



REPUBLIC OF KENYA



**Koin & 5 others v Kikonyo & 5 others (Environment & Land Petition
E004 of 2022) [2022] KEELC 14785 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14785 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION E004 OF 2022
CG MBOGO, J
NOVEMBER 16, 2022**

BETWEEN

**MURERA OLE KOIN 1ST PETITIONER
MOON MAINE 2ND PETITIONER
SUYIANKA KEKO 3RD PETITIONER
SANKAYON MELITA 4TH PETITIONER
OTUMOI KASHANKA 5TH PETITIONER
OLOIBONI TINKOI 6TH PETITIONER**

AND

**JOHN KIKONYO 1ST RESPONDENT
JOSPHAT KOIN 2ND RESPONDENT
CHARLES SAITABAU 3RD RESPONDENT
DISTRICT LAND ADJUDICATION OFFICER 4TH RESPONDENT
DISTRICT LAND REGISTRAR 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT**

RULING

1. Before this court for determination is a notice of motion application dated April 26, 2022 expressed to be brought under section 3A of the [Civil Procedure Act](#) and order 40 and rule 51 (1) and 3 of the [Civil Procedure Rules](#) seeking the following orders: -

1. Spent.



2. Spent
 3. That temporary injunction do issue, restraining the 1st,2nd ,3rd,4th, 5th and 6th respondents herein by themselves, their servants, agents or anyone acting under their direction or authority whosoever from surveying, demarcating, registration and inspecting Loita Ilkerin Land Adjudication Section pending hearing and determination of this suit.
 4. That costs of this application be borne by the defendants/respondents.
2. The application is premised on the grounds *inter alia* that the petitioners are the registered members of Loita Ilkerin Adjudication Section and that demarcation and placing of beacons is being carried out without their consent.
 3. The application is supported by the affidavit of the 1st petitioner sworn on even date. The 1st petitioner deposed that he is a traditional leader and a registered member of the said adjudication section. He further deposed that the officials of the adjudication process commenced demarcation and placing of beacons without the agreed consensus of the public involving all members of the adjudication section and as such there was lack of transparency. The 1st petitioner further deposed that the register of individual members has never been displayed openly to the public and that members have not been briefed or shown the areas available for allocation of public utilities. Further, that without any reasonable cause, the respondents have refused to involve the public in the demarcation and placing of beacons which process has already began. As such, they have made several complaints but the same have not yielded fruit. Annexed to the application is a letter addressed to the Land Adjudication Officer Narok South dated April 6, 2022.
 4. The application is opposed by the replying affidavit of the 4th,5th and 6th respondents sworn on June 15, 2022 by Josephine Njoroge-the 4th respondent herein. The 4th respondent deposed that Loita Ilkerin Section was declared on August 10, 2011 and no other stage of the adjudication process was carried out because of injunction orders issued in Constitutional Petition No 11 of 2011 and later Petition No 16 of 2017 which judgment was delivered on October 2, 2019. Further, that the adjudication work resumed with the appointment of 11 members on December 16, 2019 which was after a public participation exercise conducted on December 6, 2019.
 5. The 4th respondent deposed that in the said meeting, land owners were requested to nominate persons from each administrative village to which they did by queuing behind their preferred representative. The 4th respondent further admitted that indeed the demarcation and placing of beacons process commenced through an exercise that was launched on March 29, 2022 in a baraza held to inform the landowners of the presence of government surveyors on their land and to request their cooperation and support. Further, after the exercise began the land adjudication committee requested to convene a meeting because of claims by land owners that there was clarity of the exercise which meeting was held on April 6, 2022 at Ilkerin Project Community Training Center to specifically allay fears and doubt. The 4th respondent further deposed that there is no irreparable loss that the applicants will suffer because they have been fully involved in every other preceding stage and that they have a chance to query the end product of the demarcation, survey and beaconing exercise.
 6. The 4th respondent further deposed that the list of land owners was displayed and members were given a chance to inspect the same from February 4, 2021 to February 22, 2021 and as a result a total of 241 cases were filed and were determined on March 4, 2021 to March 20, 2022. Further, that 12 appeals to the Arbitration Board were heard and determined on December 15, 2021 in accordance with sections 6 (2),7 (2) and 8 of the [Land Adjudication Act](#). Also, the public utilities were demarcated, surveyed and beacons by the demarcation officer between June 24, 2021 and July 12, 2021 in collaboration



with the Land Adjudication Committee, members of each respective village, village elders and several members of the village. In support thereof, the 4th, 5th and 6th respondents annexed a copy of the notice of establishment of Ilkerin Adjudication Section dated August 10, 2011, appointment of members of the committee dated December 16, 2019 and January 14, 2021 and resolutions of a meeting held on April 6, 2022.

