



REPUBLIC OF KENYA



**Gichugumwa & 3 others v Nguru (Environment & Land Case
E083 of 2022) [2023] KEELC 16742 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E083 OF 2022**

**BM EBOSO, J
MARCH 16, 2023**

BETWEEN

**EDDAH NJOKI GICHUGUMWA 1ST APPLICANT
JANE WANJIRU KARANJA 2ND APPLICANT
HANNAH WAGIO KIIRU 3RD APPLICANT
GRACE WAMBUI NDUNGU 4TH APPLICANT**

AND

GEOFFREY NJENGA NGURU RESPONDENT

RULING

1. The applicant in this suit took out an originating summons dated July 21, 2022, inviting the court to determine the following verbatim questions:
 - a) Whether the late Nguru Mwea alias Nguru wa Wangechi alias Kairianja Mugwimi was the registered owner of property title number Kabete/Nyathuna/141.
 - b) Whether Eddah Njoki Gichugumwa, Jane Wanjiru Karanja, Hannah Wagio Kiiru and Grace Wambui Ndungu, together with other members of their families as outlined in the supporting affidavits herein, are heirs of the Estate of Nguru Mwea alias Nguru wa Wangechi alias Kairianja Mugwimi with equal rights as Geoffrey Njenga Nguru.
 - c) Whether Nguru Mwea alias Nguru wa Wangechi alias Kairianja Mugwimi sold LR Kabete/Nyathuna/141 to Geoffrey Njenga Nguru during his lifetime.
 - d) Whether a declaration should issue that the transfer of property LR Kabete/Nyathuna/141 to Geoffrey Njenga Nguru was unprocedural, unconscionable and fraught with illegalities and or fraud.



- e) Whether a declaration should issue that the transfer of property LR Kabete/Nyathuna/141 to Geoffrey Njenga Nguru and subsequent registration of title in his name should be cancelled.
 - f) Whether a permanent injunction should issue against the respondent, his agents, servants, representatives, and or employees restraining them from selling transferring, disposing, alienating, subdividing, charging or in any other manner or in any other way interfering with property title number Kabete/ Nyathuna/141.
 - g) Whether a declaration should issue that ownership regarding title number Kabete/ Nyathuna/141 should revert to the status quo ante and the same be registered in the name of the late Nguru Mwea alias Nguru wa Wangechi alias Kairianja Mugwimi.
 - h) Who should bear the costs of the suit.
2. Contemporaneous with the originating summons, they brought a notice of motion application dated July 21, 2022 seeking an interlocutory injunction restraining the defendant either by himself, his agents, servants, representatives, and or employees, from selling transferring, disposing, alienating, subdividing, charging or in any other manner or in any other way, interfering with property title number Kabete/Nyathuna/41. The application was supported by the affidavit of Eddah Njoki Gichugumwa dated July 21, 2022. She deposed that she was the third wife of the late Nguru Mwea alias Kairianja Mugwimi the previous registered owner of land title number Kabete/Nyathuna/41.
 3. She deposed that the defendant is his step son, and at some point, he threatened to kill them. She, together with her children, moved out of the suit property because they were afraid of their lives. Upon making a complaint to the Chief's Office a portion of the suit property as beneficiary of her late husband's property, the Chief summoned the defendant. It was her contention that the defendant denied the allegations raised and stated that he bought the suit property from her late husband. Further, she deposed that it was not possible that the late Nguru Mwea could transfered the suit property absolutely to one of his children during his lifetime to the exclusion of all other beneficiaries.
 4. She further deposed that the defendant had not provided any proof of the alleged sale, including evidence of a sale agreement or a receipt of Kshs 20,000 to signify purchase of the suit property from her late husband.
 5. The defendant opposed the application through a replying affidavit dated September 26, 2022. His case is that his late mother, Muciru Nguru, was married to his late father Nguru Mwea alias Kairianja Mugwimi alias Wilson Kairianja who died in the year 1990. He adds that he is the registered owner of LR Kabete/Nyathuna/41 which was transferred to him by his late father Nguru Mwea alias Kairianja Mugwimi alias Wilson Kairianja. It is his contention that the plaintiffs are strangers to him and that he acquired LR Kabete/Nyathuna/41 for a consideration of Kshs 20,000. He confirms that green card marked as ENG-1 was a true extract of the greencard to his property.
 6. He was advised by his advocates on record that, the subject property did not pass as a gift in contemplation of death but came about from a sale which therefore did not fall under the category of his late father's free estate. He further contended that he was a purchaser for value and he wondered why the plaintiff did not challenge the sale of property known as Kabete/Gikundi/T.241, which belonged to his father, subsequently sold to one Francis Njenga Njoroge.
 7. Eddah Njoki Gichugumwa swore a further affidavit dated November 21, 2022 reiterating the contents on her supporting affidavit sworn on July 21, 2022. He confirmed that the suit property is known as LR Kabete/ Nyathuna/41 and LR Kabete/ Nyathuna/141 was a typographical error. She denied that the defendant purchased LR Kabete/Nyathuna/41 for a consideration of Kshs 20,000.



