



**Burkheit (As administrator of the Estate of the Late Burkheit Swaleh Burkheit) v Khan  
(Environment & Land Case 83 of 2021) [2023] KEELC 19280 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19280 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 83 OF 2021**

**EK MAKORI, J**

**JULY 26, 2023**

**BETWEEN**

**ATHUMAN SWALE BURKHEIT (AS ADMINISTRATOR OF THE ESTATE OF  
THE LATE BURKHEIT SWALEH BURKHEIT) ..... PLAINTIFF**

**AND**

**HANIF IQBAL KHAN ..... DEFENDANT**

**RULING**

1. Application dated October 13, 2021 seeks injunctive relief (s). The application is opposed.
2. The Applicant contended that he brought this suit as the administrator of the estate of the late Bukheit Swaleh Bukheit who owed 1/140<sup>th</sup> share as a tenant in common in the property known as land Reference Nos. 284/III/MN comprised in title No CR 7172 measuring approximately 1,590 acres. The said shares of Swaleh Bukheit measure 11.36 acres. Upon succession in Mombasa Succession Cause No 76 of 2015, each of the four beneficiaries of the late Swaleh Bukheit Swaleh acquired a portion of land measuring 2.285 acres. That the Plaintiff was at all material times in the process of acquiring registration of the proposed sub-division of 2.825 acres each which he occupies together with the family to date and that the process is pending completion.
3. The respondents contended that the applicant has not annexed any title document to claim ownership of the property but that the property is owned by 3<sup>rd</sup> parties who are not party to this suit. That the Respondent leased the properties from one Lawrence Kazungu Ngoro.
4. Parties canvassed the current application by way of written submissions.
5. At this stage what to decide is whether the application has achieved the threshold in the grant of injunctive orders. The guiding principles for the grant of orders of a temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* [1973] EA 358. This position



has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR where the Court of Appeal held that:

“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, ally 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.”

6. The subject matter in this case LR No 284/III/MN the original title has long changed hands and there are several sub-divisions - subsequently; 657/II/MN, 698/III/MN, 699/II/MN, 700/III/MN, and 701/III/MN with different proprietors.
7. The manner the applicant has crafted his case does not seem to reflect the proprietary ownership of the suit property to accord the applicant the basics so that the court proceeds to order for the preservation of the substratum of the suit property in issue through either issuance of injunctive orders or status quo orders.
8. Having considered the materials placed before me, the suit property is not well defined. The Respondent has demonstrated It has already changed hands and seems to be registered in the names of other 3<sup>rd</sup> parties. In the plaint, the Plaintiff/Applicant seeks orders in the nature of a permanent injunction. There is nowhere ownership is presented. Perhaps an amendment in the future may be desirable.
9. It follows then that the applicant has not brought out a *prima facie* case with a probability of success to warrant the orders sought. Application dated October 13, 2021 is hereby dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 26TH DAY OF JULY 2023**

**E.K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Omondi for the Plaintiff**

**Court Clerk: Happy**

**In the absence of:**

**Mr. Luganje & Company Advocates for the Defendant**

