



**Muema v Ntalai & 2 others (Environment & Land Case
E067 of 2022) [2023] KEELC 17059 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17059 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E067 OF 2022
LC KOMINGOI, J
APRIL 27, 2023**

BETWEEN

EVELYNE MUENI MUEMA PLAINTIFF

AND

AGNES OSOI NTALIAI 1ST DEFENDANT

SONTIKA LERIRO 2ND DEFENDANT

COUNTY GOVERNMENT OF KAJIADO 3RD DEFENDANT

RULING

1. This is the Notice of Motion dated 22/8/2022 brought under;

Under Order 40 Rule 1 of the *Civil Procedure Rules* 2010 and Section 1A, 1B and 3A of the *Civil Procedure Act* Cap 21, Rule 3(1) of the *High Court (Practice and Procedure) Rules* of the *Judicature Act* and all other enabling provisions of the Law.

2. It seeks orders;

1. Spent.
2. Spent.
3. Spent.
4. The Honourable Court be pleased to issue an Order of temporary injunction restraining the Defendants/Respondents by themselves, agents servants or any other person claiming under their title or authority and/or instructions from entering, interfering, constructing, fencing, leasing out, carry on any activity thereon or committing any act whatsoever on all that property formerly



known as Plot number 853/Business Emali T. Centre now Plot Nos A149 and A150 situated within Kajiado County pending the hearing and determination of this Suit.

5. The order be effected through the OCS Emali Police Station.
 6. Costs.
3. The grounds are on the face of the application and are set out in paragraphs a to i.
 4. The application is supported by the Affidavit of Everyln Mueni Muema, the Plaintiff/Applicant herein sworn on the August 22, 2022.
 5. The application is opposed. There is a Replying Affidavit sworn y Agnes Osoi Malia, the 1st Defendant/ Respondent on the October 25, 2022.
 6. There are grounds of opposition filed by the 3rd Defendant/Respondent dated October 11, 2022.
 7. The 2nd Defendant/Respondent who was duly served did not file any response.
 8. On the October 26, 2022 the court with the counsel of parties, directed that the Notice of Motion be canvassed y way of written submissions.
 9. The Plaintiff/Applicant’s submissions are dated 8th December 2022.
Counsel has submitted that the 1st Respondent transferred the entire plot No 853/Business Emali T Centre to the Plaintiff/Applicant on March 29, 2022 before the 3rd Respondent came into being.
 10. It is further submitted that the Plaintiff/Applicant partially developed the suit property having received approvals from the 3rd Respondent.
 11. Counsel further submitted that on April 26, 2019 the 3rd Respondent issued the plaintiff’s/Applicants with a new allotment letter for Plot No A149/Business Emali T. Centre which showed a reduced size Plot. No reasons were given for the discrepancy only for the Plaintiff/Applicant to learn that a third party have been issued with the remainder of the parcel vide an allotment letter Plot No A150/Business Emali T. Centre.
 12. Counsel further submitted that granting the orders herein will be in the interest of Justice and will avert greater harm to the applicant and the Respondents.
He has put forward the case of *Jan Bonde Nielsen Vs Herman Phillipus Steyn also known as Hermannus Phillipus Steyn & 2 Others* (2012)eKLR.
 13. It is further submitted that the balance of convenience lies with granting the orders sought.
He prays that the application be allowed.
 14. Mr. Kivuva for the 1st Defendant/Respondent intimated that the 1st Defendant/Respondent would not be filing any submissions but would rely on the Replying Affidavit.
 15. The 3rd Defendant/Respondent submissions are dated November 21, 2022.
Counsel submitted that the Plaintiff/Applicant has not demonstrated any legal proprietary rights to the suit property capable of being protected by this Honourable Court.
The size of the plot in the Sale Agreement cannot be ascertained.



16. It is further submitted that the 1st Defendant/Respondent has stated that she sold to the Plaintiff/Applicant plot No853/Business Emali T Centre measuring 50 feet by 100 feet.
He has put forward the case of *Serab Mweru Mubu Vs Commissioner of Lands & 2 Other.* (2014) eKLR.
17. It is also submitted that the Plaintiff/Applicant has not Proprietary rights or interest over Plot No A150/Business Emali T. Centre.
18. The Plaintiff/Applicant has failed to present evidence of injury she would suffer if she is denied the injunctive relief. She has no interest over Plot No A150/Business Emali T. Centre nor is she in possession.
He has put forward the cases of *Kenleb Cons Ltd Vs New Gatitu Service Station Ltd & Another* (1990) eKLR; *Nguruman Limited Vs Jan Bonde Nielsen & 2 others* (2014) eKLR.
19. The balance of convenience does not tilt in favour of the Plaintiff/Applicant given that she is not in possession and use of the suit property being Plot No A150/Business Emali T.Centre. He prays that the Notice of Motion be dismissed with costs to the 3rd Respondent.
20. I have considered the Notice of Motion, the Affidavits support and the annexures. I have also considered the responses thereto, the written submission's and the authorities cited.
The issues for determination are;
- a. Whether the Plaintiff/Applicant's application has met the threshold for granting of temporary injunction.
 - b. Who should bear costs of this application?
21. The principles guiding the grant of temporary injunctions were set down in the case of *Giella Vs Cassman Brown & Co. Ltd* (1973) EA 358.
The Court of Appeal in *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR defined what amounts to a prima facie case thus;
- “So what is a prima facie case? I would say in civil cases, it is a case in which on the material presented to the court or a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal by the latter”
22. It is the Plaintiff/Applicant's case that she bought Plot No853/Business Emali T Centre from the 1st Defendant/Respondent.
She further stated that the Plot is now known as Plot Nos. A149 and A150.
23. It is her case that Plot No A150 has been allocated to the 2nd Defendant/Respondent which means the original plot has reduced significantly.
24. The Plaintiff/Applicant relies on the Sale Agreement dated November 28, 2011 between herself and the 1st Defendant/Respondent. The plot is described as Plot No 853/Business Emali T Centre. The size of the said plot is not given but she paid Kshs 350,000/= for it.
She has annexed a letter of Allotment dated 29/10/2002. The same is issued to Agnes O Ntaliai (the 1st Defendant/Respondent herein. Again the size of the plot is not given.



She has also annexed a transfer the 1st Defendant/Respondent to herself (Plaintiff) and the size is not given.

25. It is clear from the above documents that the size of the plot sold to the Plaintiff/Applicant cannot be ascertained. I find that she has not demonstrated that the plot measures 75 feet by 100 feet or 0.065 Hectares. The 1st Defendant/Respondent has stated that she sold a plot measuring approximately 50ft x 100ft to the Plaintiff/Applicant.
26. I find that the Plaintiff/Applicant has not demonstrated that she has an interest on Plot No A150 Business Emali T. Centre which she states had been allocated to the 2nd Defendant/Respondent.
27. I find that she has not established a *prima facie* case with a probability of success at the trial.
28. I also find that she has failed to demonstrate that she'll suffer irreparable injury that cannot be compensated by award of costs.

In the *case of Nguruman Limited Vs Jan Bonde Nielsen & 2 Others* (2014) eKLR it was held thus;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, *prima facie*, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy”.

The Plaintiff/Applicant is not in possession of the suit property.

29. I also find that the balance of convenience does not tilt in favour of the Plaintiff/Applicant. She has not developed the said plot.
30. In conclusion I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF APRIL, 2023.

L. KOMINGOI

JUDGE

In the Presence of:

Mr. Babu for the Plaintiff/Applicant.

Mr. Kivuva for the 1st Defendant

N/A for the 2nd, 3rd Defendants.

Court Assistant – Mutisya.

