



**Gachiri & another v Mugambi & 9 others (Environment & Land Case E060 of 2022) [2023] KEELC 20317 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20317 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E060 OF 2022  
LC KOMINGOI, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**JOSEPH KARANJA GACHIRI ..... 1<sup>ST</sup> PLAINTIFF**

**LILIAN WAKIIYA MWAURA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ELIUD NDUNG’U MUGAMBI ..... 1<sup>ST</sup> DEFENDANT**

**ODERA OBAR KENNEDY ..... 2<sup>ND</sup> DEFENDANT**

**NTIONI NANG’ETO ..... 3<sup>RD</sup> DEFENDANT**

**LILIAN WAITHIRA MWAI ..... 4<sup>TH</sup> DEFENDANT**

**WILLIAM SANTAMO SENTER ..... 5<sup>TH</sup> DEFENDANT**

**ELIZABETH MOKEIRA (AKA LIZ) ..... 6<sup>TH</sup> DEFENDANT**

**OLIVE LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**J.M. MWINZI (SUED AS THE 1ST LAND REGISTRAR  
NGONG) ..... 8<sup>TH</sup> DEFENDANT**

**JONATHAN MWAMBIA (SUED AS THE 2ND LAND REGISTRAR  
NGONG) ..... 9<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 10<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This is the notice of motion dated April 27, 2022.

2. It seeks orders:



- i. Spent.
  - ii. Spent.
  - iii. That the 1<sup>st</sup> to the 9<sup>th</sup> defendants/ respondents by each of themselves in plural and singularly by their agents, servants, employees, assigns, successors, nominees or anybody taking or assuming title from any one of them, or otherwise however described be temporary injunctioned from alienating, selling, disposing of, subdividing, continuing to occupy and/or fence, make use of, charging, breaking into, entering, demolishing, and/or remaining thereon, and/or undertaking any other destructive manner interfering with the 1<sup>st</sup> plaintiff's quiet enjoyment, or 1<sup>st</sup> plaintiff's exercise of his proprietary rights of the suit property known as LR No Kajiado/Ntashart/1706 (or such other land reference arising from Kajiado/Ntashart/1706 unlawfully or lawfully re-named/ re-allocated land reference numbers) situated in Kajiado County pending *inter partes* hearing and determination of the suit.
  - iv. That the honourable court be pleased to order the defendants/ respondents by either of them, their agents, servants or anybody taking title from any of them in singular and/or jointly, to produce to the court's custody the entire copies and / or the entire file or all their title deed, transfer instruments, sub-division documents, bank charge instruments, valuation(s), and/or of any the subdivision or transfer (sic), alienation and/or such change regarding title(s) of land parcel No Kajiado/Ntashart/1706 (with effect from 1<sup>st</sup> November 1990, to date) or such other within 14 days of the order being issued, and/or such a time as the honourable court shall deem it fair and just, and such produced documents to be so held in the honourable court's custody and used as evidence of the said transactions, until the hearing and determination of this suit.
  - v. That upon the production and/ or making provisions for inspection under the honourable courts supervision, the plaintiff(s) by himself, or agent or employee or representative, be at liberty or be enabled to inspect, copy and to have the same produced, or impounded and admitted in court as evidence, the abstract of title/green card and parcel files held by the 8<sup>th</sup> to 10<sup>th</sup> defendants and/or any such public officer concerning the land subject matter more particularly the Land Registrar(s) at Ngong Land Registry.
  - vi. That the honourable court be pleased to order or suspend any further transaction, sub-division, sale or transfer, alienating or such other activity of all the wrongful sub-divisions, titles arising thereof and the purported transfers arising from the wrongful sub-divisions or other actions aforesaid and more particularly originating from LR No Kajiado/Ntashart/1706 pending the hearing and determination of this suit or any further orders of this honourable court.
  - vii. That this honourable court grants any further order and/or directions as it may deem fair and just in the circumstances, including directions providing any security for the enforcement / effecting any of the orders given hereinabove.
  - viii. That the costs of this application be provided for.
3. This application is premised on the grounds set out on its body and in the sworn affidavit of Joseph Karanja Gachiri where he avers that he is the rightful owner of LR No Kajiado/Ntashart/1706 measuring about 50acres since 1990. He gave history of the acquisition stating that the 2<sup>nd</sup> plaintiff purchased 100acres of land LR No Kajiado/Ntashart/754 from one Sentet Ole Kurraru for Kshs 1,500,000. The 100acres was subdivided into three portions as LR No Kajiado/Ntashart/1704 measuring 20acres, LR No Kajiado/Ntashart/1705 measuring 30acres and LR No