7. The application was disposed off by way of written submissions. The petitioners filed written submissions dated July 26, 2022. The petitioners raised one issue for determination which is whether the petitioners have proved grounds to warrant the grant of temporary injunction as sought. The petitioners submitted that they are members of the adjudication section and that the adjudication process is being conducted without their consent or participation which demonstrates that they have a genuine and arguable case and that they have tendered evidence in support of that as well. The petitioners further submitted that they have been in occupation of the adjudication section and the adjudication process can lead to a dispute regarding the boundaries. The petitioners relied on the cases of *Giella versus Cassman Brown* (1973) EA 358 and [*Kenya Electricity Transmission Company Limited versus Kibotu Limited*](#) [2019] eKLR and [*Kakooza versus Stanbic Bank \(U\) Limited*](#) (Miscellaneous Application 614 of 2012) [2013] UGCommC 24.
8. The 4th, 5th and 6th respondents filed written submissions dated July 28, 2022. The 4th, 5th and 6th raised one issue for determination which is whether the petitioners are entitled to an order of temporary injunction pending the hearing and determination of this suit. While relying on the cases of *Giella versus Cassman Brown* (1973) EA 358, [*Mrao Limited versus, First American Bank of Kenya & 2 others*](#), (2003) KLR 125 and [*American Cyanamid Co versus Ethicom Limited*](#) (1975) AN AER 504, the 4th, 5th and 6th respondents submitted that the petitioners have not demonstrated any right that is being violated or is likely to be violated which would shift the burden onto the respondents. As such, they do not have a prima facie case with a probability of success.
9. The 4th, 5th and 6th respondents further submitted that even if an injunction is not granted, the petitioners will not suffer any substantial loss because they have been fully involved in every stage and have been listed as land owners. They relied on the case of [*Nguruman Limited versus Jan Bonde Nielsen & 2 others*](#) [2014] eKLR. They further submitted that if an injunction is granted, it is likely to delay the adjudication process which will also affect the petitioners who are beneficiaries and other members as well. That the financial loss is likely to be incurred by delaying the process of lengthening the same will likely be borne by the 4th, 5th, and 6th respondents. They relied on the case of [*Paul Gitonga Wanjau versus Gathuthis Tea Factory Company Limited & 2 others*](#) [2016] eKLR.
10. I have carefully analysed and considered the application, the replying affidavit and the written submissions and authorities filed by the petitioners and the 4th, 5th and 6th respondents and the issue for determination is whether the petitioners are entitled to a grant of temporary injunction.
11. Order 40 rule 1 of the [*Civil Procedure Rules*](#) provides a basis upon which a temporary injunction may issue and it states ‘Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.’



12. In an application for an interlocutory injunction the onus is on the applicant to satisfy the court that it should grant an injunction. The jurisdiction to grant an Injunction may be exercised if it is just and convenient to do so. In the case of *Giella v Cassman Brown & Co Ltd*, the court set out the principles for interlocutory injunctions which are: -
- a. The plaintiff must establish that he has a *prima facie* case with high chances of success;
 - b. That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages; and
 - c. If the court is in doubt, it will decide on a balance of convenience.
13. In addition, an injunction is a discretionary remedy as was held in *Kenleb Cons Ltd v New Gatitu Service Station Ltd & another*, (1990)eKLR “to succeed in an application for injunction, an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction.”
14. The important consideration before granting a temporary injunction under order 40 rule 1 of the *Civil Procedure Rules* is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit, the court is in such a situation obligated to grant a temporary injunction to restrain such acts. In the instant case, the petitioners pleaded lack of transparency and refusal to involve the public in the adjudication process. The petitioners relied on a letter dated April 6, 2022 addressed to the Land Adjudication Officer, Narok South which the 1st petitioner claims that they were not given an opportunity to express their views. The petitioners through their advocate also wrote a letter dated April 19, 2022 to the Land Adjudication Officer requesting consent to institute proceedings. In my view, the petitioners have not demonstrated that their property is in danger of being wasted, damaged or alienated in any way. Also, there is no demonstration of any violation, infringement or threat to their constitutional right to own property as envisaged in article 40 of the *Constitution*. The petitioners have not demonstrated how they would suffer irreparable loss that cannot be compensated by way of damages in the event that the adjudication process is not stopped.
15. The 4th, 5th and 6th respondents have in their response laid out the process of land adjudication in Ilkerin Adjudication Section with a notice dated August 10, 2011 and provided minutes of the meeting held on April 6, 2022. In so far as the documents relied upon by the 4th, 5th and 6th respondents are concerned, I am satisfied that there is no need to interfere with the adjudication process. In *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125 which was cited with approval in *Moses C Mubia Njoroge & 2 others v Jane W Lesaloi and 5 others*, (2014) eKLR, the Court of Appeal defined a prima facie case as: -
- “A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.
16. Arising from the above, this court finds that the petitioners have not established a *prima facie* case to warrant grant of the orders and as such the notice of motion application dated April 26, 2022 is hereby dismissed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED and DELIVERED VIA EMAIL ON 16TH NOVEMBER, 2022.

Mbogo C.G



Judge

16/11/2022.

In the presence of:-

CA: Timothy Chuma

Applicant:

Respondent:

