



**Mugambi v Mwaita & 3 others (Civil Suit E429 of 2022)  
[2023] KEELC 18073 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 18073 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL SUIT E429 OF 2022**

**JA MOGENI, J**

**MAY 23, 2023**

**BETWEEN**

**HOWARD MURURU MUGAMBI ..... PLAINTIFF**

**AND**

**SAMMY KOMEN MWAITA ..... 1<sup>ST</sup> RESPONDENT**

**TAIWA HOLDINGS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**DINAH CHELAL ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before this Honorable Court is the notice of motion dated 21/12/2022 brought pursuant to provisions of section 3A of the *Civil Procedure Act*, order 40 rule 1, 2 and 4 of the *Civil Procedure Rules*, and section 68 of the *Land Registration Act* 2012 and article 40 and 60 (1) of *the Constitution* of Kenya. The applicant is seeking a temporary order of Injunction restraining the defendants whether by themselves, or servants, agents, employees or any person whomsoever from encroaching onto, occupying or in any manner whatsoever alienating, or charging or interfering with the plaintiff's/ Applicant's land registration details, ownership, possession, use and quiet enjoyment of the land known as LR No. 13791/3 Karen pending the hearing and determination of the application and the suit. She is also seeking to injunct the 4<sup>th</sup> defendant and restrain them from any alteration, modification, or insertion of any registration entries and to preserve the registration status relating to LR 13791/3 Karen pending the hearing of the suit.
2. The application is based on the grounds on the face of it and on his supporting affidavit dated 21/12/2022. The applicant avers that vide an agreement dated 18/11/2021, he bought the suit property measuring 0.2025 hectares from the company known as Mart Properties Limited for a consideration of Kshs. 24,000,000 and pursuant to the sale agreement the property was transferred to



- him on 17/12/2021 and a title bearing his name was issued. That the 1<sup>st</sup> defendant has invaded the suit property and also engaged goons to deny the plaintiff access to the said property.
3. That the defendant has also attempted to alter fraudulently the directorship of Mart Properties Limited which is the company from whom the Plaintiff bought the suit property and made the directorship reflect the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the 1<sup>st</sup> Defendant claims to be a shareholder of the 2<sup>nd</sup> Defendant.
  4. He states that he is apprehensive that the 1<sup>st</sup> defendant may be in the process of meddling with the property's registration details at the Land Registry owing to the previous position of Commissioner of Lands held by the 1<sup>st</sup> Defendant. He contends that he will suffer irreparable loss and damage if the orders sought are not granted.
  5. He further avers that he has a good prima facie case against the defendants and it is only fair and just that his application be allowed to conserve the suit property.
  6. The Application is opposed vide the Replying Affidavit filed by the 3<sup>rd</sup> Defendant on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants with their consent and permission dated 18/01/2023.
  7. She avers that she is a director of MART Properties Limited and she owns 1000 shares and her co-director TAIWA Holdings Limited owns 3500 shares. That Mart Properties was incorporated on 20/07/20000 and there have not been any changes effected in the directorship and it owns LR 13791/3 which is the suit property. Further that the company is still in possession of the suit property.
  8. That Robert Muthuri and Miriam Nguthiru Wangeci filed a suit in the Chief Magistrate's Court CMCC/S E792/22 which is still pending in court claiming ownership of Mart Properties. The two are the ones who allegedly sold the suit property to the Plaintiff.
  9. Further that sometime in June 2022, it came to the attention of the defendants that the records at the Registrar of Companies has been fraudulently interfered with. That the Respondents wrote to the Registrar of Companies 23/06/2022 seeking a rectification of the register to reflect the correct directorship and on 6/10/2022 the Registrar invoked the powers under section 862 of the Companies Act and returned the ownership of the said original company to Taiwa Holdings Limited and Dinal Chelimo Jinal.
  10. That the Registrar also wrote a letter to the Police on 7/10/2022 detailing the incidences of fraud and setting the record straight on the ownership.
  11. That defendant avers that there is no proof that the plaintiff paid the consideration of Kesh 24,000,000 as alleged and as this is the case it shows that the plaintiff was part of the alleged fraud and cannot therefore benefit from it. She urged the court to dismiss the application.
  12. The plaintiff filed a further affidavit where he averred in response to the defendants' replying affidavit that from the time he entered into the sale agreement for the purchase of the suit property to the completion of the transaction, the company was owned by the two directors basically the company owned the suit property LR 13791/3 Karen.
  13. He further stated that he was not privy to any internal wrangles and neither was he part of he alleged scheme of change of ownership of the Company.
  14. He observed that the Company Registrar has been inconsistent to show the true position of ownership. The letters dated 21/7/2022 and the one dated 15/12/2022 show this inconsistency. Therefore, in view of this the irregularities and inconsistency portrayed by the Registrar's office seems to show that the office is hellbent to assist the defendants through skewed records.



