



**Yellow Horse Inns Limited v Mitar Consultants Limited & another (Environment & Land Case E431 of 2022) [2023] KEELC 18235 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18235 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E431 OF 2022**

**MD MWANGI, J  
JUNE 21, 2023**

**BETWEEN**

**YELLOW HORSE INNS LIMITED ..... PLAINTIFF**

**AND**

**MITAR CONSULTANTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT**

*(In respect of the Notice of Motion application dated 22<sup>nd</sup> December 2022 brought under the Provisions of Order 40 rules 1, 3 & 4 of the Civil Procedure Rules)*

**RULING**

**Background**

1. The Plaintiff in its Notice of Motion application dated December 22, 2022 seeks a temporary injunction restraining the Defendants/Respondents, their directors, servants, agents, employees, officers or any other person, body or authority from offering for sale, selling, charging, leasing or in any way dealing with all that property comprised in L.R. No. 209/11856 (hereinafter referred to as ‘the suit property’) pending the hearing and determination of this suit.
2. The grounds upon which the application is based are on the face of the application and in the supporting affidavit of Joseph Gathuku sworn on December 22, 2022. The Plaintiff’s assertion is that it is the registered proprietor of the parcel of land known as L.R. No. 209/11856 (the suit property). The Plaintiff states that it had learnt of an illegal scheme involving especially the 1<sup>st</sup> Defendant to sell through unlawful means of the suit property. In the supporting affidavit the deponent explains in some detail the scheme by the 1<sup>st</sup> Defendant.
3. The Plaintiff came to know of the scheme through a letter alluding to a transaction for sale of the suit property allegedly authored by the 1<sup>st</sup> Defendant’s Advocate. The Plaintiff however asserts that it



has neither offered it property for sale nor has it ever appointed any person and or agent to offer its property for sale.

4. The application by the Plaintiff was not opposed by the Defendants/Respondents. The Advocate for the 2<sup>nd</sup> Defendant who was present in court when the application came up for hearing informed the court that the 2<sup>nd</sup> Defendant was not opposed to the application by the Plaintiff. The 1<sup>st</sup> Defendant/Respondent did not file any response to the application despite the fact that its advocate was present when the date for the hearing of the application was given in court.

### Issues for determination

5. The issue for determination is whether the application by the Plaintiff is merited.

### Analysis and determination

6. The principles to be considered in determining an application as the one before me for an order of temporary injunction are well settled since the pronouncement in the case of *Giella -Vs- Cassman Brown* (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 harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”

7. A prima facie case as defined in the case of *Mrao Ltd -Vs- First American Bank of Kenya Ltd and 2 others* (2003) eKLR is a ‘genuine and arguable case’ which on the material presented to the court, a tribunal properly directing itself would 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.
8. Discussing irreparable harm on the other hand the court of Appeal in the case of *Nguruman Ltd vs Jan Bonde Nielsen 7 2 Others* (2014) eKLR held that, ‘speculative injury will not do; there must be more than 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 - ‘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 the amount can be measured with reasonable accuracy or injury or harm is of such a nature that monetary amount will never be adequate remedy.”
9. Warsame J (as he then was) in the case of *Joseph Siro Mosioma -Vs- Housing Finance Company of Kenya & 3 others* (2008) eKLR stated that damages is not an automatic remedy when deciding whether to grant an injunction or not. He proceeded to note that,  
  
“damages is not and cannot be a substitute for the loss, which (may) be occasioned by a clear breach of the law. In any case, the financial strength of a party is not always a factor to refuse an injunction. Moreso, a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an injunction.”
10. From the facts presented by the Plaintiff in this case, it is not in doubt that it has established a prima facie case. The Plaintiff is the registered proprietor of the suit property. It alleges a non-justifiable and unlawful attempt by the 1<sup>st</sup> Defendant to sell its property; an apparent violation of its right. The



Plaintiff further alleges that if an order of temporary injunction is not granted, it stands to suffer irreparable loss.

11. From the foregoing, and relying on the authorities cited above, the court is convinced that the Plaintiff's application is merited and hereby allows the same as prayed. Accordingly, an order of temporary injunction be and is hereby issued restraining the Defendants/Respondents, their directors, servants, agents, employees, officers or any other person, body or authority from offering for sale, selling, charging, leasing or in any way dealing with all that property comprised in L.R. No. 209/11856 pending the hearing and determination of this suit.
12. In regard to the issue of the costs of the application, the same shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF JUNE 2023.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Muriithi holding brief for Dr. Kariuki Muigua for the Plaintiff/Applicant.

No appearance for the Defendants.

Court Assistant – Yvette.

**M.D. MWANGI**

**JUDGE**

