



**Marangu & 3 others v) & 3 others (Environment & Land Case
E014 of 2022) [2023] KEELC 16369 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E014 OF 2022**

**CK YANO, J
MARCH 22, 2023**

BETWEEN

**ROSEMARY KAROKI MARANGU 1ST APPLICANT
KALLEN KATHAMBI KAIMENYI 2ND APPLICANT
LUCY GAKIRU MARANGU 3RD APPLICANT
SUSAN KIENDE MARANGU 4TH APPLICANT**

AND

**AGM (SUED AS THE GUARDIAN OF MNN, A PERSON OF UNSOUND
MIND) 1ST RESPONDENT
ADIEL GITOBU MARANGU 2ND RESPONDENT
GEOFFREY KIMATHI MARANGU 3RD RESPONDENT
JOSEPH KABURU MARANGU 4TH RESPONDENT**

RULING

1. This ruling is in respect to a notice of motion dated July 19, 2022 by the plaintiffs brought under Article 40 of the [Constitution](#), Section 3A and 63 of the [Civil Procedure Act](#) and Order 40 Rules 1, 2 and 3 and Order 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law. The application mainly seeks an order of temporary injunction restraining the respondents whether by themselves, their agents, servants or employees from in any way whatsoever alienating, wasting, interfering or dealing in any way with land parcel number Abogeta/U/Kithangari 523 pending the hearing and determination of this suit.
2. The application is supported by the affidavit of Rosemary Karoki Marangu sworn on July 19, 2022 and a supplementary affidavit sworn on October 12, 2022. Briefly, it is the applicants' case that following



various meetings with his family, their deceased father Joses Marangu Muthamia Marete was the absolute proprietor of the suit property measuring approximately 19.25 hectares since May 27, 1965 until August 11, 2015. That before his demise, the deceased transferred various properties to all his children, that is the applicants and the 1st to 3rd respondents herein while the suit property was to be under trust for the benefit of the whole family.

3. The applicants aver that the 1st to 3rd respondents were given five (5) acres each of land in Ngobit, Nanyuki, one (1) acre each of land adjacent to the suit property, one (1) plot each at Kionyo market while the 1st applicant was given land parcel number Nairobi/Block 114/87 measuring 0.0130 Ha, and the 2nd, 3rd and 4th applicants were given land parcel Number Abogeta/L-Kithangari/1724 measuring 2.85 Ha.
4. The applicants aver that the last family meeting was held on June 4, 2016 during which the issue of the suit property being put under trust was discussed, it was not disclosed to the family that the suit property was registered in the joint names of the respondents on August 11, 2015. The applicants aver that the applicants and the respondents have lived on the suit property on a portion where their deceased father had built a matrimonial home while the remaining portion was utilized in common for farming of tea, cabbages, onions and other crops for the benefit of the family. That to-date, the 4th respondent lives on the portion where the said matrimonial home is built.
5. It is the applicants' case that the suit land has been commonly utilized by both parties as a family until June 23, 2015 when the applicants' father passed away and that is when the 1st to 3rd respondents became hostile towards the applicants by preventing them from utilizing, taking part and being involved in the management of the suit property. It is their contention that the suit property is a family land that was being utilized in common by both parties herein thus there exists a customary trust which is an overriding interest over the suit property. That their attempts to resolve the dispute before Kaguru Deputy County Commissioner were not successful and on November 24, 2016, the applicants lodged a restriction over the property which was registered on the same day.
6. The applicants aver that sometime in March 2022, the respondents secretly without informing the applicants presented themselves before Kaguru Deputy County Commissioner and falsely informed him that the family had resolved the land dispute yet the applicants were not involved in any resolution of the dispute and were not part of the said meeting. That on March 23, 2022, the Land Registrar Meru removed the restriction that had been lodged by the applicants vide the Deputy County Commissioner's letter dated March 3, 2022.
7. It is the applicants contention that the registration of the suit property as a joint tenancy in the names of the respondents on August 11, 2015 was done unlawfully as the 4th respondent had no capacity to contract due to her mental infirmity as she was diagnosed with dementia sometimes in 2014 a condition she still severely suffers from.
8. That the applicant's deceased father had a personal account number xxxx with Yetu Sacco limited where the 4th respondent was a signatory, and after his demise and due to the mental condition of the 4th respondent, the applicants and the 1st to 3rd respondents mandated the 2nd applicant and the 2nd respondent to operate the said account along with the 4th respondent.
9. The applicants contend that the said joint tenancy was created contrary to the law by the 1st to 3rd respondents who took advantage of the deceased who was of an advanced age of 89 years, and when he was in the process of changing his name on the title deed to include his other names namely, Marangu Muthamia Marete since the title deed initially had the name Jose Muthamia. The applicants further contend that unless the orders of injunction are granted, the applicants will be permanently disposed



of their family land which is also being utilized by the 1st to 3rd respondents alone whereof the applicants will be occasioned substantial irreparable harm and their right to property under the Constitution will continue to be threatened and or violated.