15. That the defendants do not have the original title and if they really hold that they have it then the plaintiff urges the court to require that it should be produced in court.
16. He averred that he is an innocent 3<sup>rd</sup> Party purchaser without notice and is not involved in the wrangles of ownership to the suit property alleged in paragraphs 32, 33 and 34 of the replying affidavit.
17. He stated that he took possession and was only interrupted by the defendants' goons when he was preparing the grounds for the upcoming development. (Photographs attached)
18. With regard to paragraphs 37,38 and 40 of the Replying Affidavit, the plaintiff attached all email communication in which all the payments towards purchase of the suit property are highlighted and acknowledged. He also attached bank statements and Mpesa payments.

### **Analysis and Determination**

19. I have carefully perused the application, the affidavits and applicant's submissions dated 24/04/2023 and rival submissions dated 27/04/2023, the issues to be determined are;
  - a. Whether the plaintiff has met the threshold for the grant of temporary injunction in terms of order 40 of the Civil Procedure Rules 2010?
  - b. Who should bear the cost of this application?
20. 8.The law on granting of interlocutory injunction is set out under order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides:-
 

“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 plaintiff 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.”
21. The conditions for consideration in granting an injunction were settled in *Giella vs Cassman Brown & Company Limited* (1973) E A 358,-
 

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
22. The first question I must answer is whether the Plaintiff has established a prima facie case. A prima facie case was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and with approval in *John Chuchui Muchai v Andrew Njenga & 2 others* [2015] eKLR as follows:
 

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case 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 as to call for an explanation or rebuttal from the latter.”

23. It is averred that the plaintiff bought a parcel of land from the Mart Properties Limited and has provided the court with a sale agreement. The land was transferred to him by the vendor on 17/12/2021 and a title bearing his name as the new owner issued to him. He attached copies of the transfer and title documents. He therefore claims ownership over the parcel of land through purchase. He risks losing the land if the orders are not granted.
24. The applicant also brought the application under section 68 of the [Land Registration Act](#) where it is provided that: -

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, generally until a further order, the registration of any land lease or charge.”
25. As it were, an order of inhibition under section 68 of the [Land Registration Act](#) is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until the suit in which the property is a subject matter is dealt with.
26. The Court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending the trial. The applicant has given an alleged account of how the respondents have used the office of the Registrar of Companies to change the ownership of the company and according to the plaintiff he fears that the Chief Registrar of Lands may also be influenced to manipulate the ownership document at the Land Registry. There is no doubt that the suit property is in danger of being alienated, however, though the applicant made reference to Section 68 he never made a prayer for inhibition instead he sought the court’s intervention to issue injunctive orders against the 4<sup>th</sup> Defendant restraining them from making any alterations, modification or insertion of any registration entries in relation to LR No. 13791/3. I am persuaded that this is also warranted.
27. The court was guided by the principle that the Court should always take the course that carries the lower risk of injustice.
28. In light of the foregoing analysis, the application dated 21/12/2022 is allowed in the following terms;
  - i. An order of injunction is allowed in terms of prayer nos. 2, 3, 4, 5 and 6 in the application.
  - ii. The parties are now referred to the DR for PTC to prepare the suit for hearing on a priority basis.
  - iii. The costs of this application shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY, 2023**

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**MOGENI J.**

**JUDGE**

In the virtual presence of :-

Mr Mutava for Plaintiff/Applicant

Mr Kamau for 4<sup>th</sup> Defendant/Respondent



Mr Ochunda for 1<sup>st</sup> – 3<sup>rd</sup> Defendant/Respondent

Ms. Caroline Sagina : Court Assistant.

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**MOGENI J**

**JUDGE**

