



Said (Suing as Trustee of Seif Bin Salim Trust) v Goshen International Ltd & 9 others (Those Unknown Persons Operating Business Stalls on Land Reference Numbers Mip(X/175 To 216 (Inclusive)) (Environment & Land Case 98 of 2022) [2023] KEELC 18110 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18110 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 98 OF 2022**

NA MATHEKA, J

JUNE 19, 2023

BETWEEN

SEIF SAID SEIF ALIAS SAIF SAID SAIF AL- BUSAIDY (SUING AS TRUSTEE OF SEIF BIN SALIM TRUST) PLAINTIFF

AND

GOSHEN INTERNATIONAL LTD 1ST DEFENDANT

ABDIKADIR OSMAN 2ND DEFENDANT

JOSEPH NDABA 3RD DEFENDANT

MOURINE LUMUMBA 4TH DEFENDANT

STELLA ADHOCH 5TH DEFENDANT

JAFFAR YASSIN 6TH DEFENDANT

TRIZZER CHERUSTA 7TH DEFENDANT

VIRGINIA NJOROGE 8TH DEFENDANT

STEVEN MURENGE 9TH DEFENDANT

MUNIRA MUSYOKA 10TH DEFENDANT

THOSE UNKNOWN PERSONS OPERATING BUSINESS STALLS ON LAND REFERENCE NUMBERS MIP(X/175 TO 216 (INCLUSIVE))



RULING

1. The application is dated November 14, 2022 and is brought pursuant to Order 40 Rule 1 of the Civil Procedure Rules 2010. Article 23(3)(c) Constitution 2010. Section IA an 1B of the Civil Procedure Act Chapter 21 seeking the following orders;
 1. That pending the hearing and determination of this application inter parties this Honourable Court be pleased to issue a temporary injunction restraining the Plaintiff/1st Respondent, 1st Defendant/2nd Respondent, 2nd Defendant/3rd Respondent either by themselves, their agents, servants and /or personal representative from interfering, harassing or intimidating the tenants on TITLE NUMBER MI/XX/175, TITLE NUMBER MI/XX/176, TITLE NUMBER MI/XX/177, TITLE NUMBER MI/XX/178, TITLE NUMBER MI/XX/179, TITLE NUMBER MI/XX/180, TITLE NUMBER MI/XX/181, TITLE NUMBER MI/XX/182, TITLE NUMBER MI/XX/183, TITLE NUMBER MI/XX/184, TITLE NUMBER MI/XX/185, TITLE NUMBER MI/XX/188, TITLE NUMBER MI/XX/210, TITLE NUMBER MI/XX/211, TITLE NUMBER MI/XX/212 TITLE NUMBER MI/XX/213, TITLE NUMBER MI/XX/214, TITLE NUMBER MI/XX/215 and TITLE NUMBER MI/XX/216.
 2. That pending the hearing and determination of this suit this Honourable Court be pleased to issue a temporary injunction restraining the Plaintiff/1st Respondent, 1st Defendant/2nd Respondent, 2nd Defendant/3rd Respondent either by themselves, their agents, servants and /or personal representative from interfering, harassing or intimidating the tenants on TITLE NUMBER MI/XX/175, TITLE NUMBER MI/XX/176, TITLE NUMBER MI/XX/177, TITLE NUMBER MI/XX/178, TITLE NUMBER MI/XX/179, TITLE NUMBER MI/XX/180, TITLE NUMBER MI/XX/181, TITLE NUMBER MI/XX/182, TITLE NUMBER MI/XX/183, TITLE NUMBER MI/XX/184, TITLE NUMBER MI/XX/185, TITLE NUMBER MI/XX/188, TITLE NUMBER MI/XX/210, TITLE NUMBER MI/XX/211, TITLE NUMBER MI/XX/212 TITLE NUMBER MI/XX/213, TITLE NUMBER MI/XX/214, TITLE NUMBER MI/XX/215 and TITLE NUMBER MI/XX/216.
2. That this Honourable Court be pleased to issue conservatory Orders restraining the Plaintiff/1st Respondent, 1st Defendant/2nd Respondent, 2nd Defendant/3rd Respondent from evicting or land and further trespass onto the suit parcel of lands pending the hearing and determination of this application inter-parties.
3. That the Officer Commanding Station Central police station Commander be directed to ensure enforcement of the orders granted by this Honourable Court.
4. That the costs of this application be provided for
It is premised upon the annexed supporting Affidavit of Patrick Mugo the Applicant/ Tenant, and on the following and such other/further grounds as may be adduced at the hearing hereof namely that the Applicants are the tenants on the parcel of land TITLE NUMBER MI/XX/175, TITLE NUMBER MI/XX/176, TITLE NUMBER MI/XX/177, TITLE NUMBER MI/XX/178, TITLE NUMBER MI/XX/179, TITLE NUMBER MI/XX/180, TITLE NUMBER MI/XX/181, TITLE NUMBER MI/XX/182, TITLE NUMBER MI/XX/183, TITLE NUMBER MI/XX/184, TITLE NUMBER MI/XX/185,



TITLE NUMBER MI/XX/188, TITLE NUMBER MI/XX/210, TITLE NUMBER MI/XX/211, TITLE NUMBER MI/XX/212 TITLE NUMBER MI/XX/213, TITLE NUMBER MI/XX/214, TITLE NUMBER MI/XX/215 and TITLE NUMBER MI/XX/216 in dispute. That the Tenants have no interest in the parcels of land and are only there to earn their daily bread and butter. That there have been continuous harassment and intimidation from the 2nd and 3rd Respondent with threats to evict the Applicants/Tenants. That there is imminent danger of the 1st, 2nd and 3rd Respondent wasting away and demolishing the property before the determination of the suit. That further the tenants would be willing to continue paying their rent before the determination of the registered proprietor of the suit properties. That this application is made timeously and any delay occasioned is inadvertent and explainable. That it is only in the interest of justice, fairness and equity that this application be allowed as prayed. That there is no prejudice sufferable by the Respondent should this application be allowed as prayed.

5. This court has considered the application and submissions therein. The power of the court in an application for interlocutory injunction is discretionary, the discretion is judicial and is exercised on the basis of law and evidence. The principles which guide the court in deciding whether or not to grant an interlocutory injunction are well settled. *Giella v Cassman Brown & Co Ltd* [1973] EA 358, set out the three requirements that has to be satisfied in an interlocutory injunction application. The applicant has to establish his case only at a *prima facie* level, demonstrate irreparable injury if a temporary injunction is not granted, and where the court has any doubts, it will be decided on a balance of convenience.
6. The court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 defined a *prima facie* case is. It held that;

“So what is a *prima facie* case? I would say that in civil cases it is a case in 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.” The court went further to hold that “A *prima facie* case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant case upon trial. That is clearly a standard which is higher than an arguable case.”

7. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR held that;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately 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.”



8. The court in Nguruman Limited (*supra*), found that the three conditions and stages have to be applied as separate, distinct and logically. It was held that;

“If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

9. In the instant case, I find that the Applicants have established a *prima facie* case and that irreparable loss would be suffered as they are tenants on the suit property. I find this application is merited and order that the *status quo* be maintained pending the hearing and determination of this suit. Costs of this application to be in the cause. Parties are advised to comply with order 11 and set down this matter for hearing.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19TH JUNE 2023.

N.A. MATHEKA

JUDGE

