agreement with Mobil Oil Limited for 30 years from 1st January 1970, that has since expired and was not renewed; that vide letter of allotment dated the 8th June 1998, the 3rd defendant alienated the suit property to 1st defendant; the 1st defendant instructed a survey who surveyed the plot and survey plan number FR. 122/6 was submitted to Director of Surveys on 12th



March 2008 for issuance of a deed plan for a new grant, but it was rejected as a deed plan had already been issued over the suit property; that on 29th April 2009, the 1st defendant tendered an affidavit to the Director of Survey deposing that the deed plan No. 88162 was lost and applied for a certified copy which was issued on 14th May 2009; that on 24th June 2009, the 1st defendant was issued with a certificate of grant No. CR. 45734 over the suit property that it subsequently transferred to the 2nd defendant on 12th August 2009; that the suit property was not available for allocation by 3rd defendant to the 1st defendant or any other person, and the allocation was therefore fraudulent, illegal null and void ad initio; that no Presidential consent was sought and or issued for the alienation under section 3 of the Government [Land Act](#) chapter 280 of the Laws of Kenya [repealed].

2. The application is opposed by the 2nd defendant through the seven (7) grounds of objection dated 6th November 2024, and replying affidavit of Hussein Sheikh Ali, director, sworn on the 6th December 2024, inter alia deposing that it is the registered proprietor of the suit property, having bought it from the 1st defendant after conducting due diligence and cannot be denied its right to title, use and possession under Article 40 of [the Constitution](#) without giving it a hearing; that the statutory consents to transfer were obtained and stamp duty paid and the 2nd defendant obtained good title to the suit property; that it has not been shown that its title was acquired by fraud, misrepresentation, illegally, unprocedurally or corrupt scheme; it has not been alleged that there is danger or transferring title to third party, and no irreparable loss is likely to be suffer as the value of the land can be ascertained through valuation.
3. The 1st defendant opposed the application through the eight (8) grounds of opposition dated the 5th November 2024, and replying affidavit of Muna Ibrahim Abukar, director, sworn on 29th November 2024, inter alia deposing that the application is premature, offends section 26 of [Land Registration Act](#), section 3, 5, & 7 of Government Lands Act chapter 280 of Laws of Kenya, Article 40 of [the Constitution](#) and is not in line with section 11(j) of Ethics and Anti-Corruption Act; that parcels MN/V1/2586 and 2586 are two distinct parcels created from different deed plans and folio numbers, and MN/V1/2588 has never formed part of the KPA lands; that the parcel KPA had leased to Mobil Oil Limited was MN/V1/2586 and not 2588; that the 1st defendant was regularly allocated the suit property on 8th June 1998, paid the fees payable and obtained good title after following due process; that the 1st defendant subsequently transferred the suit property to the 2nd defendant.
4. The learned counsel for the plaintiff, 1st and 2nd defendants filed their submissions dated the 13th November 2024, 5th December 2024 and 6th December 2024 respectively, which the court has considered.
5. The issues for determinations by the court are as follows:
 - a. Whether the plaintiff has met the threshold for the inhibition order sought to issue at this stage.
 - b. Who pays the costs?
6. The court has carefully considered the grounds on the application and in opposition/objection, affidavit evidence tendered, submissions by the learned counsel for the parties, superior courts decisions cited thereon, and come to the following findings:
 - a. The principles to be considered by the court in applications for temporary injunctive orders were long settled through various superior courts decisions including *Giella versus Cassman Brown Company Ltd & Another* [1973] EA 358, *Nguruman Limited versus Jan Bonde Nielsen & 2 Others* [2014] eKLR, *Mrao Limited versus First America Bank of Kenya & 2 Others* [2003] KLR 125 and *Solomon Chepsat versus Scion Healthcare Limited* [2022]



eKLR, among others that have been cited by counsel for the plaintiff and 1st defendant in their submissions. Simply put, an applicant should establish a prima facie case with a probability of success; show irreparable loss that would not be compensated with an award of damages is likely to occur unless the order is issued; and that the balance of convenience tilts towards granting the order. The plaintiff has contended that the suit property is part of public land belonging to KPA that was fraudulently and illegally allocated by the 3rd defendant to the 1st defendant who then transferred it to the 2nd defendant. that contention has been rejected by the 1st and 2nd defendants through their deposition and submissions defending their title as good title. The court reminds itself that it is not at this interlocutory stage expected to make any final or complete determinations on any questions of the law or facts as that has to wait until after the full trial. However, having given due considerations to the facts presented so far by the parties on the alienation and transactions relating to the suit property from 1998, the court is satisfied the plaintiff has established a prima facie case.

- b. It is a fact the suit property has since alienation been transferred from the 1st defendant to the 2nd defendant. Though the 2nd defendant has pointed out that there is no evidence presented to show that it is likely to transfer the suit property to a third party, the claim by the plaintiff if successful will result to the property being taken back to public land. Though the court is aware that under the doctrine of Lis pendens, the court can issue orders to cancel or revoke transactions over the suit property that may occur should the property have been transferred before the determinations of this suit, it is important to appreciate that will translate into additional costs financially and time. As was held in the case of Kenya Anti-Corruption Commission versus James Raymond Njenga & Another Eldoret HCCC No. 61 of 2008, the one who will have lost is the Kenyan people “...whose government set aside land for public use which was again taken away from the public thereby depriving them for its use. That loss to the Kenya public is not to be remedied adequately by an award of damages...” I therefore find the plaintiff has established the second test of irreparable harm.
 - c. On the balance of convenience, and considering the public interest in the suit should the plaintiff succeed, the court is of the view that it tilts towards granting the injunctive order sought.
 - d. Under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, the costs follow the event unless where for good cause the court orders otherwise. In this matter, I am of the considered view that just in the suit will be served better by an order that costs abide the outcome of the main suit.
7. Having come to the determinations set out above, the court finds the plaintiff’s notice of motion dated the 9th October 2024 has merit and the following orders are issued:
- a. That an inhibition order is hereby issued restraining the 2nd defendant whether by itself or through its agents, servants or assigns from alienating, transferring, charging, leasing, subdividing, consolidating, disposing of, wasting, or undertaking any construction or development of any nature thereon or on any part thereof of parcel described as MN/V1/2588, suit property, or from howsoever dealing with the said property pending the hearing and determination of the plaintiff’s suit.
 - b. That the costs in the application to abide the outcome of the main suit.
- It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 26TH DAY OF MARCH 2025.



S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff : M/s Songole

Defendants : Mr. Gathu For 1st Defendant And Holding Brief For Mr Karina For 2Nd Defendant.

Shitemi – Court Assistant.

