



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chufe v Sarbo & another (Environment & Land Case  
58 of 2022) [2023] KEELC 18813 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18813 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 58 OF 2022**

**BM EBOSO, J**

**JULY 17, 2023**

**BETWEEN**

**ILLE CHOKE CHUFE ..... PLAINTIFF**

**AND**

**HASSAN MARSA SARBO ..... 1<sup>ST</sup> DEFENDANT**

**JUJA DEKOMA CO-OPERATIVE SOCIETY ALIAS DEKOMA SLAUGHTER  
HOUSE MEAT VENDORS AND LIVESTOCK CO-OPERATIVE SOCIETY  
LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff and the 1st defendant are wife and husband. Through a plaint dated May 17, 2022, the plaintiff sought the following verbatim reliefs against the defendants:

I. A declaration that the parcel of Plot No 330 measuring 20.7x9m out of the original LR No 4148/166 belongs to the plaintiff and that the 1st defendant is a trespasser on the land and the plaintiff is entitled to quiet enjoyment and possession of the said parcel of land.

II. A temporary injunction do issue restraining the defendant whether by himself, his servants, agents, representative contractors or any other person than the plaintiff from occupying ploughing, trespassing into the parcel of Plot No 330 measuring 20.7x9m out of the original LR No 4148/166 of the said parcel of land pending the hearing and determination of the suit.

III. A permanent injunction do issue restraining the defendant whether by himself, his servants, agents, representative contractors or any other person other than the plaintiff from occupying, ploughing, trespassing into the parcel of Plot No 330 measuring 20.7x9m out of the original LR No 4148/166 of the said parcel of land pending the hearing and determination of the suit.



IV. An order ordering the defendants to produce the original plot ownership certificate parcel of plot No 330 measuring 20.7x9m out of the original LR No 4148/166 for cancelling and an order registration be issued to the plaintiff.

V. Costs of the suit.

VI. Any other relief this honourable court may deem fit to grant.

2. Alongside the plaint, the plaintiff brought a notice of motion dated May 17, 2022, seeking the following verbatim interlocutory reliefs:

- 1) That this honourable Court be pleased do certify this application as urgent and the same be heard *ex parte* owing to its urgency.
- 2) That this honourable court be pleased do issue a temporary injunction restraining the 1st defendant whether by himself, his servants agent, contactors and any other person other than the plaintiff from fencing, developing, entering or trespassing into the suit property plot no 330 within land referred to as LR No 4148/166 situated in Juja Kalimoni pending hearing and determination of this application.
- 3) That this honourable court be pleased to order that the plaintiff/applicant be granted unlimited access to the suit property Plot No 330 within land referred to as LR No 4148/166 Juja Kalimoni pending hearing and determination of this application.
- 4) That this honourable court be pleased to grant interim orders to restrain the respondent its servants, agents and or representatives from processing the title deed selling or transferring or interfering with plaintiff/applicant property Plot No 330 within land referred to as LR No 4148/166 until the plaintiff's/applicant application is heard and determined.
- 5) That this honourable court be pleased to find that the plot certificate ownership for Plot No 330 in the name of Hamza Hassan Marsa Sarbo within land referred to as LR No 4148/166 was issued under unscrupulous and illegal means and be pleased to order for its cancellation.
- 6) That costs of this application be provided for.

3. The application dated May 17, 2022 is the subject of this ruling. The 1st defendant opposed the application through a replying affidavit sworn on June 20, 2022. The 2nd defendant opposed the application through a replying affidavit sworn on June 23, 2022 by Idris Aide. The plaintiff subsequently filed a supplementary affidavit sworn on August 8, 2022.

4. The application was canvassed through written submissions dated January 31, 2023 filed by M/s Ratemo Oira & Company Advocates. The 1st defendant filed written submissions dated May 25, 2023 through M/s Ogola Okello & Co LLP. The 2nd defendant filed written submissions dated May 24, 2023 through M/s Ochieng Ogutu & Company Advocates.

5. I have read and considered the application; the responses to the application; the parties' respective submissions; the relevant legal frameworks and the prevailing jurisprudence on the key issue in the application.



6. The case of the applicant is that in the year 2003, together with the 1st defendant, they jointly acquired Plot Numbers 330 and 331 in Land Reference Number 4148/166, in Juja Kalimoni Area. Land Reference Number 4148/166 was the subject of a subdivision scheme by the 2nd defendant. She contends that subsequent to the joint acquisition of the two plots by her and the 1st defendant, the two defendants fraudulently “transferred” Plot No 330 to Hamza Hassan Marsa Sarbo, a son to the 1st defendant. It is her case that she is entitled to Plot No 330 while the 1st defendant is entitled to Plot No 331.
7. Through his replying affidavit, the 1st defendant denies the plaintiff’s claim. The case of the 1st defendant is that he solely purchased the two plots; he solely developed the two plots; and the premises developed on the land have been occupied since the year 2010.
8. The case of the 2nd defendant is that this is a matrimonial property dispute which should not be in the Environment and Land Court. The 2nd defendant further contends that their records do not reflect joint acquisition or joint ownership of the two plots, adding that the two plots were purchased by the 1st defendant alone.
9. The application dated May 17, 2022 was canvassed as an interlocutory application seeking interlocutory injunctive reliefs. The single question to be answered in the application is whether it satisfies the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs. The relevant criteria was outlined in the case of *Giella v Cassman Brown* [1973] EA 358. First, the applicant is expected to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the interlocutory injunctive relief is not granted, he would stand to suffer injury that may not be adequately indemnifiable through an award of damages. Third, should the court have doubt on both or either of the above, the application is to be determined on the basis of the balance of convenience. Lastly, at the stage of disposing an application of this nature, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.
10. Bearing the above criteria in mind, I have carefully examined the orders which this court was invited to grant. Prayer 1 is a plea for certification of the notice of motion dated May 17, 2022 as urgent. Prayers 2, 3, and 4 sought interim interlocutory reliefs pending the hearing and determination of the notice of motion dated May 17, 2022. The said notice of motion was heard and is now the subject of this determination. Put differently, prayers 1, 2, 3 and 4 of the notice of motion dated May 17, 2022 are spent at this point of determining the application.
11. What remains to be considered in the plaintiff’s application dated May 17, 2022 is prayers 5 and 6. Prayer 5 is a plea for a finding to the effect that the plot ownership certificate for Plot No 330 in the name of Hamza Hassan Marsa Sarbo within LR No 4148/166 was issued “unscrupulously and illegally” and the same should be cancelled. Can an order of this nature be issued at this interlocutory stage and in the circumstances of this application? I do not think so.
12. First, Hamza Hassan Marsa Sarbo has not been made a defendant in this suit. It would go against the rules of natural justice to condemn him unheard. Secondly, the plea in prayer 5 is a prayer for a final relief. In a case such as the present suit, where defendants have stepped forward to challenge the plaintiff’s claim, a final relief such as the one sought in prayer 5 cannot be granted through an interlocutory application. Suffice it to state that an order of this nature calls for a proper trial.
13. In light of the foregoing, I do not think the plaintiff has satisfied the criteria for grant of interlocutory injunctive reliefs. The application has failed and is dismissed. The applicant will bear costs of the application.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF JULY  
2023**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

**Mr Ratemo Amenia for the Plaintiff /Applicant**

**Court Assistant: Hinga**

