



Kipkai Enterprises Limited v Hussein (Environment & Land Case E212 of 2023) [2023] KEELC 20872 (KLR) (17 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20872 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E212 OF 2023
MD MWANGI, J
OCTOBER 17, 2023**

BETWEEN

KIPKAI ENTERPRISES LIMITED APPLICANT

AND

ABDRAHIM CHERUIYOT HUSSEIN RESPONDENT

RULING

Introduction

1. This ruling is in respect of the application by way of a Notice of Motion by the plaintiff/applicant dated the 13th June, 2023 seeking for the following orders:
 - a. Spent
 - b. Spent
 - c. A temporary injunction do issue restraining the Defendant/ Respondent whether by himself, his servants, agents or any other persons(s) claiming under him from dealing with or continuing to deal with , use, dispose of, part with, charge, alienate, lease or otherwise in any manner whatsoever interfering with the Plaintiff's ownership, control and proprietorship over all parcel of land to wit Land Reference No. 12507/5 (I.R 40679) situated in Nairobi County, pending hearing and determination of this suit.
 - d. The costs of this Application be provided for.
2. The Defendant/Respondent was served by way of substituted service by an advertisement in the Standard Newspaper on the 21st August, 2023. An Affidavit of service deponed by Erick Oduor Obiero on the 30th August, 2023 is on record confirming service upon the Defendant/ Respondent. However, no response has been filed and this application is therefore unopposed. The court had earlier granted interim orders of injunction pending the hearing and determination of this application.



Applicant's Case

3. The Plaintiff's application is premised on the grounds on the face of it and further supported by the Affidavit of Jane Nyaboke Njagi, a Director of the Plaintiff/Applicant company deponed on the 13th June, 2023.
4. It is the applicant's case that it is the registered proprietor of the suit property known as LR No. 12507/5 situated in Nairobi County, measuring 2.023 hectares or thereabouts. The Applicant avers that it acquired the said parcel of land for valuable consideration in 1993 and has been enjoying continuous peaceful occupation of the same. It annexes a copy of the original grant and a transfer instrument in its name.
5. The applicant asserts that it is also registered at the Nairobi City County Valuation roll and has at all material times remained the rate payer for the property.
6. The applicant avers that it has learnt that the Respondent is purporting to lay a claim of ownership of the suit property on the basis of a fictitious Grant of Title number I.R. 234920. It asserts that it has never disposed any of its interests over the suit property in favour of the Respondent or any other person for that matter. The Respondent's claim over the suit property is fraudulent and fictitious. The Applicant therefore seeks the orders herein pending hearing and determination of this suit.
7. The principles to be considered in determining an application for an order of temporary injunction were pronounced in the case of *Giella v Cassman Brown* [1973] EA 358, where it was held that in order to qualify for an injunction: -

“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 harm which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
8. In the case of *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others* [2003] eKLR the Court of Appeal elaborated the meaning of a *prima facie* case and stated as follows:

“a prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
9. The Court of Appeal in *Nguruman Ltd vs Jan Bonde Nielsen & 2 Others* (2014), while upholding the 3 conditions pronounced in the *Giella* case stated that, ‘the 3 conditions and stages are to be applied as separate distinct and logical hurdles which an applicant is expected to surmount sequentially.’
10. This court in the case of *Nicholas Njeru Muturi vs Thome Dynamics Limited & Another* [2022] eKLR stated that the essence of the holding in the *Nguruman* case is that ‘...if a prima facie case is not established, the court need not go farther to consider if the applicant has established the irreparable injury that he would suffer, if an order of temporary injunction is not granted.’
11. On the question whether the Plaintiff has established a *prima facie* case, this court has no difficulty in answering the same in the affirmative. Section 26 of the *Land Registration Act* is clear that a certificate of title shall be taken by all courts as *prima facie* evidence that the person named as the proprietor of the land is the absolute and indefeasible owner of the land.



12. The Plaintiff has not only exhibited the title of the suit property and a Transfer Instrument from the previous owner one Peter Vincent Chiera Gichuru but also rate payment receipts from Nairobi City County.
13. The Plaintiff claims that it is likely to suffer irreparable harm unless the order of temporary injunction sought is granted. The deponent of the supporting affidavit has explained that the Defendant is laying a claim of ownership of the suit property on the basis of a fictitious Grant of Title Number I.R. 234920. The Applicant denies having disposed any of its interests over the suit property in favour of the Respondent or any other person. The Applicant therefore seeks the orders herein to preserve its proprietary rights over the suit property pending the hearing and determination of this suit.
14. I am persuaded that the Plaintiff's application meets the threshold for the grant of an order of temporary injunction pending hearing and determination of this suit.
15. The Plaintiff has established on the face of it that he has a right that deserves protection. In arriving at this decision, I am guided by the Court of Appeal dictum in the case of *Mbutia -vs- Jimba Credit Finance Corporation & Another* (1988) KLR.
16. The upshot is that the Plaintiff's application is allowed as prayed. Accordingly, an order of temporary injunction is hereby issued restraining the Defendant/Respondent, Abraham Cheruiyot Hussein, whether by himself, his servants, agents or any other person(s) claiming under him from dealing with or continuing to deal with, use, dispose of, part with, charge, alienate, lease or otherwise in any manner whatsoever interfering with the Plaintiff's ownership, control and proprietorship over all parcel of land to wit Land Reference No. 12507/5 (I.R 40679) situated in Nairobi County, pending hearing and determination of this suit.
17. Costs of this application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF OCTOBER, 2023

M.D. MWANGI

JUDGE