- Kajiado/Ntashart/1706 measuring 50 acres (the suit property) and title issued in his name on October 30, 1990. However, in 2017 when the 2<sup>nd</sup> plaintiff visited the property to put a perimeter fence on it, she was informed that the 1<sup>st</sup> plaintiff had sold the suit property to one Eliud Mugambi (1<sup>st</sup> defendant) who later sold it to Odera Obar Kennedy (2<sup>nd</sup> defendant). The 1<sup>st</sup> plaintiff claims that he has never sold nor transferred the suit property to anyone. Following this allegation, they filed a complaint with the land registrar at the Ngong’ Land Registry in 2017, hearing was conducted and submissions filed but a ruling of the matter was yet to be delivered years later.
4. He went on to add that there had been several attempts to change ownership of the suit property from him to other persons over the years illegally and fraudulently orchestrated by the 5<sup>th</sup> defendant (son to Sentet Ole Kurraru) together with other persons at the Ngong’ Land Registry but some of the fraudulent entries had been successfully cancelled and rectified by the registrar. He noted that the said LR No Kajiado/Ntashart/1706 had apparently been subdivided into a further three portions LR No Kajiado/ Ntashart/8364-8366 measuring 20 acres and 10 acres respectively. And LR No Kajiado/ Ntashart/8365 had further been subdivided into 3 portions of 3 acres each with LR Nos Kajiado/ Ntashart/20303-20306 and had been disposed of to Elizabeth Mokeira (the 6<sup>th</sup> defendant).
  5. Consequently, advocate for the 2<sup>nd</sup> defendant raised a preliminary objection dated September 20, 2022 on the following grounds:
    - i. That the plaint and notice of motion application filed herein are incompetent and defective, being supported by defective affidavits.
    - ii. That the plaintiffs’ suit is incompetent and defective as it offends section 3(3) of the [Law of Contract Act](#) and should be struck out.
    - iii. That owing to the foregoing the plaint and notice of motion application dated April 27, 2022 should be struck out with costs to the defendants.
  6. The 2<sup>nd</sup> defendant in his replying affidavit dated September 22, 2022 stated that the plaintiffs did not have proprietary interests in the suit property because he was the registered owner having purchased it from the 1<sup>st</sup> defendant and subsequently registered in his name on January 31, 2017 and started erecting a fence. However, the family of the late Sentet Ole Kurraru led by the 5<sup>th</sup> defendant were hostile towards him on claim that the suit property had been sold without their consent. Upon discussion they reached an agreement dated August 25, 2021 to have the suit property subdivided into two equal portions of 25 acres each. The 25 acres was transferred to the 5<sup>th</sup> defendant on January 11, 2022 with the new titles being Kajiado/Ntashart/23689 and 23690 registered in the 2<sup>nd</sup> and 5<sup>th</sup> defendant’s names respectively. He deponed that prior to this subdivision, the Lands Registrar cancelled all the fraudulent titles that had been registered by the 5<sup>th</sup> defendant.
  7. He went on to confirm that he had been summoned by the Land Registrar Ngong’ in respect to ownership of LR No Kajiado/Ntashart/1706 (the suit property) filed by the 1<sup>st</sup> plaintiff and it was determined that he was the registered owner of the property *vide* a letter dated July 8, 2022. He also stated that the 1<sup>st</sup> plaintiff had indicated that he resides in the United States of America yet his affidavit indicated that it was sworn in Nairobi and had been notarised which was thus defective.
  8. The 5<sup>th</sup> defendant in his replying affidavit dated October 21, 2022 contested the plaintiff’s ownership stating that the 1<sup>st</sup> plaintiff had not adduced evidence of how he became the proprietor of the suit property such as the sale agreement among other documents and had not met the ingredients to warrant issuance of the interlocutory injunction as sought. He also disputed the allegation that he was involved in fraudulent dealings against the suit property and asked for dismissal of the suit with costs.



