



**Onchiri & 38 others v Ngenda Location Ranching Co Ltd & another (Environment & Land Case 204 of 2017) [2023] KEELC 21050 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21050 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 204 OF 2017  
FM NJOROGE, J  
OCTOBER 26, 2023**

**BETWEEN**

**JOEL O ONCHIRI & 38 OTHERS ..... PLAINTIFF**

**AND**

**NGENDA LOCATION RANCHING CO LTD ..... 1<sup>ST</sup> DEFENDANT**

**STIMA INVESTMENT COOPERATIVE SOCIETY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling on an application dated 15/6/2023 filed by the plaintiff/applicant under Order 40 rules 1,2,3 of the Civil Procedure Rules, Order 51 of the [Civil Procedure Rules](#), Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of law.
2. It seeks that this application be certified as urgent, service be dispensed with in the first instance and the application be heard on a priority basis and that pending the hearing and determination of this application inter-partes, the Respondents and its agents be restrained by way of a temporary injunction from carrying out any boring of boreholes, installation of power lines and any other electrical infrastructure on the lands known as Land Ref No, 11764 (originally No. 9397/1, 0398/2, 4767) all that parcel of lands known as IR No. 9264 (originally No. 8943/5 & 496/12) and all that parcel known as LR No 6290 and/or dealing in any other way with the said land whatsoever, that pending the hearing and determination of this application.
3. It also seek orders that the Respondents and its agents be restrained by way of a temporary injunction from carrying out any boring of boreholes, installation of power lines and any other electrical infrastructure on the lands known as Land Ref No, 11764 (originally No 9397/1, 0398/2, 4767) all that parcel of lands known as IR No. 9264 (originally No. 8943/5 & 496/12) and all that parcel known as LR No 6290 and/or dealing in any other way with the said land whatsoever pending the hearing and determination of this suit and that alternatively, that pending the hearing and determination of



this suit this Honourable Court be pleased to issue an order of status quo preserving the lands known as Land Ref No, 11764 (originally No. 9397/1, 0398/2, 4767) all that parcel of lands known as IR No. 9264(originally No. 8943/5 & 496/12) and all that parcel known as LR No 6290 until otherwise ordered by this Court and that costs of this application be borne by the Respondents.

4. On 15/6/2023 when the matter came before the court in the absence of the parties for directions, the court certified the motion as urgent, directed that the Notice of Motion Application dated 15/6/2023 be served forthwith together with a copy of these directions and an affidavit of service be filed and also gave a time frame for the filing of submissions by the parties.
5. It also ordered that pending the ruling on the Notice of Motion dated 15/6/2023 all parties shall maintain the present status quo of Land Ref. No. 11764 (originally No. 9397/1, 0398/2, 4767) all that parcel of lands known as IR No 9264 (originally No. 8943/5 & 496/12) and all that parcel known as LR No 6290.
6. The background to the present application is that the applicants are members of the 1<sup>st</sup> Respondent which was formed as a land buying concern for purposes of settling its members who bought shares from the same. The Plaintiff/Applicant states that as such the 1<sup>st</sup> Respondent by use of monies invested by the Applicants herein did purchase and become the registered proprietor of the lands known as Land Ref No 11764 (originally No 9397/1, 0398/2, 4767) all that parcel of lands known as IR No. 9264 (originally No. 8943/5 & 496/12) and all that parcel known as LR No. 6290. It is the Plaintiffs' contention that the 1<sup>st</sup> Respondent did indeed, without the consent and or authority of the Applicants who are its shareholders, purport to sell the above mentioned suit properties to the 2<sup>nd</sup> Defendant. The Plaintiff/Applicant states that further to the above, proceeds from the said sales have been misappropriated and most of the Applicants herein remain yet to be settled which was indeed core to the establishment of the 1<sup>st</sup> Respondent.
7. The Plaintiff/Applicant states that due to the above set of circumstances the Applicants herein in their capacity as shareholders of the 1<sup>st</sup> Respondent have been forced to file this suit in order to protect their rights.
8. The Plaintiff/Applicant also states that this suit was filed way back in the year 2017 and all parties herein have put in their pleadings being well aware of the suit in Court. The Plaintiff further avers that despite the matter being under adjudication the 2<sup>nd</sup> Respondent herein has embarked upon the development of said lands whilst being fully aware of the existence of this suit.
9. The Plaintiff/Applicant further asserts that the said developments on the suit lands may end up wasting the 1<sup>st</sup> Defendant's land and or damage the same to the detriment of the Plaintiffs who are indeed entitled to the suit lands and who opposed the irregular disposal of said lands. The Plaintiff/Applicant states that it is rather curious that the Respondents and persons whom they have allocated parcels of the suit lands herein have indeed been carrying on with the developments as though this matter that is still under adjudication is a foregone conclusion and that unless the application herein is heard and the prayers allowed on priority basis the applicant herein stands to suffer irredeemable damages that cannot be made right by the issuance of pecuniary damages rendering the instant suit a mere academic exercise.
10. The 1<sup>st</sup> Defendant/ Respondent in its Replying Affidavit sworn on 26/7/2023 by Felista Njeri Cheror deposed that Mr. Njehia is not a shareholder of the company, but an administrator of an Estate in respect to which there is no confirmation of any grant placed before this Honourable Court on distribution of the Estate on the specific assets conferring rights upon any beneficiary.
11. The 1<sup>st</sup> Defendant/Respondent deposed that as 28/7/2017, when the 1<sup>st</sup> Defendant filed its Statement of Defence it clearly indicated that it had exhausted the parcels of land mentioned in the Plaint through



allocation to its members that had paid survey fees and that LR No 9264 was specifically sold to Stima Investment Cooperative Society Limited; that upon distribution of land to members and the said sale the 1<sup>st</sup> Respondent became divested to any power to control over the individual subdivisions of the land or usage of the same since it is neither the owner nor in possession of the same.

