



REPUBLIC OF KENYA



KENYA LAW
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Langat (Suing in her capacity as the administrator of the Estate of Joel Kimetet Arap Langat (Deceased)) v Ngetich & 2 others (Environment & Land Case 24 of 2023) [2023] KEELC 21572 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21572 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 24 OF 2023
A OMBWAYO, J
NOVEMBER 16, 2023**

BETWEEN

**NAOMI CHEPKORIR LANGAT PLAINTIFF
SUING IN HER CAPACITY AS THE ADMINISTRATOR OF THE ESTATE OF
JOEL KIMETET ARAP LANGAT (DECEASED)**

AND

**AGNES CHEBET NGETICH 1ST DEFENDANT
CHIEF LAND REGISTRAR 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The plaintiff seeks orders that pending the hearing and determination of this suit, this Honorable Court do issue an injunction restraining the 1 /Defendant/ Respondent, their servants, agents and/ or any other person acting under her authority from; sub-dividing, selling, encroaching on, cultivating, leasing charging, transferring and/or otherwise interfering with all that land measuring 11.30 Hectares comprised in the titles formerly known as L.R No. Olenguruone/keringet Block 1/60 (kirobon), now sub-divided into L.R No. Olenguruone/keringet Block 60/333-341.
2. The applicant further prays that pending the hearing and determination of this suit this Honourable Court do issue a temporary order of inhibition inhibiting/prohibiting the registration of any dealings in respect to all that parcel of land known as L.R No. Olenguruone/keringet BLock 1/60 (kirobon), now sub-divided into L.R.No's. OLenguruond/Keringet Block 60/333-341, being resultant from mutation and subdivision of L.R No. Olenguruone/Keringet Block 1/60 (kirobon). The applicant prays that the costs of this application be provided.



3. The application is based on grounds that the Plaintiff/ Applicant herein is the Administratrix of the Estate of Joel Kimetet Arap Langat(deceased) who, at the time of his demise, was entitled to registration as sole proprietor, by virtue of his shareholding in Kirobon Farmers Co. Ltd., of all that parcel of land known as L.R No. Olenguruone/Keringet Block 1 /60(Kirobon) now subdivided into parcels numbers 333-341.
4. In or about May 2022, the 1st Defendant/ Respondent, acting in collusion with the 2nd Defendant, unlawfully registered herself(1st Respondent as the proprietor of L.R No Olenguruone /Keringet Block 1/60 (Kiroboni) Lawfully belonging to Joel Kimetet arap Langat(deceased) knowing very well that she was not entitled to registration thereof and thereafter caused the closure of the registers through subdivision of the said parcel of land into portions comprised in L.R Nos Olenguruone/ Keringet Block 60/333-341.
5. In or about July 2023, armed with the title that she had irregularly and fraudulently acquired, the 1st Defendant/ Respondent trespassed onto the suit land and is in the process of erecting a house thereon.
6. In view of the foregoing, it is apparent that the 1st Defendant/ Respondent is acting in connivance with officers of the 2nd Defendant/ Respondent and unless they are restrained, may dispose of the land to third parties thereby rendering this suit nugatory.
7. Attempts by the Plaintiff/Applicant to settle the matter amicably have been rendered futile as the 1st Defendant/ Respondent has persisted in her acts of trespass and destruction of the Applicant's fences/ property.
8. The Plaintiff/ Applicant is now apprehensive that the 1st Defendant/ Respondent and/or their agents may ultimately deprive the beneficiaries their rightful entitlement of the land parcel previously known as L.R No. Olenguruone/Keringet Block 1/60 (Kirobon) though now comprised in Parcels no. 333-341 unless restrained by this Honorable Court. The Plaintiff/ Applicant claims that she stands to suffer irreparably unless the orders sought are granted as the 1st Defendant/ Respondent's acts of trespass continue unabated.
9. In her reply, the 1st defendant states that she is a co-wife to the plaintiff and that her husband the late Joel Kimet Arap Langat put her on the land and made it her matrimonial home and directed that the title deed be issued in her name by the Kirobon Farmers Co Ltd. The respondent states that the applicant obtained the grant of the letters of administration intestate secretly and that she has moved court to revoke the grant.
10. The law that governs applications for injunction is premised under Order 40 Rule 1 of the [Civil Procedure Rules](#) 2010 which provides as follows:-
 1. 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.

11. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

12. Consequently, the Plaintiff ought to, first, establish a *prima facie* case. The plaintiff/Applicant claimed that they have established a *prima facie* case and relied on the judicial decision of *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. I have considered the application which is opposed. The plaintiff claims that the deceased Joel Kimetet Arap Langat was entitled to be registered as the owner of the land L.R No Olenguruone/Keringet/Block 1/60 having been a member of the land buying company and had paid for the shares are true.
14. The company register annexed to the supporting affidavit shows that the said plot belonged to the deceased. The plaintiff has produced documents that show that the deceased had an interest in the land and therefore her case is not frivolous. I do find that the plaintiff has demonstrated that she has a prima facie case with a likelihood of success. However, the claims that the 1st defendant was a co wife to the deceased Joel Kimetet Langat are not controverted and therefore the interest of the plaintiff and the 1st defendant will be determined after the hearing, and the judgment of the main suit.
15. I do find that the plaintiff is likely to suffer irreparably if the injunction is not allowed as the property might be sold or wasted before determination of the suit. However, the court ought to consider the fact that the 1st defendant has already put up a house on the suit property and has even subdivided the land.
16. Considering the above facts on a balance of convenience, I do find that the plaintiff and the 1st defendant being widows of the late Joel Kimetet Arap Langat, the proper order would be to maintain the status quo on the ground and the register at the lands office kept by the Land Registrar and therefore I do grant orders that pending the hearing and determination of this suit the status quo be maintained thus the 1st defendant to continue utilizing the land without causing any wastage on the same. Moreover, that pending the hearing and determination of this suit, an order of inhibition is hereby issued inhibiting or prohibiting the registration of any dealings in respect to all that parcel of land known as L.R No. Olenguruone/Keringet BLock 1/60 (kirobon), now sub-divided into L.R.No's. OLenguruond/keringet Block 60/333-341, being resultant from mutation and subdivision of L.R No. Olenguruone/keringet Block 1/60 (kirobon). Costs to be in the suit. Orders accordingly.



**RULING, DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH
NOVEMBER 2023.**

A O OMBWAYO

JUDGE

