



Barina Squatters Self Help Group v Barina Squatters Self Help Group Land Project & another (Environment and Land Appeal E007 of 2023) [2023] KEELC 21887 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21887 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E007 OF 2023
LA OMOLLO, J
NOVEMBER 30, 2023**

BETWEEN

BARINA SQUATTERS SELF HELP GROUP APPLICANT

AND

**BARINA SQUATTERS SELF HELP GROUP LAND PROJECT 1ST
RESPONDENT**

BARINA SQUATTERS LOBBY GROUP 2ND RESPONDENT

RULING

Introduction

1. This ruling is in respect of the Appellant's/Applicant's Notice of Motion application dated 22nd March, 2023 which is expressed to be brought under Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), Order 42 Rule 6 (6) of the Civil Procedure Rules and all other enabling provisions of the law.

The Application seeks the following orders:

- a. Spent
- b. Spent
- c. That pending the hearing of the appeal herein filed by the Appellant, an order of temporary injunction be issued to stop and restrain the Respondents and their officials, whether acting by themselves or through their agents, servants, hoodlums, employees or through anybody acting on their authority, from entering, surveying, leasing, fencing, or in any manner dealing with land parcels no LR No 11384, 5700 and 10332.
- d. That the costs of this application to be granted to the Applicant.



2. The application is based on the grounds on its face and supported by the affidavit sworn on 22nd March, 2023 by one Simon Ndungu Kuria, the chairman of the Appellant/Applicant.

Factual Background.

3. The Application dated 22nd March, 2023 was filed by the Appellant/Applicant after it had filed a Memorandum of Appeal dated 22nd March 2023. The Appellant sought the following prayers:
 - a. The Appeal be allowed.
 - b. The Honourable Court be and is hereby pleased to set aside the subordinate court orders of the 13th November, 2020, the 18th December, 2020 and 18th December, 2020 issued on the 21st December 2020, 15th January 2021 and 19th January 2023 respectively in Nakuru CMCC Miscellaneous Application No. 138 of 2020.
 - c. The matter Nakuru CMCC Miscellaneous Application No 138 of 2020 be set down for hearing and determination on merit.
 - d. The costs of this Appeal be provided for by the 1st Respondent.
4. The application first came up in Court on 23rd March, 2023. The said application was filed under certificate of urgency.
5. The Court stated that it was not persuaded as to the urgency of the application and directed that the same, the Memorandum of Appeal, be served upon the Respondents' and further directed that the application would be heard inter partes on 18th April, 2023.
6. On 18th April, 2023, the Appellant/Applicant in the presence of the 1st Respondent confirmed that it had received a response to its application dated 22nd March, 2023 and sought leave to file a Supplementary Affidavit. Leave was granted and directions issued that the application would be heard by way of written submission.
7. On 31st May, 2023, parties confirmed having filed their submissions and the matter was reserved for ruling.

The Appellant's/applicant's Contention.

8. The Appellant/Applicant deposes that vide a letter dated 22nd August, 2007 the then Nakuru District Gender & Social Development Officer confirmed them as the bonafide office bearers. It further contends that they had some wrangles within the office bearers on the management of the affairs of the Appellant and on 26th February, 2015 they held a meeting at the Rongai Deputy County Commissioners office where it was unanimously resolved that they hold elections on a date to be set.
9. The Appellant/Applicant contends that on the 10th April, 2015 an election was held wherein they were elected as officials and the group was duly registered as No REV/NKU/DSS/SHG/267 on the 9th December, 1996 and registration renewed on the 19th December, 2003.
10. The Appellant/Applicant contends that it is the registered owner of the suit properties L.R No 11384, 5700 and 10332 the suit land having been bought by the Appellant. It contends that the titles were originally charged to the Standard Chartered Bank but were discharged after they finished payments and further the Standard Chartered Bank executed transfer of the titles in their favour.
11. The Appellant/Applicant deposes that for purposes of registration, they formed a trust to hold titles on behalf of the members and had the same duly registered. It deposes that prior to coming into office,