8. The application was canvassed by way of written submissions dated November 21, 2022 filed by the law firm of Kibatia & Company Advocates LLP. Counsel for the plaintiffs identified the following as issues for determination; (a) whether the defendant is a bona fide purchaser of property title number LR Kabete/Nyathuna/41, (b) whether this court should grant the injunction sought.
9. On whether the defendant is a bona fide purchaser of property title number LR Kabete/Nyathuna/41, counsel disputed the fact that the defendant had purchased the suit property as no written contract had been adduced in evidence and the payment of Kshs 20,000 as purchase price, remained unproved. Counsel cited the decision of Mutungi J in *Esther Kabugi Njuguna v Martha Chebet & 3 others* [2020] on the burden of proving payment of purchase price.
10. On whether this court should grant the injunction sought, counsel was of the view that plaintiffs had satisfied all the conditions set in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014]eKLR and the condition in *Mrao v First American Bank & 2 others* [2003]eKLR. Counsel further submitted that if the prayers sought are not granted, plaintiffs stood to suffer irreparable loss.
11. The defendant filed his submission dated January 23, 2023 through the firm of Ndua Kinuthia & Co Advocates. The identifiable issues for determination were: (i) reply to submissions made by the plaintiffs; (ii) Whether the applicants had satisfied conditions necessary for grant of an injunctive relief; and (iii) Whether the suit by the applicants is statute barred, an abuse of the court process and suffering from laches.
12. Counsel submitted that the plaintiffs were misguided on the law that was applicable at the time when the sale of the suit property in favour of the defendant took place as he brought the suit property in the year 1980 when Section 3(3) of the *Law of Contract Act* 2003, was not commenced and thus, the governing law was Sec 3(7) of the *Law of Contract Act*. Counsel opined that the defendant had fulfilled every requirement that had been put in place by the act before the amendment in the year 2003.
13. On whether the applicants had satisfied conditions necessary for grant of an injunctive relief, counsel was of the view that the four documents annexed by the plaintiffs have not shown any proprietary interests by the applicants. Thus, they had not satisfied the conditions set in *Giella v Cassman Brown's* case. On Whether the suit by the applicants is statute barred, an abuse of the court process and suffering from laches, counsel submitted that the plaintiffs had not been on the land for a period of 34 years. Counsel urged the court to find that the plaintiffs had been caught up in laches. In the end, counsel urged the court to dismiss the application dated July 21, 2022.
14. The court has considered the application together with the defendant's response. It has also considered the relevant legal framework and jurisprudence on the key question that fall for determination in the application. The single question falling for determination is whether the applicants have satisfied the criteria upon which our trial courts exercise jurisdiction to grant interlocutory injunctive reliefs. The said criteria was outlined in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, he is required to demonstrate that if the injunctive relief is not granted, he would stand to suffer irreparable damage that may not be adequately indemnified through an award of damages. Third, should there be doubt on both or either of the above two requirements, the court is required to determine the application based on the balance of convenience. Lastly, at the stage of disposing the application for interlocutory injunctive relief, the court does not make conclusive or definitive pronouncements on the substantive issues in the cause.
15. In the application under consideration, the applicants claim to be beneficiaries of the estate of the late Nguru Mwea alias Kairianja Mugwimi. A copy of greencard shows that the late Nguru Mwea was the



registered owner of LR Kabete/Nyathuna/41 which property was then transferred to Geoffrey Njenga Nguru on January 16, 1980. The applicants claim to be beneficiaries. They have placed before this court evidence relating to the administration of the estate of the late Nguru Mwea. The said estate is not a party to the original summons.

16. On the defendant's side, he exhibited a copy of a transfer in his favour, a copy of search document showing he is the proprietor of the suit parcel. In our prevailing jurisprudence, an interlocutory injunction is a discretionary relief granted on the basis of evidence and well settled legal principles spelt out in *Giella v Cassman Brown*
17. A prima facie case was defined in the case of *Mrao Limited v First American Bank Limited & 2 Others*, [2003] KLR 125 as:

' 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 so as to call for an explanation or rebuttal from the latter.'
18. Taking the foregoing into account, and having carefully examined the materials presented by both the plaintiffs and the defendant at this interlocutory stage, the court is not convinced that, in the absence of the estate of the late Nguru the plaintiffs have made out a prima facie case with a probability of success to warrant the grant of an injunctive order against the defendant.
19. Because what is before the court is an interlocutory application, the court would refrain from commenting further on the merits of the plaintiffs' case against the defendant. Suffice to say, at this point, the plaintiffs have failed to satisfy the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive relief. The upshot of this Ruling is that the plaintiffs' Notice of Motion Application dated July 21, 2022 fails for lack of merit and the same is dismissed.
20. The defendant shall have the costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -

Ms Wakarima for the Plaintiff

Mr Kinuthia for the Defendant/Respondent

Court Assistant: Ms Hinga

