



REPUBLIC OF KENYA



KENYA LAW
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**Magondu v Chavda Educational Holdings Limited (Environment & Land
Case E301 of 2022) [2023] KEELC 16703 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E301 OF 2022**

**AA OMOLLO, J
MARCH 23, 2023**

BETWEEN

JANE WANGUI MAGONDU PLAINTIFF

AND

CHAVDA EDUCATIONAL HOLDINGS LIMITED DEFENDANT

RULING

1. The plaintiff moved the court vide Notice of Motion dated September 16, 2022 and amended on December 5, 2022 brought under the provisions of Section 3A, 63(C) of the [Civil Procedure Act](#) and Order 40 of the [Rules](#). The applicant sought the orders that;
 1. Spent
 2. Spent
 3. An interlocutory injunction do issue barring the defendant from continuing to construct or Charging transferring, trespassing onto or otherwise interfering with the suit property LR No 12673/153 LR No 85236 pending the hearing and determination of this suit.
 4. The OCS Runda Police Station do supervise the observance of the orders.
 5. Costs be provided for.
2. The application was premised on the grounds listed on its face, the supporting affidavit sworn by the applicant on September 16, 2022 and the supplementary affidavit sworn on December 5, 2022. The grounds listed include;
 - i. The plaintiff is the registered owner of LR No 12673/153 I R No 85236.
 - ii. In early August, 2022 the Defendant invaded the plaintiff's land and started construction thereon.



- iii. The plaintiff will suffer irreparable loss if the Defendant is not stopped and damages cannot be an adequate remedy.
3. In the Supporting Affidavit Ms. Wangui deposed that she is the registered owner of LR No 12673/153 and annexed a copy of a title to boot. She stated that she has been in quiet possession of the suit property from 2001 until August, 2022 when on a routine inspection she found it fenced with iron sheets and some construction works had commenced. That she reported the matter to the CID Land Fraud Unit who are still continuing with investigations. The Applicant added that a new search conducted still show she is the registered owner.
 4. The defendant filed a replying affidavit sworn by Amrital Chavda. Mr Chavda deposed that the Defendant had no interest on the land title LR 12673/153 and that they were constructing on LR No 27398/153 IRNo 103329 which it purchased from ITE Farmers Co-operative Sacco Ltd. in October, 2020. The defendant proceeded to annex copies of documents exchanged during the sale and transfer process. The Defendant also itemised the difference in the titles held by each of the parties.
 5. The plaintiff filed a supplementary affidavit dated December 5, 2022. The plaintiff observed that the defendant admits that their title emanated from a purported change of user of the original No 12672/153 IR85236 which property is owned by her. That a search conducted on October 13, 2022 show the details of the applicant's property has never changed.
 6. The plaintiff further averred that she purchased the land from Wakam Enterprises who had earlier acquired it from Nairobi City Council after ITE Farmers Sacco surrendered it as a condition for subdivision of their land and she produced the conditional letter of approval at pages 7 and 8. The Applicant deposed further that ITE Farmers Sacco was unhappy with the allocation to the Nairobi City by the Commissioner of Lands and thus made them file Civil Case No 1214 of 2001 ITE Farmers Sacco v Commissioner of Lands, City Council of Nairobi, Wakam Enterprises Ltd. and Jane Wangui.
 7. That the application for injunction in that suit was dismissed by Justice Ransley as per copies of the ruling annexed as SWM. The Applicant added that the suit by ITE Farmers Sacco was dismissed on May 30, 2012 for want of prosecution. That following the dismissal, the Applicant charged the property to Consolidated Bank on 2011 and further charges registered in August, 2016 and July, 2017. The Applicant deposed that she is shocked that the title IR103329 LR No 27398 was obtained in November 2006 by ITE Farmers while there was an active case before the court. That the Defendants title was obtained by super imposing a new subdivision over the one which created the plaintiff's title.
 8. The plaintiff argued at paragraph 25 of the supplementary affidavit that after the allocation of the land to the Nairobi City Council, the said title could not be cancelled without recourse to court. She annexed a letter from the Commissioner of Lands marked as JWM 6 advising the ITE Farmers of this position. The plaintiff urged the court to preserve the suit property on the strength of the information and the material she had provided.
 9. I have read and considered the submissions of the parties filed. The principles for granting injunctions of a temporary nature are well settled. The court is herein required to determine whether or not the Applicant has demonstrated that she has a prima facie case which has a probability of succeeding. The Applicant has in my view satisfied the first principle as the materials before court point to the fact that the land in dispute is one except each of the parties are holding distinct titles. It would be prudent to preserve the suit property while determining the rightful title holder.
 10. Will be plaintiff suffer irreparable loss? There is no dispute on the on going construction works in the suit premises which are being undertaken by the Defendant. Unless the orders of temporary injunction are granted, the works being undertaken will alter the status of the suit property. Secondly,



the Defendant pleaded that the property is theirs so that if the plaintiff succeeds at the end of the case when the building is complete, she will have lost her property. The interests attached to land though can be ascertained it does not serve justice to overlook violation of rights to property merely because compensation can be paid. The Court of Appeal in *Agnes Nyang'anyi Omwamba v Samuel Bosire Nyaruna* [2022] eKLR stated;

“...it means that the result of the actions of the adverse party of left unattended to by a Court order halting them will be such that the other party is not likely to be compensated by damages. Put differently, the payment of money in form of damages will not put the injured party back into the position he should have been had the actions of the adverse party not taken place. Thus, it is not enough to should a prima facie case. The applicant must demonstrate that the effect of the actions of the Respondent is so grievous that when all is said and done, he will not be in the same position as he was originally.”

11. In whose favour does the balance of convenience tilt? The construction is at the preliminary stages. It is my considered opinion and I so hold that the balance of convenience tilts in having the suit property preserved in its current state pending the hearing and determination of the case. However, the Plaintiff /Applicant shall give the Defendant an undertaking as to damages which undertaking shall be filed in court within 30 days of the delivery of this ruling.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH, 2023

A. OMOLLO

JUDGE

In the presence

Koyoko for Plaintiff

Wawire for Defendant