9. The 2<sup>nd</sup> plaintiff in a further supporting affidavit dated March 1, 2023 contested the 2<sup>nd</sup> defendant's deposition stating that the said Eliud Mugambi was unknown to the 1<sup>st</sup> plaintiff and no sale or transfer of the suit property had ever been effected in his favour. She also went on to question the 1<sup>st</sup> defendant's whereabouts who was the 2<sup>nd</sup> defendant's client. In yet another rejoinder, she averred that when the suit property was transferred to the 1<sup>st</sup> plaintiff, the 5<sup>th</sup> defendant was a child and could not claim any proprietary rights over it and could also not pass good title to anyone since he was not an administrator of the estate of the late Sentet Ole Kuraru. She also stated that the said settlement between the 2<sup>nd</sup> and the 5<sup>th</sup> defendant was null because the land being adjudicated upon was not available for the alleged transfer.
10. The 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants in their replying affidavit dated March 10, 2023 sworn by J.M. Mwinzi a Land Registrar at Ruaraka deponed that LR No Kajiado/Ntashart/1706 was a subdivision of LR No Kajiado/Ntashart/294 which register was opened on September 4, 1990. The land was registered and title issued on the same day in Sentet Ole Kuraru's name and then title transferred to the 1<sup>st</sup> plaintiff on the same September 4, 1990. On the November 26, 2009 it was transferred to Eliud Ndung'u Mugambi and a title issued in his name. On January 31, 2017 the suit land was registered in favour of the 2<sup>nd</sup> defendant (Odera Obar Kennedy) and on January 10, 2022 the register was closed upon subdivision of that land to Kajiado/Ntashart/23689 and 23690.
11. He went on to state that the entries showing transfer of the suit land from Joseph Karanja Gachiri (1<sup>st</sup> plaintiff) to Eliud Ndung'u Mugambi was neither entered by him nor the 9<sup>th</sup> defendant since they were not working at the Ngong Registry at the time. He however confirmed that the entries dated January 31, 2017 which were a transfer from Eliud Mugambi to Odera Obar and issuance of title to Odera were registered by him pointing out that he worked as a Land Registrar between 2015 and 2018. He also confirmed that the 9<sup>th</sup> defendant who worked as the Land Registrar at the Ngong Registry between 2018 and 2022 registered the entry that shows closure of the Title on subdivision. He concluded by stating that they could not be sued for undertaking their duties and registering entries which were duly supported.

### **The Plaintiff's / Applicant's Submissions**

12. Counsel for the plaintiff submitted that the issue of defective affidavits sworn by the 1<sup>st</sup> plaintiff based on the place of swearing was an error on the face of it but it was on record supported by evidence that the affidavit was sworn and notarised in Los Angeles. And if court found that the affidavits were defective, it was an error that was amendable and should not warrant dismissal of the suit.
13. On the issue that the suit offends section 3(3) of the *Law of Contract Act* and should be struck out, counsel submitted that the said section was not applicable to the suit since their suit was premised on a tortious claim and not enforcing their rights against another party to the suit.
14. On the notice of motion application, counsel submitted the following case laws as evidence that their application merited the issuance of an interlocutory injunction: *NoorMmohammed Janmohammed v Kassin Ali Virji Madhani* [1953] 20 LRK 8, *Erinford Properties Ltd v Chesire County Council*, *Giella v Cassman Brown & Co Ltd* (1973) EA 358, *Aikman v Muchoki* [1984] eKLR, *Russell Co Ltd v Commercial Bank of Africa Ltd & Another* [1986] eKLR

### **The 2<sup>nd</sup> Defendant's Submissions**

15. Counsel for the 2<sup>nd</sup> defendant highlighted the following three issues for determination as summarised hereunder.



