



Kemnitz v Muthoni alias Elizabeth Karimba (Environment & Land Case E023 of 2023) [2023] KEELC 22613 (KLR) (19 October 2023) (Ruling)

Neutral citation: [2023] KEELC 22613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E023 OF 2023
LC KOMINGOI, J
OCTOBER 19, 2023**

BETWEEN

CHRISTOPHER JAMES KEMNITZ PLAINTIFF

AND

ELIZABETH MUTHONI ALIAS ELIZABETH KARIMBA RESPONDENT

RULING

1. This is the Notice of Motion dated 20th March 2023 brought under;

(Under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rules 1, Order 51 Rule 1 of the *Civil Procedure Rules*, 2010, and all other enabling provisions of the Law)
2. It seeks Orders;
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue a temporary injunction restraining the Defendant and/or her agents and/or representatives and/or other persons claiming under her from offering for sale, selling, subdividing, charging, leasing, pledging and/or in any other ways transferring, alienating and/or disposing off property Title No Ngong/Ngong/89438 and Ngong/Ngong/92389.
 4. That the costs of and incidental to this Application be borne by the Defendant/Respondent.
3. The grounds are on the face of the Application and are set out in paragraphs (a) to (h).
4. The Application is supported by the affidavit of Christopher James Kemnitz, the Plaintiff/Applicant herein, sworn on the 20th March 2023.



5. The Application is opposed. There is a Replying Affidavit sworn by Elizabeth Muthoni Alias Elizabeth Karimba the Defendant/Respondent, sworn on the 12th June, 2023.

There are also grounds of objection filed by the Defendant/Respondent dated 31st May 2023.

6. On the 15th June 2023, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

7. I have considered the Notice of Motion and the affidavits in support the responses thereto, the written submissions and the authorities cited.

The issues for determination are'

- i. Whether the plaintiff/applicant's application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application?
8. In their submissions counsel have substantiated their clients' respective positions stated in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.
9. The principles were laid down in the precedent setting cases of *Giella v Cassman Brown and Co. Ltd* (1973) EA 358.
10. In the case of *Mrao Limited v First American Bank Ltd and 2 Others* (2003) KLR 128 the Court of Appeal stated what amounts to a prima facie case.
11. The Plaintiff/Applicant has attached bank statements from Nationwide Bank in the UK and ABSA Bank showing how he transmitted the monies which were for the purchase of the suit properties.
12. It is also his case that the defendant/respondent processed the titles in her name while assuring the Plaintiff/Applicant that she was holding in trust for him until he relocated to Kenya and acquired resident status.
13. The Defendant/Respondent her part stated that she is the one who acquired the suit properties. She however attached no documents to show the source of funds.
14. I find that the Plaintiff/Applicant has established a prima facie case with a probability of success at the trial.

In the case of *Njenga v Njenga* (1991) KLR 401 Bosire J (as he then was) stated that;

an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles”.

I am persuaded by the facts presented by the Plaintiff/Applicant that he deserves the orders sought.

15. In *Kenleb Cons. Limited v Gatitu Services Station Limited & Another* (1990) KLR 557 Bosire J (as he then was) held that;

“To succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show he has a right, legal or equitable, which requires protection by injunction”

I am satisfied that the Plaintiff/Applicant herein deserves this kind of protection.



16. I also find that the Plaintiff/Applicant has demonstrated that he stands to lose the two suit properties if these orders are not granted.

I am guided by the case of *Ooko v Barclays Bank of Kenya Ltd* (2002) KLR 394 where Ringera J (as he then was) held;

The second condition is that an interlocutory injunction will not normally be granted unless the applicant can show he will suffer an irreparable injury, which cannot be compensated by award of damages. The onus is obviously on the applicant to do that. She was content to submit that once a prima face case has been made; it is not necessary to consider any other matters and that the defendant has not shown it would compensate her adequately in damages. To my mind the plaintiff's submission is misconceived“.

17. I find that the balance of convenience tilts in favour of granting the injunction to preserve the suit properties pending the hearing and determination of the suit.
18. In conclusion I find that the Plaintiff/Applicant's application has met the threshold for granting of a mandatory injunction.
19. Accordingly I hereby grant the orders;
- a. That a temporary injunction is hereby issued restraining in the Defendant/Respondent and or her agents, representatives, any other persons claiming under her, from offering for sale, selling sub-dividing, charging, leasing, pledging and or any other way transferring, alienating or and disposing off the properties Title Numbers Ngong/Ngong/89438 and Ngong/Ngong/92389 pending the hearing and determination of this suit.
 - b. That costs by the Application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF OCTOBER 2023.

L. KOMINGOI

JUDGE.