- they had different factions who had bought parts of the suit parcel but a probe committee was formed on 31st July, 2007 which brought everybody under the Applicant/Appellant's umbrella.
12. The Appellant/Applicant contends that it is during the wrangles that a lobby group was formed and instituted a dispute at the Land Disputes Tribunal resulting into the filing of Land Dispute No 5 of 2004. It contends that once they came together, it was agreed and a consent was filed withdrawing the Land Dispute Tribunal Case however the consent was not endorsed by the court. It contends that the lobby group was not registered as a legal entity.
 13. It is the Appellant's/Applicant's deposition that they consequently engaged a surveyor to plan, subdivide, prepare and register the Registry Index Maps. It further deposes that the survey has been completed and they have given the relevant groups their respective portions, however, due to financial constraints, they have not been able to pay the surveyor to facilitate the registration of the Registry Index Map.
 14. The Appellant/Applicant contends that over time, the 1st Respondent has unsuccessfully attempted to meddle into their affairs. It further contends that they currently pay rates for the titles and have adduced clearance certificates.
 15. The Appellant/Applicant contends that the cause of action in the lower court originated from the orders of the court in Land Dispute Tribunal Case No. 5 of 2004 given and issued on 6th June, 2011 and 22nd June, 2011 respectively and the parties in Land Disputes Tribunal Case No 5 of 2004 were the 2nd Respondent as the Plaintiff and the 1st Respondent as the Defendant. It is also the Applicant's/Appellant's contention that the 1st Respondent is a different legal entity and was not a party in Land Dispute No 5 of 2004.
 16. The Appellant/Applicant deposes that neither the award by the Land Dispute Tribunal nor the Land Dispute Tribunal Case No 5 of 2004 identifies or specifies the land upon which the alleged 803 acres was to be given to genuine squatters. It further deposes that it was made an Appellant in the subordinate court after the matter had proceeded and orders made.
 17. The Appellant/Applicant contends that it filed an application dated 1st February, 2023 seeking to set aside the ex-parte orders issued by the subordinate court in Nakuru CMCC Miscellaneous Application No. 138 of 2020.
 18. It deposes that the orders were made on 13th November, 2020, 18th December, 2020 and issued on the 21st December, 2020, 15th January, 2021 and 19th January, 2023 respectively. It is the Appellant's/Applicant's deposition that the subordinate court dismissed the said application vide a ruling delivered on 3rd March, 2023.
 19. The Appellant/Applicant contends that it has filed an appeal against the said ruling of 3rd March, 2023. It further contends that the 2nd Respondent is not a legal entity capable of suing or being sued and it also has no capacity to transact or own property. The Appellant/Applicant contends that the 1st Respondent had sued the 2nd Respondent in the subordinate court where the 1st Respondent sought to enforce and or execute the orders made in Land Dispute No 5 of 2004.
 20. The Appellant/Applicant deposes that the 1st Respondent was not a party to the said suit and it cannot execute orders from a case to which it was not a party.
 21. The Appellant/Applicant further deposes that the 1st Respondent has attempted to interfere with the Appellant's parcels and the ex-parte orders made in the subordinate court included orders directed at the Police Service to offer security and assistance during execution proceedings.



22. The Appellant/Applicant contends that it has satisfied the conditions for grant of a temporary injunction pending appeal as it is the registered owner of the suit properties and its members are in possession.