16. On whether the suit and application were statute barred counsel submitted that the 1<sup>st</sup> plaintiff's allegation was that the suit property was transferred to the 2<sup>nd</sup> defendant fraudulently on diverse dates in 2017 and particularly on March 18, 2017 when she visited the suit property. As such the cause of action accrued on March 2017 and the suit ought to have been filed by March 2020. Counsel went on to state that the 2<sup>nd</sup> plaintiff's claim that their complaint filed with the 8<sup>th</sup> defendant in April 2017 was yet to be determined was false and if that was the case then they should have filed the suit earlier. Therefore the suit should be struck out since it was statute barred which was a jurisdictional issue and the interim orders of inhibition discharged. Reference was made to *Elijah Ntaiyia v Lekinini Kulale & 3 others* [2008] eKLR which relied on *Javed Iqbal Abdul Rahman & Another v Alfred Wekesa Sambe & Another*; *Karuri v Nchebe* CAK [1995-1998] EA 89 1; *Anaclet Kalia Musau v Attorney General & 2 others* [2020] eKLR
17. On the preliminary objection counsel submitted that the suit offended section 3(3) of the *Law of Contract Act* whereby the plaintiffs failed to demonstrate on a prima facie basis that they met its requirements by not producing a sale agreement between them and the said Sentet Ole Kurraru. Counsel went on to submit that the written authority by the 1<sup>st</sup> plaintiff to the 2<sup>nd</sup> defendant was only in regard to carrying out investigations regarding the alleged fraud and not to file the suit. Therefore the plaintiffs have no locus standi to file the suit and it should be struck out with costs. The following cases were cited in support of this position: *Daudi Ledama Morintat v Mary Christine Kiarie & 2 others* [2017] eKLR and *Lawrence John Irungu Mwangi & 9 others v Julius Kimani Maina t/a Geomath Management & 6 others* [2018] eKLR
18. On defective affidavits counsel submitted that the affidavit supporting the interlocutory application was not properly commissioned contrary to section 5 of the Oaths and Statutory Declaration Act. He went on to add that the 1<sup>st</sup> plaintiff's location was indicated as Nairobi while the 1<sup>st</sup> plaintiff had stated that his location was Los-Angeles California, adding that the verifying affidavit and supporting affidavits had also not been notarised as required by law. In that regard the suit and application cannot stand on its own and should thus be struck out for being fatally defective. Reference was made to: *Z-U-DG v SJK-U* [2021] eKLR, *CMC Motors Group Ltd v Bengeria Arap Korir t/a Marben School & another* [2013] eKLR, *Gideon Sitelu Knochellah v Julius Lekakeny Ole Sunkuli & 2 others, Mary Gathoni & another v Frida Ariri Otolu & another* [2020] eKLR
19. On the final issue of interlocutory injunction, while making reference to *Giella v Cassman Brown & Co Ltd* [1973] eKLR and *Kenleb Cons Ltd v Nw Gatitu Service Station Ltd & another* [1990] eKLR counsel stated that the plaintiffs had not shown that they had a *prima facie* case as was set out in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR and *Nguruman Lrd v Jan Bonde Nielsen & 2 others* [2014] eKLR adding that the 8<sup>th</sup> to 10<sup>th</sup> defendants had confirmed that the 2<sup>nd</sup> defendant was the registered proprietor and the plaintiff had not shown the history of their acquisition of title as was held in *Munyu Maina v Hiram Gathiha Maina*. Counsel pointed out that the plaintiffs despite acquiring the property in 1990, they had not taken possession adding that there was no evidence of what irreparable damage they would incur if the injunction was not granted citing *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2019] eKLR
20. Counsel went on to submit that on a balance of convenience, the 2<sup>nd</sup> defendant stood to suffer more since he had shown that he had registrable interest over the suit property and ought to enjoy peaceful possession of the same as was held in *Chebii Kipkoech v Barnabas Tuitoek Bargarioria & another* [2019] eKLR As such the *ex parte* inhibition granted on August 3, 2022 should be discharged and the application dismissed.



