



REPUBLIC OF KENYA



**Langat & another v Kamau & another (Civil Suit 112 of 2012)
[2022] KEHC 14569 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT 112 OF 2012
JM NGUGI, J
OCTOBER 31, 2022**

BETWEEN

PHILIP KIPKOECH LANGAT 1ST APPLICANT

JOSEPH KIPRONO TORICH 2ND APPLICANT

AND

NDUNGU KAMAU 1ST RESPONDENT

WANJIRU MUGO 2ND RESPONDENT

RULING

1. The suit herein was filed in March, 2012 before the Environment and Land Court had been established pursuant to Article 162 of *the Constitution*. It would appear that the suit remained dormant with little action and was, thus, never considered for transfer to that Court. In any event, by the directions of the Chief Justice, matters filed before the High Court before the establishment of the ELC were to remain and be determined in the High Court.
2. The Plaintiffs/Applicants have filed a Notice of Motion dated July 2, 2021 seeking the following prayers:
 - 1) – Spent -
 - 2) – Spent -
 - 3) That this Honourable Court be pleased to grant temporary order of injunction restraining the Defendant, whether by themselves or servants, agents, employees, assigns or anybody claiming under them, pursuant to instructions or whatsoever from entering, encroaching, trespassing, remaining thereon, using damaging, wasting away or in any way dealing or interfering with the Plaintiffs peaceful and quiet possession, enjoyment and use of the property known as Molo



South/Ikumbi Block 9(Haraka)490 and Molo South/ikumbi Block 9(Haraka)491 (the suit property) situate at Kuresoi North sub county, pending hearing and determination of this suit.

- 4) That the Kuresoi North Sub County Police Commander to ensure maintenance of law and order in enforcement of the above Court orders.
 - 5) That this Honourable Court be pleased to issue any other orders as it may deem fit in the circumstances and in the interest of justice.
 - 6) That the costs of this Application be in cause.
3. The Defendants/Respondents filed a Replying Affidavit opposing the Application.
4. Ngetich J. gave directions that the parties argue the Application by way of written submissions. The Applicant's counsel filed his submissions. The Respondent's counsel did not. Subsequently, Ngetich J. was transferred out of the station and it fell on me to conduct this matter. I directed that the Respondent's counsel be served with a date for directions; and twice they did not show up. Consequently, I made a decision to render a ruling based on the material in the Court file.
5. The procedural posture of the case at this point is that this is an application for injunctive relief. In our jurisprudence, consideration whether a party is entitled to an interlocutory injunction now enshrined in a tripartite legal criterion set out in the celebrated case of *Giella vs Cassman Brown* in the words of Spry V.P.:
- 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 be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
6. Hence, the Court's first task is to determine if the Applicants have established a prima facie case with a probability of success once the full case is fully ventilated. It is important to recall that at this point the Court can do no more than form a necessarily provisional view of the case.
7. I have looked at all the documents filed in this case. The Applicants say that they own Molo South/Ikumbi Block 9(Haraka) 490 and Molo South/Ikumbi Block 9(Haraka) 491. They exhibited the title documents to the properties. They claim that the Respondents have descended on the properties with surveyors with the aim of subdividing them. They even claim that one of the Respondents' agents has been arrested and charged with forceful detainer and trespass.
8. On the other hand, the Respondents, through an affidavit deponed on July 21, 2021, claim that the disputed parcels are Molo South/Ikumbi Block 9(Haraka)182 and Molo South/ikumbi Block 9(haraka)180. They say that the two parcels belong to them and that they litigated the issue with the Applicants at the Molo Land Dispute Tribunals and prevailed. They say that the Applicants never appealed against that decision. All they are doing, they say, is to enforce the decree from the Molo Chief Magistrate's Court that adopted the award of the Molo Land Dispute's Tribunal.
9. It is not possible, on the basis of the rival accounts of the parties herein to determine at this stage who is more likely to prevail when the suit is finally heard and determined. What must be clear for all, though, is that there is a bona fide dispute for determination by the Court. One of the issues for determination will be whether the present suit is *res judicata* in view of the earlier proceedings. In any event, in the circumstances of this case it appears eminently reasonable that the Court acts to preserve the substratum of the controversy. This would mean that neither of the protagonists should



be permitted to continue with surveying, demarcation or any other activities that may change the status quo of the Suit Property as that may have the effect of permanently changing the rights of the respective rights of the parties.

10. Differently put, the dictates of justice demand that status quo ante (as it existed immediately before the filing of the Application dated July 2, 2021) be maintained. Those will be the orders that this Court will issue. Additionally, in view of the history of the case, the Court hereby directs the Kuresoi North Sub-County Police Commander to ensure maintenance of law and order in enforcement of the above Court orders.
11. The costs of this Application will be in the cause.

DATED AT NAIROBI THIS 17TH DAY OF OCTOBER, 2022

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JOEL NGUGI

JUDGE

DELIVERED AT NAKURU THIS 31ST DAY OF OCTOBER, 2022

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HILLARY CHEMITEI

JUDGE