1st Respondent's Response

23. In response to the application, the 1st Respondent filed a replying affidavit sworn by Patrick Maguru being the chairman of the 1st Respondent.
24. The 1st Respondent describes the application as incompetent, lacking merit, fatally defective, offensive to the rules of Civil Procedure and should be dismissed with costs to the 1st Respondent.
25. The 1st Respondent deposes that the Appellant/Applicant no longer exists owing to the fact that some time in 2004, its name changed to the 1st Respondent, a change that was initiated by the then officials including Simon Ndungu Kuria; the deponent of the Appellant's/Applicant's supporting affidavit.
26. The 1st Respondent deposes that the Appellant/Applicant does not hold a valid registration certificate and therefore is not capable of sustaining the instant application and appeal.
27. It is the 1st Respondent's deposition that the proper party to prosecute this application and suit should be the registered trustees which is a body corporate capable of suing and being sued and the Appellant/Applicant has no locus to sustain the instant application.
28. It is the 1st Respondent's deposition that the Appellant/Applicant is not the registered owner of the suit properties. The 1st Respondent contends that the land Dispute of 2004 was filed by the 2nd Respondent herein against the 1st Respondent which was originally the Applicant/Appellant.
29. The 1st Respondent contends that after the name was changed to the 1st Respondent, even correspondences with Standard Chartered Bank were addressed to the 1st Respondent and the assertions by the Applicant/ Appellant are an attempt to mislead this court to further delay settlement of members on their respective parcels of land.
30. The 1st Respondent contends that no evidence has been adduced to support the claim that the Appellant/Applicant members are in occupation of the suit land and they are at risk of being displaced/ evicted and none of the members moved the court to stop the alleged eviction.
31. The 1st Respondent contends that the Appellant/Applicant has no mandate to lodge suits and applications on behalf of its members and no evidence has been adduced to indicate which members the Appellant/Applicant is referring to.
32. The 1st Respondent contends that the decree issued on 22nd June, 2011 has never been stayed, varied, set aside and/or appealed against by the Appellant or any other party since 2011 to date despite being aware of the same.
33. The 1st Respondent deposes that the court in the Land Dispute Case identified the Applicant herein as the genuine group and ordered that it continues liaising with the bank without interference and the National Land Commission also recognized the Applicant as a genuine group after conducting investigations.
34. The 1st Respondent further deposes that Simon Ndungu Kuria was one of the officials in the 1st Respondent acting in the capacity of secretary executing his duties in that capacity including but not limited to executing documents in relation to the Applicant as secretary and communicating with members.



35. The 1st Respondent deposes that the said Simon Ndungu Kuria acted in the capacity of secretary of the group until sometime in 22nd July, 2008 when elections were held and he was replaced by Patrick Mbuthia. It further deposes that Simon Ndungu Kuria is not an official or a member of the 1st Respondent formerly the Applicant/Appellant as there were no elections in 2015 or at all electing him.
36. The 1st Respondent deposes that the matter was reported to the National Land Commission and it was found that indeed 803 acres had been identified and beacons placed on the land which were removed by rival trustee groups. The National Land Commission also found that the Appellant is not a genuine group but rather a rival group as it was formed by the squatters following advice from the Provincial Administration.
37. The 1st Respondent deposes that the National Land Commission established that the trustees who are also officials of the Appellant/Applicant herein collected money by selling the land to any customer irrespective of their membership and completely disregarding the status of those who had genuinely paid for the land.
38. It is the 1st Respondent's deposition that the members who contributed towards the purchase of the land have not been able to access the same. It also deposes that the Plaintiff in ELC Cause No 4 of 2019, one James Muigai made the final payment to the bank before the documents were released and it was a term of the agreement that the title documents would be released to the purchaser's Advocates Ms. Wambui Ndungu & Co Advocates, however unscrupulous officials of the bank and the group conspired to have the ownership documents released to them.
39. The 1st Respondent also contends that that their Advocate wrote to the bank to trace the whereabouts of the ownership documents which were released to her office. It contends that the application filed herein seeks to muddle the issues and see that genuine members do not get their share.
40. The 1st Respondent contends that the suit land was bought and payment completed, a survey plan was prepared and members settled on the land and due to the 2007-2008 post-election violence, members were displaced from the suit land and had to find safer areas.
41. The 1st Respondent contends that some unscrupulous officials including the said Simon Ndungu Kuria took advantage of the situation and started selling the land belonging to members to other third parties without their knowledge and they also made unsuccessful attempts to change the description of the land to Solai/ Ndungiri.
42. The 1st Respondent contends that the consent was never adopted, it was prepared and signed through fraudulent means in an attempt to withdraw the matter without consent of the parties necessitating an application by Ms. Mirugi Kariuki & Co, the 1st Respondent's then advocates.
43. The 1st Respondent contends that the Appellant/ Applicant was not a substantive party in Misc. Application No 138 of 2020 but rather an interested party. It contends that the 1st and 2nd Respondents' were necessary parties as they were the same parties litigating in Land Dispute No 5 of 2004.
44. The 1st Respondent also contends that the various groups have never been able to access their respective parcels of land which necessitated the filing of the instant application seeking police assistance in enforcing the decree by the Land Dispute Tribunal due to the violent nature of the officials of the proposed interested party officials.