## The 5<sup>th</sup> And 7<sup>th</sup> Defendants' Submissions

21. On the issue of whether the plaintiffs had established a prima facie case, counsel submitted that the plaintiff had only made unsubstantiated allegations that the 5<sup>th</sup> defendant had interfered with the proprietorship of the suit property fraudulently. Counsel went on to submit that the 5<sup>th</sup> and 7<sup>th</sup> defendants had also been enjoined in the suit wrongly because they were neither in occupation of the suit property nor registered proprietors thereof. Counsel also submitted that there was a misjoinder of parties since the Estate of the late Sentet Ole Kurraru who the plaintiffs claimed to have purchased the suit from was not joined in the suit and a sale agreement to that effect had not been adduced. As such the suit should be struck out for offending section 3(3) of the [Law of Contract Act](#) citing *Daudi Ledama Morintat v Mary Christine Kiarie & 2 others* (2017) eKLR

## Analysis And Determination

22. I have considered the notice of motion, the affidavit in support, the responses thereto, the preliminary objection, the written submissions and the authorities cited. The issues for determination are:
- i. Whether the preliminary objection dated September 20, 2022 is meritorious.
  - ii. Whether the applicants have met the threshold for grant of interlocutory injunctions.
23. The 2<sup>nd</sup> defendant raised a preliminary objection on the grounds that the affidavits sworn by the plaintiffs were incompetent and defective and that the suit offended section 3(3) of the [Law of Contract Act](#) and should thus be struck out.
24. It is trite law that a preliminary objection should be raised purely on a point of law as was advanced in the precedent setting case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors* (1969) EA 696. This principle was also buttressed in the Supreme Court of Kenya case of *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* [2014]eKLR and re-emphasised in [Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others \(interested parties\)](#) [2020] eKLR:

... The Joho decision has been subsequently cited by this Court in *Hassan Nyanje Charo v Khatib Mwashetani & 3others*, civil application No 23 of 2014; and in *Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 others*, Application No 50 of 2014, in which the court further stated at paragraph 15;

“Thus a preliminary objection may only be raised on a ‘pure question of law’.  
To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are *prima facie* presented in the pleadings on record.”

25. Therefore, is the objection at hand on a pure point of law or fact? Counsel for the 2<sup>nd</sup> defendant submitted at length on the issue of a defective affidavit and asked this court to strike it out. This court is of the opinion that the question of a defective affidavit is question of law which can be seen on the face value of the affidavit and does not require digging into evidence and the factual issues of the matter. Looking at the said affidavit, the court confirms that it is sworn at Nairobi but Notarised in Los Angeles. In a rejoinder, the counsel for the plaintiffs submitted that the issue of the place of attestation as raised was an erroneous mistake which could easily be rectified and should not warrant a dismissal striking out of the suit. Should this then warrant striking out and dismissal of the suit? In arriving at a decision, court wishes to seek guidance from article 159(2)(d) of the [Constitution](#) which provides: (2)



In exercising judicial authority, the courts and tribunals shall be guided by the following principles- (d) justice shall be administered without undue regard to procedural technicalities. As well as order 19 rule 7 of the [Civil Procedure Rules, 2010](#) which stipulates:

The court may receive any affidavit sworn for the purpose of being used in any suit notwithstanding any defect of misdescription of the parties or otherwise in the title or other irregularity in the form thereof or on any technicality.

26. Guided by the foregoing I am in agreement with the plaintiffs that the issue of place of attestation is an issue of a curable technicality which should not warrant the plaintiffs from being ejected from the seat of justice. The High Court in [Panchal Trading \(K\) Limited v NF Metals Corporation](#) [2021] eKLR called upon to pronounce itself on an issue of defectiveness of an affidavit held:

