



Kariuki t/a Savannah Land Surveyors v Kamwati (Environment & Land Case 142 of 2022) [2023] KEELC 22217 (KLR) (23 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 142 OF 2022
BM EBOSO, J
NOVEMBER 23, 2023**

BETWEEN

**FRANCIS MURIGIH KARIUKI T/A SAVANNAH LAND
SURVEYORS PLAINTIFF**

AND

JOHN NDICHU KAMWATI DEFENDANT

RULING

1. Falling for determination in this ruling is the notice of motion dated 22/11/2022, brought by Francis Murigih Kariuki [the applicant]. Through the motion, the applicant seeks: (i) an order directing the Ruiru Land Registrar to register a restriction barring further dealings in the land register relating to land parcel number Ruiru/Ruiru East Block 1/7308 [hereinafter referred to as ‘the suit property’] pending the hearing and determination of this case; and (ii) an interim injunction restraining the respondent either by himself, his agents or servants from dealing with, encroaching on, trespassing on, or interfering with the plaintiff’s legal, contractual, equitable interests and/or rights of quiet possession, occupation and enjoyment of the suit property pending the hearing and determination of this case. The application was premised on the grounds outlined in the motion and in the applicant’s supporting affidavit sworn on 22/11/2022. It was canvassed through written submissions dated 22/9/2023, filed by M/s Wakahiu Mbugua & Company Advocates.
2. The case of the applicant is that he entered into a sale agreement dated 14/1/2020 with the respondent, for purchase of the suit property at Kshs 18,000,000. The suit property was initially referred to as Plot “E”, measuring approximately 50 by 100 feet and was a subdivision from land parcel number Ruiru/Ruiru East Block 1/1339. The applicant contends that he paid Kshs 5,000,000 upon execution of the agreement. On 13/2/2020, he paid an additional Kshs 5,000,000 which was agreed to be paid within 60 days from the date of execution of the sale agreement. The balance of Kshs 8,000,000 was to be paid within twelve (12) months in exchange of a title deed to the suit property in the applicant’s name.



3. The applicant further contends that he learnt that a title deed to the suit property was issued on 29/9/2022 and the respondent intended to transfer the suit property to a third party. The applicant adds that the respondent served him with a notice of termination of the sale agreement. He contends that he has developed the suit property which he has been in occupation of since purchase and he is likely to suffer irreparable loss if the orders sought are not granted.
4. The respondent opposed the application through his replying affidavit sworn on 2/5/2023 and written submissions dated 2/5/2023, filed by M/s Mburu Machua & Company Advocates. The respondent confirms being privy to the agreement dated 14/1/2020. He also confirms receipt of part payment of the purchase price totaling Kshs 10,000,000. However, the respondent contends that upon consulting with his advocates on clause 4 of the sale agreement on when the balance of Kshs 8,000,000 was payable, he realized that the clause was prejudicial to him, prompting him to inform the applicant that he would only effect transfer of title to the suit property upon payment of the balance of Kshs 8,000,000. He adds that the applicant agreed to this variation in the agreement.
5. The respondent contends that title to the suit property was issued on 21/9/2021 in the joint names of the respondent and his nephew one Rogers Kinyanjui Muhia, and on 29/9/2022, another title deed was issued solely in his name to enable him eventually transfer the land to the applicant. The respondent states that despite informing the applicant about issuance of the title deed and reminding him to pay the balance of the purchase price severally from 21/9/2021, the applicant failed to respond, prompting him to terminate the agreement. The respondent adds that the applicant only put up temporary structures on the suit property subject to a lease agreement entered into between them. The respondent urges the court to dismiss the application.
6. The single question to be determined in the application is whether the applicant has satisfied the criteria upon which trial courts exercise jurisdiction to grant interlocutory injunctive reliefs. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown* [1973] EA 358: First, the applicant is required to demonstrate a *prima facie* case with a probability of success. Second, the applicant is required to demonstrate that if the injunction is denied, he would stand to suffer injury that may not be indemnifiable through an award of damages. Third, should the court have doubt on the applicant's satisfaction of both or either of the above two requirements, the application is to be decided based on the balance of convenience. At the stage of disposing the plea for interlocutory relief, the court does not make conclusive or definitive findings or pronouncements on the key issues in the suit. Definitive and conclusive findings and pronouncements are reserved for judgment after trial.
7. At this interlocutory stage, there is common ground that there was a binding land sale contract between the two parties to the suit. The defendant has admitted receipt of Kshs 10,000,000 out of the agreed purchase price of Kshs 18,000,000. It does emerge that subsequent to signing the sale agreement, and upon receipt of the sum of Kshs 10,000,000, the defendant consulted his advocate and was advised by his advocate that conveying the land to the plaintiff before the plaintiff paid him the balance of the purchase price would be prejudicial to him. The defendant contends that the contract was subsequently varied. At this interlocutory stage, the defendant has not exhibited a compliant variation agreement in terms of Section 3(3) of the [Law of Contract Act](#). There is therefore no demonstration of breach of contract by the plaintiff at this interlocutory state.
8. On his part, the plaintiff has demonstrated the probability that there may be breach of the contract by the defendant by dint of him failing to convey the suit land to the plaintiff in terms of the parties' mutual contract. In the circumstances, the court is satisfied that the plaintiff has demonstrated a *prima facie* case with a probability of success.



9. On the adequacy of damages, the plaintiff has demonstrated that he is a purchaser in possession of the land. He contends that he has made substantial developments on the land. The defendant's position is that the plaintiff's developments are temporary structures. The view the court takes is that, as a purchaser already in possession of the land, his ejection from the land would constitute damage that may not be adequately indemnifiable through an award of damages.
10. Lastly, taking into account the foregoing, the balance of convenience tilts in preserving the title and the *status quo* of the land itself.
11. For the above reasons, I will issue an interlocutory order preserving the relevant land register and the land itself in tandem with prayers 2 and 3. Costs of the application will be in the cause.
12. In the end, the notice of motion dated 22/11/2022 is disposed in the following terms.
 - a. Pending the hearing and determination of this suit, there shall be no dealings in the land register relating to land parcel number Ruiru/Ruiru East Block Githunguri 1/7308.
 - b. Pending the hearing and determination of this suit, no further developments or construction works shall be undertaken on land parcel number Ruiru/Ruiru East Block Githunguri 1/7308.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 23RD DAY OF NOVEMBER 2023

B M EBOSO

JUDGE

Court Assistant: Hinga

