



Njoroge (Suing as administrator of the Estate of Njoroge Ngugi) & another v Ali (Environment & Land Case E412 of 2022) [2023] KEELC 17157 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17157 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E412 OF 2022
EK WABWOTO, J
APRIL 27, 2023**

BETWEEN

JOHN KIARIE NJOROGE (SUING AS ADMINISTRATOR OF THE ESTATE OF NJOROGE NGUGI) 1ST PLAINTIFF

LUCY WANJIRU NJOROGE (SUING AS ADMINISTRATOR OF THE ESTATE OF NJOROGE NGUGI) 2ND PLAINTIFF

AND

NOOR HAJI ALI DEFENDANT

RULING

1. The Plaintiffs filed a Notice of Motion Application dated 2nd December 2022 which was accompanied by a Supporting Affidavit sworn by John Kiarie Njoroge and Lucy Wanjiru Njoroge. The Plaintiffs sought the following orders:
 - i. ...Spent.
 - ii. ...Spent.
 - iii. That pending hearing and determination of the main suit, this Honourable Court be pleased to issue an order of injunction to restrain the Defendant/Respondent, their servants, workmen, licensees, agents or any other persons acting on their own behalf or on behalf of the Defendant/Respondent from building, erecting structures, dealing, interfering, alienating, selling or otherwise disposing of all that property known as LR No 36 Plot No 433.
 - iv. That this Honourable Court be pleased to direct OCS Pangani Station to provide security towards the enforcement of the orders sought herein;
 - v. That the costs of this Application be in the cause.



2. The Application was made on the grounds that:
 - i. The Plaintiffs/Applicants are the beneficiaries and administrators of the Estate of the Late Njoroge Ngugi who is the lawful and registered owner of land parcel no LR No 36 Plot No 433
 - ii. The Plaintiffs/Applicants have instituted this suit herein against the Defendant/Respondent regarding the said suit property.
 - iii. The Defendant/Respondent is currently in the process of modification of the suit property to the detriment of the interests of the Plaintiff
 - iv. The Plaintiffs' case raises tribal issues which should be heard and determined.
 - v. The status quo of the suit property should be maintained until the matter has been fully heard and determined.
3. On 1st February 2023, the Court directed that the application would be canvassed by way of written submissions. The Plaintiffs were directed to file their submissions within 14 days and upon service, the Respondents would equally have 14 days to file their submissions.
4. In the Plaintiffs' submissions dated 2nd March 2023, it was reiterated they sought to claim legal ownership by virtue of being the administrators to the estate of the Late Njoroge Ngugi, through a court order issued in ELC No. 3923 of 1990. It was further submitted that the suit property was illegally transferred to the Defendant in disobedience of the Court order. Relying on the cases involving *Mrao Ltd vs First American Bank of Kenya ltd & 2 others* (2003) eKLR and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR it was argued that on a balance of conveniences, if the injunction was granted and the Defendant succeeds in the main suit, he would not have suffered any harm as he would be in possession and could proceed with the modifications then,
5. In a Replying Affidavit dated 19th January 2023, sworn by Noor Haji Ali, it was averred that he was the sole legal owner of the suit property. It was argued that the Plaintiffs' search document was procured fraudulently with the intention of misleading the Court. Additionally, it was averred that since 31st December 2014, he had enjoyed quiet possession as evidenced by various official searches on 29th September 2014, 18th February 2015 and 30th September 2022.
6. It was further submitted that the property had been charged twice for the amount of Kes 43,000,000/- on 21st November 2019 and Kes 32,000,000/- on 27th October 2022 both by Gulf African Bank. In submissions dated 7th February 2023, it was argued that Defendant had undertaken great commercial investments and activities and as such would stand to suffer irreparable harm.
7. I have considered the application, rival affidavits and respective submissions. In my view, the issue that arises for determination is whether the Plaintiffs have met the threshold to be granted the temporary injunction orders sought.
8. *Giella v Cassman Brown* (1973) EA 358 sets out the principles to determine the threshold for temporary injunction in that a party seeking a temporary injunction has to establish a prima facie case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.
9. This Court is guided by Section 63 of the *Civil Procedure Act* and Order 40(1) of the *Civil Procedure Rules*, 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 Plaintiffs 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.[Emphasis Mine]
10. In *Nguruman Limited V. Jan Bonde Nielsen & 2 Others*, Ca No. 77 of 2012, the Court outlined that:
- “In an interlocutory injunction application, the applicant has to satisfy the three requirements to;
- (a) Establish his case only at a prima facie level,
 - (b) Demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour”
10. The Court is cognizant of the delicate balance of the rights of the parties as well as their respective long-term ties and investment that each claims upon the suit property. In my view, the evidence presented by the parties relates to issues of ownership of the suit premises, which should be rightfully tried, heard and determined exhaustively at trial. Therefore, at this juncture, preservation of the subject matter would be prudent and in the best interest of justice for all parties.
11. In the foregoing, this Court finds that the Plaintiffs have established a prima facie case and therefore the Notice of Motion application dated 2nd December 2022 is allowed in the following terms:
- i. That pending hearing and determination of the main suit an order of status quo is hereby issued and to be maintained upon the suit property- LR No. 36 Plot No. 433 barring any further development, construction and/or disposition.
 - ii. Costs will abide the determination of the main suit.
12. It is so ordered.

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

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Rukwaro h/b for Mr. Kimani for the Plaintiff.

Mr. Musdaf for the Defendant.

Court Assistant; Caroline Nafuna.

