



**National Social Security Fund v Ngige (Environment & Land Case  
E021 of 2023) [2023] KEELC 22507 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22507 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E021 OF 2023  
EK WABWOTO, J  
DECEMBER 18, 2023**

**BETWEEN**

**NATIONAL SOCIAL SECURITY FUND ..... PLAINTIFF**

**AND**

**MARTIN NGIGE ..... DEFENDANT**

**RULING**

1. The Plaintiff filed a Notice of Motion Application dated 18<sup>th</sup> July 2023 which was accompanied by a Supporting Affidavit sworn by Obed Mbuvi. The Plaintiff sought the following orders:
  - i. ...Spent.
  - ii. ...Spent.
  - iii. That pending hearing and determination of this application, this Honourable Court be pleased to issue an order of injunction restraining the Respondent, whether by himself, his agents, servants and/or any person claiming under him from trespassing, accessing or interfering with the Applicants' parcels of land known as Land Reference LR No 209/11331, 209/12220, 209/12219, 209/11412 and LR No 209/12287 situated along Kenyatta Avenue, Nairobi and the Officer Commanding Station (OCS) Central Police Station to ensure compliance with this order.
  - iv. That pending hearing and determination of this suit, this Honourable Court be pleased to issue an order of injunction restraining the Respondent, whether by himself, his agents, servants and/or any person claiming under him from trespassing, accessing or interfering with the Applicants' parcels of land known as Land Reference LR No 209/11331, 209/12220, 209/12219, 209/11412 and LR No 209/12287 situated along Kenyatta Avenue, Nairobi and the Officer Commanding Station (OCS) Central Police Station to ensure compliance with this order.



- v. That costs of this Application be provided for.
2. The Application was premised on the following grounds; that the Applicant is the legitimate and registered owner of all those parcels of land known as Land Reference No. 209/11331, 209/12220, 209/12219, 209/11412 and LR No 209/12287(the suit properties) situated along Kenyatta Avenue Nairobi wherein the Applicant operates its parking business, that on 17<sup>th</sup> July 2023, the Respondent without an iota of justification and colour of right, in company of hired goons invaded the suit premises and sought to evict the Applicant and that when confronted, the Respondent insisted that he owns the suit properties but did not produce any documents.
  3. It was also averred that the actions of the Respondent amounted to trespass as he has no legitimate claim as a registered owner of the suit properties and that the Applicants titles are protected by law from interference by the Respondent and his cronies.
  4. The Application was canvassed by way of written submissions. The Applicant filed written submission dated 25<sup>th</sup> October 2023. No written submissions were filed by the Respondent despite service and being notified of the proceedings herein.
  5. In the Applicant's submissions dated 25<sup>th</sup> October 2023, it was submitted that the Applicant has shown that it is the legitimate and registered owner of the suit properties. Relying on the cases of *Winfred Nyamira Maina v Peterson Onyiego Gichana* (2015) eKLR and *Kenleb Cons Limited v New Gatitu Service Station* (1990) eKLR it was submitted that the Applicant had established a prima facie case and the application was not intended to buy time, nor was it frivolous or vexatious. It was further submitted that the Respondent would suffer no hardship as opposed to the Applicant who stood to lose property should the orders sought not be granted.
  6. I have considered the application and submissions filed by the Applicant and the main issue that arises for determination is whether the Applicant have met the threshold to be granted the orders sought.
  7. Section 63 of the *Civil Procedure Act* and Order 40(1) of the *Civil Procedure Rules*, stipulates that 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.”
  8. The case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others*, CA No. 77 of 2012, sets out the principles to determine the threshold for temporary injunction in that a party seeking a temporary injunction has to establish a prima facie case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.



9. In the instant case, the evidence presented by the Applicant does demonstrate that indeed the Applicant has established a prima facie case to warrant the grant of the orders sought. The suit properties are currently registered in the names of the Applicant and the Applicant stands to suffer some loss should the injunctive orders sought not be granted. Perusal of the Court records confirms that at the time of writing this ruling, no affidavit of service had been filed and no Defence or response had been filed by Defendant. It is therefore in the interest of justice that the suit properties be preserved against wastage and damage and both parties given audience and adequate time to present their cases in trial.
10. In the foregoing, this Court finds that the Applicant has established a prima facie case and therefore the Notice of Motion application dated 18<sup>th</sup> July 2023 is merited and allowed in the following terms:
  - i. Pending the hearing and determination of this suit, an injunctive order is issued restraining the Defendant/Respondent, whether by himself, his agents, servants and/or any person claiming under him from trespassing, accessing or interfering with the parcels of land known as Land Reference LR No 209/11331, 209/12220, 209/12219, 209/11412 and LR No 209/12287 situated along Kenyatta Avenue, Nairobi.
  - ii. Costs will abide the determination of the main suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER 2023.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Mwangi Kang'u for the Plaintiff/Applicant.

N/A for the Defendant/Respondent.

Court Assistant; Caroline Nafuna.