12. The 1<sup>st</sup> Defendant/Respondent deposed that the process leading to the exhaustion of the land was done within the knowledge of the shareholders following approval and that for any member to be allocated land they had to pay survey fee which none of the applicants did, save for the 21<sup>st</sup> Plaintiff who after paying the survey fee declined to ballot.
13. The 1<sup>st</sup> Defendant/Respondent also deposed that it had made provisions for public utilities/social amenities while allocating land to members and development of the public utilities is undertaken by the government while development of the privately allocated individual parcels of land is undertaken by the respective owners as they desire. The 1<sup>st</sup> Defendant further deposed that it does not have any control over land already allocated and that the application is made in bad faith and an afterthought since the Court has proceeded with hearing of the matter uninterrupted.
14. The 2<sup>nd</sup> Defendant/ Respondent filed its grounds of opposition dated 4/7/2023 and stated that the application fails to show a prima facie case given: The 2<sup>nd</sup> Defendant/Respondent after effectively carrying out due diligence, legally bought the parcel of land LR/9264 from the 1<sup>st</sup> Defendant/ Respondent, during the process of purchase no objection was raised by the Plaintiffs/Applicants or any other 3<sup>rd</sup> party, the 2<sup>nd</sup> Defendant/Respondent thus acquired good title, the 2<sup>nd</sup> Defendant/ Respondent further subdivided the land to 3<sup>rd</sup> parties and as such the titles are in the name of different 3<sup>rd</sup> parties who are not party to this suit. Further, the suit property in which the Plaintiffs/Applicants are claiming to be unjustly developed is land belonging to the 1<sup>st</sup> Defendant/Respondent.
15. The 2<sup>nd</sup> Defendant/Respondent stated that the Plaintiffs/Applicants suffer no irreparable harm and neither is the land depreciating in value and in fact: the 2<sup>nd</sup> Defendant/Respondent acquired good title to the suit property and justly subdivided the same to 3<sup>rd</sup> parties, the 3<sup>rd</sup> parties to whom the land was subdivided are enjoying their proprietary rights as they have proper title to the parcels, if the 3<sup>rd</sup> parties are carrying any development to the land it is their right and it is more of value addition to the land.
16. The 2<sup>nd</sup> Defendant/Respondent stated that on a balance of probability, the 2<sup>nd</sup> Defendant/Respondent rightfully acquired title and subdivided the land to 3<sup>rd</sup> parties and the 3<sup>rd</sup> parties are only enjoying their proprietary rights.
17. The court ordered the application be disposed of by way of written submissions. The submissions were to be filed by the Plaintiff/Applicant on 27/7/2023 the 1<sup>st</sup> Defendant/ Respondent filed its submissions on 7/8/2023 and the 2<sup>nd</sup> Defendant/Respondent filed its submissions on 4/7/2023.
18. Section 3A of the [Civil Procedure Act](#) provides that:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
19. Order 40 rules 1a, and 1b of the [Civil Procedure Rules](#) provides that: 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



- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,”

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.

20. Order 40 rule 2 of the [Civil Procedure Rules](#) provides that:

1. In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
2. The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.

21. Order 40 rule 3 of the [Civil Procedure Rules](#) provides that:

1. In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.
2. No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.
3. An application under this rule shall be made by notice of motion in the same suit.

22. I have considered the application by the Plaintiff/Applicant dated 15/6/2023, the 2<sup>nd</sup> Defendant's grounds of opposition dated 4/7/2023 the submissions by the Plaintiff/Applicant received by the court on 27/6/2023, the 1<sup>st</sup> Defendants submissions dated 7/8/2023 and the 2<sup>nd</sup> Defendants submissions dated 4/7/2023.

23. The crux of the Plaintiff's/Applicant's application is whether they have meet the threshold for the grant of injunctive reliefs. The three tier test that has been set in the famous case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. It was stated as follows:

“First 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.”



24. In considering the Plaintiff's/Applicants application, this court is obliged to consider what is the object of seeking the injunction. In the case of *Rockland Kenya Limited v Elliot White Miller* [1994] eKLR, Justice Gicheru, JA (as he then was) held as follows:

“The object of an interlocutory injunction is to protect the plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the plaintiff's undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

25. This suit is yet to be determined. It is vital to safeguard the subject matter of the suit from waste or disposal which may further complicate the hearing and finalization of the suit. This court is satisfied that the Plaintiff/Applicant has meet the threshold for granting the injunctive order sought. I therefore issue the following order in respect of the application dated 15/6/2023:
- a. That pending the hearing and determination of this suit the Respondents, whether acting in person, by proxy, through its agents, servants, employees, its allottees and/or any other person acting at their behest, be restrained by way of a temporary injunction from carrying out any boring of boreholes, installation of power lines and any other electrical infrastructure on the lands known as Land Ref No, 11764 (originally No. 9397/1, 0398/2, 4767) all that parcel of lands known as IR No. 9264 (originally No. 8943/5 & 496/12) and all that parcel known as LR No 6290 and/ or dealing in any other way with the said land whatsoever.
  - b. There shall be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