“... The plaintiff’s counsel contended that the supporting affidavit bears a notary public stamp dated September 30, 2020 yet it is dated November 2, 2020. I find that this defect and/or omission is a matter of form and not substance, it does not in any way affect the correctness and admissibility of the supporting affidavit...”
27. The plaintiffs are directed to amend the said affidavits to reflect the proper place of attestation.
28. The other issue for objection was premised on section 3(3) of the [Law of Contract Act](#) where counsel submitted that the plaintiffs had not evidenced a sale agreement as proof of the alleged purchase of the suit property in 1990. Counsel went on to submit that the suit offended the [Limitation of Actions Act](#) since the claim that the suit property was divested of the 1<sup>st</sup> plaintiff fraudulently was time barred. The plaintiffs rebutted that the core of the suit was on proprietary interests, ownership of the suit property and a tortious claim of trespass which is continuous. Once again on whether this is an issue of law or fact, this court finds that it will require it to look through the evidence adduced to determine whether there was indeed an agreement as proof of the purchase as well as whether the crux of the suit is fraud or an action to recover land. As such, this is not purely a matter of law but of fact. To this end therefore, the preliminary objection is dismissed with no orders as to costs.
29. Without getting to the merits of the issue, this court however wishes to respectfully disagree with counsel for the plaintiffs submissions that section 3(3) of the [Law of Contract Act](#) was not applicable in this instant suit since the suit was about a tortious claim and not an assertion of rights. Whereas the court has already pronounced itself on the preliminary objection, section 3(3) is the bedrock of any disposition of an interest in land.
30. The second issue for determination is whether the interlocutory injunction sought is merited.
31. The issue of interlocutory injunctions are well settled in law as comprehensively submitted on by counsel for the 2<sup>nd</sup> defendant. [Giella v Cassman Brown Co Ltd](#) [1973] EA 358 set out the grounds for grant of interlocutory injunctions directing that a party seeking a temporary injunction has to establish a *prima facie* case; whether the party seeking injunction will suffer irreparable damage if injunction is denied; and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.
32. The 1<sup>st</sup> plaintiff states that he has a *prima facie* case since he is the lawful owner registered owner of the suit property from 1990 and suffer irreparable loss and damage if the suit property is not protected. The 2<sup>nd</sup> defendant contested this claim stating that he was the registered owner and the 1<sup>st</sup> plaintiff would not suffer any loss or damage. Adding that it was evident that since 1990 when the 1<sup>st</sup> plaintiff claims to have purchased it, he only made an attempt to put up a perimeter fence in 2017. In the matter



at hand we have two warring factions each staking claim on the suit property and each waving title to the said property. At this preliminary stage, the court should and ought to restrain itself from analysing the merits of the case. This was similarly the court's holding in *Mrao Ltd. v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 the court stated

“...We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation...”

33. At this stage, what the court ought to determine is whether a right has been violated or threatened and ought to be protected and not conduct a mini trial of the case. It is hard to discern whether the 1<sup>st</sup> plaintiff has established a *prima facie* case. Further, the 8<sup>th</sup> defendant in his replying affidavit affirmed that from their records the suit property was transferred to the 1<sup>st</sup> plaintiff in 1990 but had since been transferred to the 1<sup>st</sup> defendant then to the 2<sup>nd</sup> defendant and further subdivided between the 2<sup>nd</sup> defendant and the 5<sup>th</sup> defendant. On this ground alone, it is clear that the 2<sup>nd</sup> defendant has been the registered proprietor of the suit property from 2017. As such, the issue of irreparable loss and damage falls on its face because the suit property has been in possession of the 2<sup>nd</sup> defendant for over 5 years now. In this regard, there is no imminent danger of loss, damage or the suit property being wasted away that would warrant grant of an interlocutory injunction. This is the stipulation of order 40 rule 1 of the *Civil Procedure Rules, 2010*:

1. Where in any suit it is proved by affidavit or otherwise-
  - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - ...
  - the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

34. And buttressed in the Court of Appeal case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR where the court stated:

“... In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate 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 rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be



irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted..."

35. It is not in dispute that the suit property is registered in the name of the 2<sup>nd</sup> defendant. It is the plaintiff's/applicant's case that they discovered the fraud in 2017 and made a complaint to the Land Registrar (the 8<sup>th</sup> defendant). One wonders why it took so long for the plaintiff's/applicant's to approach this court.
36. I find that there is need to preserve the suit property pending the hearing and determination of the suit herein.
37. Accordingly I hereby grant the following orders:
  - a. That the preliminary objection dated September 20, 2022 is hereby dismissed with no orders to cost;
  - b. That the notice of motion dated April 27, 2022 is hereby dismissed;
  - c. The exparte inhibition entered against LR No Kajiado/Ntashart/1706 on August 3, 2022 is hereby discharged;
  - d. That the status quo of the suit property LR No Kajiado/Ntashart/1706 be and is hereby maintained and any further dealings on the suit property are barred pending hearing and determination of the suit;
  - e. That costs to abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28<sup>TH</sup> SEPTEMBER 2023.**

**L. KOMINGOI**

**JUDGE**

