



**Waithaka v Maina & another (Environment & Land Case
E134 of 2023) [2023] KEELC 18332 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18332 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E134 OF 2023**

**LN MBUGUA, J
JUNE 15, 2023**

BETWEEN

JACKSON KINYANJUI WAIHAKA PLAINTIFF

AND

ANTHONY MAINA 1ST DEFENDANT

PENINA MAINA 2ND DEFENDANT

RULING

1. Before me is the Plaintiff's application dated April 5, 2023 seeking orders prohibiting the Defendants from trespassing into, transferring, selling, alienating, encumbering, subdividing, charging, disposing off, interfering, intermeddling in or in any way dealing in the land parcels known as Nairobi Block 105/7030, 7040 and 7041 as well as orders that the OCS Ruai Police station does ensure compliance with the said orders.
2. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on April 5, 2023. He avers that he is the owner of the suit properties known as Nairobi Block 105/7039, 7040 and 7041 which are also known as plot numbers P2039, P2039B and A14B. He further avers that while working on the suit land, he was approached by the 1st Defendant who was a stranger to him at the time and he informed him that he was the registered owner of the suit properties.
3. He immediately went to the Central lands office and applied for an official search which confirmed that the Defendants are the registered owners of the suit land but he was not issued with a physical copy of the search. He then went to Embakasi Ranching Co Ltd and inquired on whether they had processed a title to the suit property on behalf of the Defendants; the answer was not in the affirmative. The company then summoned the Defendants, but they failed to appear to state how they acquired the suit properties.



4. The Plaintiff is apprehensive that the defendants might be in the process of selling the suit properties to 3rd parties as he has been confronted by people who were viewing the property for purposes of purchasing it.
5. The Defendants were served as per the affidavit of service sworn on May 19, 2023 but they failed to enter appearance and or file their responses. The application is therefore unopposed. Nevertheless, the court has to consider the merits of the said application. In the Supreme Court of Kenya case of *Gideon Sitelu Konchellab v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the court stated that;

“It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.
6. The issue for determination is whether the restraining orders sought by the plaintiff are merited. The law governing the granting of interlocutory injunctions is set out under order 40(1) (a) and (b) of the *Civil Procedure Rules 2010*. The conditions for consideration in granting an injunction were settled in the case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, as follows:

“Firstly, 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.”
7. The 1st condition to consider is whether the Plaintiff has established a prima facie case as defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR.
8. The Plaintiff annexed correspondence dated March 8, 2022 addressed to the PS, Ministry of Lands by Embakasi Ranching Company Limited confirming that he is owner of Plots P2039, P2039B and A14B. The plaintiff argues that the said plots are now Nairobi Block 105/7039,7040 and 7041. He has also annexed a copy of Certificate of Lease issued to the Defendants over the property known as Nairobi Block 105/7041. However, there is no evidence that the other plots being Block 105/7039 and 7040 are also registered in the name of the Defendants. In the circumstances, I am satisfied that the Plaintiff has established a prima facie case in respect of one of the suit plots that is parcel Nairobi/Block 105/7041.
9. That notwithstanding, I find that the Plaintiff did not table any evidence to prove that he stands to suffer irreparable injury, which would not adequately be compensated by an award of damages. Thus having failed to meet the second condition, It is not necessary to consider whether the last condition has been met, as it is a requirement that all the three conditions be fulfilled before an order of injunction is granted as was stated in *Nguruman Limited V Jan Bonde Nielsen & 2 Others*, CA No 77 of 2012.
10. In the final analysis, I find that the appropriate orders are; The suit property identified as Nairobi Block 7041 shall not be alienated until the suit is determined. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JUNE, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-



Nduta for Plaintiff

Court assistant: Philis