10. In the affidavit in support of the application the applicant has annexed a copy of authority dated June 23, 2022, copies of certificate of lease and title , copies of minutes, a certified copy of the green card dated June 8, 2022, copy of account statement dated February 7, 2020, a copy of death certificate dated June 11, 2016, a copy of official search dated June 3, 2022, a copy of a medical report dated February 2, 2022, copy of a letter dated December 20, 2016 and an extract of Section 91 (8) of the Land Registration Act No 3 of 2012 (now amended) a copy of eulogy, Mpesa message for NHIF payments and account statement dated September 29, 2022 from Yetu Sacco.
11. The application is opposed by the respondents vide grounds of opposition dated August 31, 2022 and a replying affidavit sworn by AGM, the 1st respondent on the same date. The deponent avers that it's true that the suit property at all material time belonged to the exclusive use and control of their deceased father and the respondents and that upon the death of their father on June 23, 2016, the registrar mandated by law that deleted the name of the deceased from the register and issued the respondents a new title bearing their names as survivors to the joint tenancy. Relying on legal advice, the deponent states that the property in joint tenancy cannot be available for distribution to any person who is not a joint owner especially without the applicants taking out letters of administration under the law of succession.
12. The 1st respondent avers that their deceased father had several other properties that he distributed amongst all his siblings before his death including Nairobi/Block 114/87 which is prime property to the 1st applicant and Abogeta/L- Kithangari/1724 to the 2nd, 3rd and 4th applicants jointly. That the meetings that were held were normal family meetings and no discussions whatsoever were done in respect of the ownership of the suit property which belonged to the deceased who willfully registered it in joint ownership with the respondents who live and have lived in it together with the 4th respondent. He avers that the applicants have their different places of abode having been married and in addition, the deceased allocated them property away from the suit property. That the property allocated to the applicants at Abogeta/L-Kithangari/1724 was sold by them three weeks after the death of their father.
13. The respondents deny that their father was of unsound mind. That the respondents have always been in occupation of the suit land which has tea bushes planted by the deceased and the 1st respondent whose proceeds they use to take care of their ailing mother who lives and calls the suit land home. The respondents accuse the applicants for being selfish.
14. It is contended that the restriction on the land was put on land that was already in joint ownership of the respondents. That the severe dementia of the 4th respondent only happened after the death of the deceased. That the applicants want to distribute the deceased property illegally without taking out letters of administration and over a property not available for distribution as the suit property which was and is still in a joint tenancy.
15. In the replying affidavit, the 1st respondent has annexed a copies of title of the suit property, affidavits, death certificate, a copy of certificate of search, a medical report, trade sheet from KTDA and photographs.
16. It is the respondents' contention that the applicant's suit is fatally incompetent and ought to be struck out.
17. The application was canvassed by way of written submissions which were duly filed by the applicants and the respondent



Analysis and Determination

18. I have considered the application herein, the response as well as the submissions filed and the authorities relied on. The issue for determination is whether the injunction orders should be issued in favour of the applicants.
19. The conditions for the grant of an interlocutory injunction are now well settled. As stated in *Giella v Cassman Brown and co Ltd [1973] EA 358* the principles are: (a) an applicant must show a prima facie case with a probability of success (b) the applicant must show that unless injunctive orders are granted he will suffer irreparable harm which would not be adequately compensated for by damages (c) and if in doubt in any of the above conditions the court will decide the matter on a balance of convenience.'
20. As to the existence of a prima facie case with a likelihood of success, the court in *Mrao Ltd v first American Bank of Kenya Ltd & 2 others [2003] KLR 125* defined 'prima facie case' in the following terms;

' In civil cases, a prima facie case 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.'

'We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.'
21. The Court of Appeal in *Nguruman Ltd (supra)* went on and held that 'the three conditions for grant of interim orders of injunction apply separately as distinct and logical hurdles to be surmounted sequentially by the applicant. Such that it is not enough that the applicant establishes a prima facie case, he must further successfully established irreparable injury, that is injury for which damages recoverable at law could not be an adequate remedy. And where there is doubt as to adequacy of damages, the court will consider the balance of convenience. Where no prima facie case is established, the court need not consider irreparable injury or balance of convenience. As such the application ought to fail and be dismissed with costs.'
22. In this case, the applicants and the 1st to 3rd respondents are siblings. It is common ground that the parties deceased father, JMMM, transferred various properties to the applicants and the 1st to 3rd



respondents. Whereas it is not disputed that the deceased gifted various properties to the applicants and the 1st to 3rd respondents it is apparent that there is a dispute over the suit property known as land Parcel Number Abogeta/U-Kithangari/523 which is currently registered in the names of the respondents herein.

23. It is the applicants case that the suit property belongs to the deceased as the sole proprietor and that the same is family land that was being utilized in common by both parties and therefore there exists a customary trust over the said property. The applicants' case is that the registration of the suit property in the names of the respondents was done unlawfully. The respondents however deny this allegation.
24. I have perused the documents exhibited by both parties. The title in respect to title number Abogeta/U-Kithangari/523 (the suit property herein) indicates that the same was registered in the names of the respondents on August 11, 2015 and title deed issued on September 22, 2015. The deceased died on September 21, 2016. It is also evident from the material on record that the respondents are the ones in occupation and use of the property. Among the reliefs sought by the applicants in the plaint is a prayer for mesne profits from February 2017. The applicants are also praying for a declaration that the land belongs to the deceased as the sole proprietor, a declaration that the transfer, registration and issuance of title of the property to the respondents was null and void and an order for cancellation of the joint tenancy and to revert the title to the deceased as sole proprietor.
25. Given that the respondents are in occupation and use of the property and are holding a title that was issued before the demise of the original owner, and considering that there is a prayer for mesne profits, I find that the applicants claim can only be determined at the main trial. I therefore find and hold that the applicants have not established a prima facie case with a probability of success. As regards irreparable damage, I take the view that any damages suffered by the applicants, if any can be quantified in damages. If I had doubt in the matter, the balance of convenience is in the favour of the respondents who are in occupation and use and who are holding title.
26. Arising from the above reasons, I find that the notice of motion dated July 19, 2022 lacks merit and the same is dismissed. Considering the relationship of the parties in this case, I order that parties bear their own costs.
27. It is so ordered.

Dated, signed and delivered at Meru this 22nd day of March 2023

In the presence of

Court Assistant – Kibagendi

Chacha for respondents

No appearance for applicants

C.K YANO

JUDGE