Issues For Determination

45. The Appellant/Applicant filed its submissions on 27th April, 2023.



46. In its submissions, the Appellant/Applicant gives a background of the Application and identifies the following issue for determination:
- a. Whether the Appellant's/Applicant's application for injunction pending the hearing and determination of the appeal is merited?
47. The Appellant/Applicant submits that the intended appeal is not frivolous and is evidently arguable as evidenced by the grounds raised in the Memorandum of Appeal. It further submits that the trial court failed to take into consideration the distinct stake that the Appellant's have in the case.
48. The Appellant/Applicant argues that the trial court ignored the uncontroverted evidence that the cause of action in the lower court file originated from the orders of the court in Land Dispute No 5 of 2004 given and issued on 6th June, 2011 and 22nd June, 2011 respectively and that the parties in the said Land Dispute No 5 of 2004 were, the 2nd Respondent as the Plaintiff and the Appellant/Applicant as the Defendant.
49. The Appellant/Applicant submits that the 1st Respondent is a different legal entity and was not a party in Land Dispute No 5 of 2004 and as a result neither the award by the land Dispute Tribunal nor the Land Dispute Case No 5 of 2004 identifies or specifies the land upon which the alleged 803 acres was to be given to genuine squatters.
50. The Appellant/Applicant relies on the provisions of Order 42 Rule 6 (6) of the Civil Procedure Rules, 2010 in seeking an order for a temporary injunction pending an appeal. The Appellant/Applicant also relies on Section 79G of the [Civil Procedure Act](#) and the judicial decisions of *Umar Auto Garage New & Another v Githere Investments Limited* [2022] eKLR and *Patricia Njeri & 3 others v National Museum of Kenya* [2004] eKLR.
51. The Appellant/Applicant submits that this appeal will be rendered nugatory unless the orders of injunction sought in the application is granted at this very stage. It submits that the Appellant's members are in occupation of the suit parcels and refusing to grant an injunction would mean that the said members are at risk of being evicted by a party trying to enforce an order which it was not a party to and this would inflict greater hardship on the part of the Appellant.
52. The Appellant/Applicant submits that even assuming that the Appellant is no longer in existence and that the 1st Respondent took over the functions of the Appellant as argued in the Replying Affidavit, that would not justify the attempt to enforce an order to which the 1st Respondent was not a party to.
53. It submits that the 1st Respondent ought and should have first applied to amend the pleadings to become a proper party in the Tribunal proceedings and it has not done so to date and thus cannot purport to enforce an order issued in a suit which it was not privy to.
54. The Applicant/Appellant relies on the case of *Giella v Cassman Brown, Mrao Limited V First American Bank of Kenya and 2 others* and *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [2014] eKLR.
55. The Appellant/Applicant submits that the present application was filed timeously since the trial court rendered its decision on 3rd March, 2023 and the present application before this court was filed on 23rd March, 2023 just days after filing its appeal.



56. The Appellant/Applicant submits that the appeal is not frivolous and there is an arguable point of law which the learned magistrate misdirected herself on.
57. It submits that had the Learned Magistrate considered that the 1st Respondent was not a party to the proceedings in the Land Dispute Tribunal Case No 5 of 2004, she would have proceeded to set aside the miscellaneous proceedings commenced by the 1st Respondent in the subordinate court and allow the Appellant to present its case.
58. The Appellant/Applicant submits that it has a genuine and arguable case that raises substantial issues for determination and that it risks suffering irreparable harm in the event the application is not allowed.
59. The 1st Respondent filed submissions on 17th May, 2023.
60. In its submissions the 1st Respondent identifies the following issues for determination:
 - a. Whether the Applicant's application is merited?
 - b. Costs
61. The 1st Respondent submits that the Applicant has admitted that the land has been allocated to members who are in occupation of their various portions of land and the said members are the proper parties who ought to have brought an application that their land has been invaded and or they are on the verge of being evicted from the said parcels of land. It submits that as it stands no evidence has been adduced to show that the said members have authorized the instant suit or that their occupation and use of the subject properties have been threatened.
62. The 1st Respondent submits that a certificate of incorporation for Barina Squatters Self Help Group Registered Trustees was issued under the provisions of the [Trustees \(Perpetual Succession\) Act](#) Cap 164. It relies on Section 3 (3) of the Act.
63. The 1st Respondent submits that the registered proprietor being a body corporate capable of suing and being sued is the proper party to bring any application relating to the suit land and the Applicant herein has no capacity to bring and sustain the instant application.
64. It submits that it is manifest that the Applicant is not deserving of the orders sought and the instant application should be dismissed with costs.
65. The 1st Respondent relies on the judicial decision of *Giella vs Cassman Brown* and submits that the principles for granting an injunction are: prima facie case, irreparable loss and a balance of convenience. The 1st Respondent defines a prima facie case based on the Black's Law Dictionary 8th Edition to mean, "sufficient to establish a fact or raise a presumption unless disproved or rebutted." The 1st Respondent also relies on the judicial decisions of *Alex Wainaina t/a John Commercial Agencies vs Johnson Wanjihia* [2015] eKLR while quoting *Kenya Breweries Limited and Tembo Co-operative Savings and Credit Society Limited vs Wasinghton O. Okeyo*, Nairobi Civil Appeal No 332 of 2000 (UR) and *Magnate Ventures Limited vs Eng. Kenya Limited* [2009] eKLR 538.
66. The 1st Respondent submits that in undertaking the tests for granting an injunction at an interlocutory stage, the court will look at the application filed and the affidavit in support together with the exhibits. The 1st Respondent submits that this exercise borders on some sort of mini-trial within the suit.
67. It further submits that this exercise has time and again been considered very delicate as it involves a balancing act where on one hand, the court must not appear to be making conclusive finding based on untested affidavit evidence and at the same time the court must form a preliminary opinion on the whether the claim is arguable.



