



**Mibei v Kariuki & 5 others (Environment & Land Case
E24 of 2023) [2023] KEELC 18050 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18050 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E24 OF 2023**

**A OMBWAYO, J
JUNE 15, 2023**

BETWEEN

RICHARD KIPKEMOI ARAP MIBEI PLAINTIFF

AND

ISAAC KARIUKI 1ST DEFENDANT

FRANCIS GATUNGU MUIRURI 2ND DEFENDANT

NATIONAL BANK LIMITED 3RD DEFENDANT

ASSOCIATED INVESTMENTS LIMITED 4TH DEFENDANT

EMMANUEL WEKESA WAMALWA 5TH DEFENDANT

LAND REGISTRAR NAKURU 6TH DEFENDANT

RULING

1. This ruling is in respect of the plaintiff's notice of motion application dated April 3, 2023 which was expressed to be brought under order 40 rule 1, 2 and 4, order 5 rule 17 of the [Civil Procedure Rules](#) and sections 1A and 3A of the [Civil Procedure Act](#). The plaintiff sought for the following prayers;
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit this honourable court be pleased to issue a temporary injunction restraining the defendants by themselves, their agents, and or servants from trespassing, charging, selling, disposing of, developing, and or further developing, and or dealing with the parcel of land known as Nakuru Municipality Block XVII/81 and the resulting sub-divisions known as Nakuru Municipality Block 17/1002, 1003, 1004, 1005, 1006 and 1007 in any manner whatsoever.



- d. That the OCS Nakuru do provide security and ensure that the defendants and or the agents herein do not develop and or further develop the suit land whatsoever.
 - e. That the costs of this application be provided for.
7. The grounds on the face of the application were that the plaintiff herein was the registered owner of land parcel No Nakuru Municipality Block XVII/81 measuring approximately 0.5213 Ha. That he was issued with a certificate of title in 1991. That unknown to the plaintiff, the 1st and 2nd defendants fraudulently caused the parcel of land known as Nakuru Municipality Block XVII/81 to be subdivided and fresh certificate of leases issued in favour of themselves and 3rd and 4th defendants as Nakuru Municipality Block 17/1002, 1003, 1004, 1005, 1006 and 1007 by the 6th defendant. That the plaintiff did not transfer the suit property to the 1st and 2nd defendants. That his consent was never sought and so he didn't understand how the land registrar closed his certificate of lease for the suit property. That the plaintiff never charged the property to the 3rd defendant. That the actions of the defendants were illegal and unlawful and even though the suit properties were vacant, the plaintiff was apprehensive that the suit properties could be disposed of.
 8. The application was supported by the affidavit of the plaintiff. He deposed that he was the registered owner of Nakuru Municipality Block XVII/81. He also deposed that he was allocated the said parcel of land on September 17, 1991. He further deposed that he was issued with a certificate of lease to the suit land on October 3, 1991. That in December 2022 the plaintiff became aware that the suit property had been transferred to third parties without his consent. That he reported the matter to the DCI in Nairobi and wrote to the 6th defendant seeking for more information and was supplied with a green card. He deposed that from the green card, it was indicated that the suit property had been charged in favour of the 3rd defendant but the documents in support of the said charge were not supplied.
 9. He also deposed that he found out that on March 2, 2023 the suit property was subdivided into Nakuru Municipality Block 17/1002, 1003, 1004, 1005, 1006 and 1007. That he was not aware of both the charge and the transfer. That the 4th defendant was registered as the owner of Nakuru Municipality Block 17/1002 while the 1st and 2nd defendants were registered as the owners of Nakuru Municipality Block 17/1003, 1004, 1006 and 1007. That the 5th defendant was registered as the owner of Nakuru Municipality Block 17/1005. That he has always been in possession of his original certificate of lease. That the said transfers were fraudulent and sought that the application be allowed as prayed.
 10. In response to the application, the 1st defendant filed his replying affidavit sworn on April 27, 2023 and filed on May 9, 2023. He deposed that the plaintiff did not state all the facts pertaining to this case. He also deposed that a charge was registered on the suit property in the year 1992. He further deposed that the suit property was put up for auction on February 11, 2009. That he participated in the auction and was declared the highest bidder. That he paid the entire purchase price and the 3rd respondent executed the transfer by chargee and was issued with a certificate of lease. That he then subdivided the suit property into six portions and transferred two of the portions to the 4th and 5th defendants who are innocent purchasers of value while the others were registered in his name. That the plaintiff does not have a prima facie case and sought that the application be dismissed with costs.

Neither of the parties filed their submissions.

Analysis and Determination

11. After considering the application and the response thereto, it is my view that the only issue that arises for determination is whether an order for temporary injunction should be granted pending the hearing and determination of this suit.



12. The guiding principles for the grant of orders of temporary injunction are set out in the case of *Giella v Cassman Brown* (1973) EA 358 and reiterated by the court of appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No 77 of 2012 (2014) eKLR where it was held as follows;

“in an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, allay any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

13. The plaintiff/applicant has to first demonstrate that he has a prima facie case. The court in the case of *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR stated as follows on what constitutes a prima facie case;

“... 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 legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

14. In the present case the plaintiff claimed to be the registered owner of the suit property and has annexed to his application, a copy of a certificate of lease issued in his name on October 3, 1991. He also annexed among other documents a copy of his letter of allotment, payment receipts, certified copy of the green card that showed that a charge had been registered in favour of National Bank of Kenya on March 19, 1992 and a discharge entered on September 2, 2011. It was also evident that there were various restrictions registered on the property before it was subdivided on September 22, 2020. Before the subdivision, there is entry No 5 on the green card that is dated September 2, 1981 when the 1st and 2nd defendants were registered as the owners of the suit property. The 1st and 2nd defendants allege that they bought the suit property at a public auction in the year 2009 before they were registered as owners.

15. As pointed out before, the plaintiff is disputing that he ever charged the suit property in favour of the 3rd defendant which eventually led it to be sold at a public auction. It is important to note that the 1st and 2nd defendants were registered as owners of the suit property under entry No 5 on the green card on September 2, 1981 when entry No 4 was dated February 25, 2010! It is my view that given the said circumstances, the plaintiff has established a prima facie case.

16. Secondly, the plaintiff must demonstrate that he will suffer irreparable injury if the order of temporary injunction is not granted. The court in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR stated as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

17. It is my view that the plaintiff in this matter has not demonstrated that if the orders sought are not granted, he will suffer irreparable loss which cannot be compensated with damages.



18. Thirdly, the plaintiff has to demonstrate that the balance of convenience tilts in his favour. The court in the case of *Paul Gitonga Wanjau v Gatbuthis Tea Factor Company Ltd & 2 others* (2016) eKLR held as follows;

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court decides as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

19. I have considered the application and do find that the balance of convenience tilts in favour of the plaintiff and his application is allowed thus pending the hearing and determination of this suit this honourable court issues a temporary injunction restraining the defendants by themselves, their agents, and or servants from trespassing, charging, selling, disposing of, developing, and or further developing, and or dealing with the parcel of land known as Nakuru Municipality Block XVII/81 and the resulting sub-divisions known as Nakuru Municipality Block 17/1002, 1003, 1004, 1005, 1006 and 1007 in any manner whatsoever. Costs in the cause.

RULING DATED, SIGNED AND DELIVERED AT NAKURU VIRTUALLY THIS 15TH DAY OF JUNE 2023.

A. O OMBWAYO

JUDGE

