



**Ali v Nomad Resort Limited (Environment & Land Case
E022 of 2023) [2023] KEELC 18999 (KLR) (24 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18999 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E022 OF 2023
EK WABWOTO, J
JULY 24, 2023**

BETWEEN

SAID MOHAMED ALI PLAINTIFF

AND

NOMAD RESORT LIMITED DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion Application dated January 19, 2023 which was accompanied by a Supporting Affidavit sworn by Said Mohamed Ali. The Plaintiff sought the following orders:
 - i. ...Spent.
 - ii. That pending hearing and determination of this Application, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendant whether by itself, its agents, servants, employees, proxies and/or any person acting on its authority or instructions from transferring, alienating, developing, charging or carrying out any activity whatsoever over the remaining Plots 4,5,6,12 and 13 hived from Title Number LR No 209/7260/184 and the OCPD California Police Station to supervise and ensure compliance.
 - iii. That pending hearing and determination of this suit, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendant whether by itself, its agents, servants, employees, proxies and/or any person acting on its authority or instructions from transferring, alienating, developing, charging or carrying out any activity whatsoever over the remaining Plots 4,5,6,12 and 13 hived from Title Number LR No 209/7260/184 and the OCPD California Police Station to supervise and ensure compliance.
 - iv. That the costs of this Application be provided for.



2. The Application was made on the grounds that:
 - i. The parties entered into a sale agreement dated 3rd August 2021 for the sale of seven plots hived from Title Number L.R. Number 209/7260/184. The said plots which were transferred to the Applicant were numbered as plot 3,4,5,6,8,12 and 13.
 - ii. The Applicant honoured the contractual obligations and paid the full purchase price which had already been paid by the time of execution of the sale Agreement.
 - iii. The Defendant only transferred Plot 3 and 8 to the Applicant despite the Agreement providing for transfer of 7 plots.
 - iv. Despite the Applicant serving the Vendor with a notice requiring it to complete the transaction, the Defendant has failed/refused to transfer and present the completion documents of the remaining 5 plots.
 - v. The Applicant is apprehensive that without the injunctive orders of this Honourable Court, the Defendant may transfer, sell, charge or even develop the remaining 5 plots on the suit property thus prejudicing the interests of the Applicant.
3. No response nor written submissions were filed by the Defendant despite being served.
4. The Plaintiff/Applicant filed written submissions dated June 2, 2023, it was submitted that the Applicant stands an imminent risk of rendering the suit nugatory and a mere academic adventure as the substratum of the matter may be extinguished if transferred or sold to a third party. Relying on the cases involving *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and *Moses C Mubia Njoroge & 2 others v Jane Lesaloi and 5 Others* [2014] eKLR it was argued that the Applicant had established a prima facie case with a likelihood of success by exhibiting an infringement of his rights.
5. I have considered the application and written submissions. In my view, the issue that arises for determination is whether the Plaintiff has met the threshold to be granted the temporary injunction order sought.
6. The Applicant is required to satisfy the criteria upon which jurisdiction to grant an interlocutory injunction is granted. The criteria was outlined in the often cited case of *Giella v Cassman Brown* [1973] EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate to the court that if the interlocutory injunctive relief is not granted, he would stand to suffer damage that may not be indemnified through an award of damages. Third, should the court have doubt on the applicant's satisfaction of both or either of the above requirements, the application is to be determined based on the balance of convenience. Last, at the stage of disposing the plea for an interlocutory injunction, the court seized of the application does not make definitive or conclusive pronouncements on the key issues in the suit.
7. The Court record confirms service vide an affidavit of service dated March 13, 2023 sworn by Lamech Kipsang Kipyego in which he averred that service was effected upon one of the directors of the Defendant however he refused to sign the duplicate copy.
8. The Defendant never filed any response to the said application. In the absence of the replying affidavit rebutting the averments in the applicant's supporting affidavit, means that the Defendant has no claim



against the applicant. Having considered the material placed before this court, I am therefore satisfied that the plaintiff has established a prima facie case herein and if I was in any doubt, the N the balance of convenience would tilt in favour of the Plaintiff since to deny him the order of temporary injunction will result in a greater risk of injustice.

9. In the foregoing, the application dated January 19, 2023 is allowed in the following terms:

- i. Pending hearing and determination of this suit, an order of temporary injunction is hereby issued restraining the Defendant whether by itself, its agents, servants, employees, proxies and/or any person acting on its authority or instructions from transferring, alienating, developing, charging or carrying out any activity whatsoever over the remaining Plots 4, 5,6,12 and 13 hived from Title Number LR No 209/7260/184 and the OCPD California Police Station to supervise and ensure compliance.
- ii. Costs will abide the determination of the main suit.

11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mutunga for the Plaintiff/Applicant.

N/A for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