68. The Respondent relies on the judicial decision of *Mrao vs First American Bank of Kenya Limited & 2 others* in quoting *Vivo Energy Limited vs Maloba Petrol Station Limited & 3 others* [2015] eKLR and submits that for the Applicants to be granted an injunction, they have to demonstrate that they have a right and that right is being threatened by the Respondents' hence calling for this Honourable Court to protect it by putting a stop to the Respondents' actions.
69. The 1st Respondent submits that the Applicant has not demonstrated which of its right is threatened and/or is being violated to necessitate the issuance of the orders prayed. It is also the 1st Respondent's submission that the Applicant has not demonstrated that it has been authorized to bring any suit or application by the purported member's whose rights are at risk. It submits that the Applicant has failed to demonstrate a prima facie case.
70. On whether the Applicant will suffer irreparable damages, the 1st Respondent relies on the judicial decision of *Films Rover International Ltd & Others vs Common Film Sales Ltd* [1986] eAER 772 and submits that greater injustice will be occasioned to the Respondents' should orders be granted because the same would have the effect of overturning orders that were legally issued by the Honourable Court.
71. The 1st Respondent submits that the Applicant has attached the decree in land dispute case No 5 of 2004 and from the decree it is clear that the 1st Respondent has been identified by name as at the time the matter was being concluded it had changed its name and the Applicant cannot purport that the 1st Respondent was not a party. It submits that the Applicant has failed to show that it will suffer irreparable damages.
72. On whether there is a balance of convenience, the 1st Respondent submits that the conditions set in the *Giella vs Cassman Brown* judicial decision are that in the event the Court is in doubt as to existence of existence of a prima facie case and whether the Applicant will suffer irreparable damages, then it can determine the application on a balance of convenience.
73. The 1st Respondent submits that the Appellant/Applicant has failed to place adequate material before the court to show how an award of damages would not adequately compensate the loss of the suit property. It submits that the balance of convenience does not lie in favour of the Appellant/Applicant.
74. The 1st Respondent relies on the judicial decisions of *Mandan Pictures Ltd vs Art Pictures Ltd & Others* AIR 1956 CAL 428 as quoted in *Lucy Wangui Gachara vs Minudi Okemba Love and Nandan Pictures Ltd vs Art Pictures ltd & others*.
75. The 1st Respondent prays that the Application dated 22nd March, 2023 be disallowed with costs for failing to satisfy the principles set for grant of an injunction and reliance is placed on the judicial decision of *Joseph Oduor Anode vs Kenya Red Cross Society*, Nairobi High Court Civil Suit No 66 of 2009 [2012] eKLR.

Analysis And Determination.

76. After considering the pleadings and submissions of the Applicant and the 1st Respondent, the following issues arise for determination:
 - a. Whether the Appellant's/Applicant's application for injunction pending the hearing and determination of the appeal is merited?
 - b. Who should bear the costs?



77. An initial reading of the response of the 1st Respondent makes this application sound like a dispute between two faction of an organization and should that be the case, then this court is not the proper forum to resolve that dispute.

A. Whether the Appellant's/Applicant's application for a temporary injunction pending the hearing and determination of the appeal is merited?

78. Order 42 Rule 6(6) provides as follows;

“Notwithstanding anything contained in sub-rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

79. The principles for grant of temporary injunction pending appeal are settled. In the case of Patricia Njeri & 3 Others vs. National Museum of Kenya [2004] eKLR, the court gave the following principles as governing grant of temporary injunction pending appeal;

- a. “An order of injunction pending appeal is a discretionary which will be exercised against an Applicant whose appeal is frivolous.
- b. The discretion should be refused where it would inflict great hardship than it would avoid.
- c. The Applicant must show that to refuse the injunction would render the appeal nugatory.
- d. The court should also be guided by the principles in Giella vs. Cassman Brown [1973] EA 358.”

80. In the case of Giella vs. Cassman Brown [1973] EA 358, the court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally 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.”

81. A prima facie case was defined in the case of Mrao Limited vs. First American Bank of Kenya & 2 Others [2003] e KLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

82. In Rockland Kenya Limited v Elliot White Miller [1994] eKLR, the court 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." Emphasis mine

83. I have perused the Memorandum of Appeal and find that the appeal is arguable. The Applicant deposes that neither the award by the Land Dispute Tribunal nor the Land Dispute Tribunal Case No 5 of 2004 identifies or specifies the land upon which the alleged 803 acres was to be given to genuine squatters.
84. The Appellant/Applicant stated that it is the registered owner of the suit parcel and that its members are in possession. Appellant/Applicant stated that there is a likelihood of violence breaking on the suit premises if the orders of temporary injunction and/or status quo are not granted by the court for the reason that the orders issued by the subordinate court included orders directed at the Police Service to offer security and assistance during execution i.e. taking of 803 acres of land by the 1st Respondent. I find that failure to issue orders on temporary injunction would inflict great hardship than it would avoid.
85. It is important that parties are granted an opportunity to exhaust its right to be heard on appeal and in doing so, the court is duty bound to ensure that the appeal is not rendered nugatory.
86. In this case if the 1st respondent takes 803 acres of land that is not known or sufficiently described and / or execute the said order against an entity that was not a party to the suit as alleged, in my view, this would cause great hardship and loss.
87. The Court has further analyzed the Supporting Affidavit deposed by Simon Ndungu Kuria in support of the application dated 22nd March, 2023 and noted that a copy of the ruling dated 3rd March, 2023 that is the subject of the appeal has not been annexed to the application. However, to buttress the possibility of violence breaking out on the suit premises, the Appellant/Applicant has annexed various court orders as SNK 16 a, b and c which sought the assistance of the police to maintain law and order while the 1st Respondent "takes 803 acres of land to be given to recognized genuine squatters"
88. I have considered the rival positions on this matter and I am reminded by Sections 1A and 1B of the *Civil Procedure Act* to ensure the ends of justice are met in a manner that is just, expeditious, proportionate and affordable. In this case if the 1st Respondent "takes" 803 acres of land that is not known or sufficiently described and/or execute the said order of 22nd June, 2011 against an entity that was not a party to the suit as alleged, in my view, this would cause great hardship and loss. Further this court is yet to interrogate the allegations by the Appellant are founded. It is only just and reasonable that the suit property be preserved before the determination of this Appeal.
89. Taking these facts and circumstances into consideration, I find that an order of temporary injunction pending appeal is merited.



Disposition.

90. In the result, the application dated 22nd March, 2023 is allowed in the following terms:

- a. That pending the hearing of the appeal herein, an order of temporary injunction is hereby issued to stop and restrain the Respondents and their officials, whether acting by themselves or through their agents, servants, hoodlums, employees or through anybody acting on their authority, from entering, surveying, leasing, fencing, or in any manner dealing with land parcels no LR No 11384, 5700 and 10332 pending the hearing and determination of this appeal.
- b. The cost of this application shall abide the outcome of the Appeal.

91. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF NOVEMBER, 2023

L. A. OMOLLO

JUDGE

In the presence of:

No appearance for the Applicant

Mr. Maina for the 1st Respondent

Court Assistant: Ms. Monica Wanjohi.

