



**Jattani v Jattani (Environment and Land Appeal 9 of 2023)
[2023] KEELC 21965 (KLR) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 21965 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILOLO
ENVIRONMENT AND LAND APPEAL 9 OF 2023
PM NJOROGE, J
DECEMBER 4, 2023**

BETWEEN

ABDI GUYO JATTANI APPELLANT

AND

GUYO JATTANI RESPONDENT

RULING

1. This applications is dated 25th May, 2023 and seeks orders;
 1. That this application be certified urgent and the same be heard ex-parte at first instance.
 2. That this Honourable court be pleased to issue an order of temporary injunction restraining Safaricom PLC from releasing the accumulated rent or any subsequent rent to the respondent, his agents or anyone acting on his behest in respect of the lease agreement dated 24th February, 2014 pending the hearing and determination of this application.
 3. That this Honourable Court be pleased to issue an order of temporary injunction restraining Safaricom PLC from releasing the accumulated rent or any subsequent rent to the respondent, his agents or anyone acting on his behest in respect of the lease agreement dated 24th February, 2014 pending the hearing and determination of this appeal.
 4. That this Honourable Court be pleased to issue a temporary injunction restraining the respondent whether by himself, his agents and/or servants or any other persons acting on their behest from claiming or collecting any cash/revenue/proceeds emanating from the rental premises erected on Plot No. 212 pending the hearing and determination of this appeal herein.
 5. That this Honourable Court be pleased to issue a temporary injunction restraining the respondent whether by himself , his agents and/or servants or any other persons acting on



their behest from claiming or collecting any cash/revenue/proceeds emanating from the rental premises erected on Plot No. 212 pending the hearing and determination of this appeal herein.

6. That in the alternative and without prejudice to the above, the court be pleased to direct any cash/revenue/proceeds emanating from the rental premises erected on Plot No. 212 be deposited in the court's account pending the hearing and determination of this application.
 7. That in the alternative and without prejudice to the above, the court be pleased to direct that any cash/revenue/proceeds emanating from the rental premises erected on Plot No. 212 be deposited in the court's account pending the hearing and determination of this appeal.
 8. That this Honourable Court be pleased to issue an order of inhibition restraining the respondent from, selling, disposing of, charging or in any other way dealing with the property to the detriment of the Appellant/Applicant pending the hearing and determination of this Appeal.
 9. That this Honourable Court be pleased to grant leave to the Appellant to adduce additional evidence being:
 - i. Letter from the Ministry of Lands and Physical Planning dated 23rd May, 2023;
 - ii. Letter from the Ministry of Lands and Physical Planning dated 13th May, 2022;
 - iii. Letter from Director of Criminal Investigations dated February 14, 2023
 10. That this Honourable court be pleased to issue such further orders as it may deem fit under the circumstances of this case.
 11. That the costs of this application be costs in the cause.
2. The application is supported by the affidavit of Abdi Guyo Jattansi, the applicant and has the following grounds:
- a. The Appellant/Applicant is aggrieved by the decision and judgment of the court made on 12th May, 2023 in Moyale –ELC Case No. E006 of 2021 and have filed the Appeal against the said decision.
 - b. The said Appeal is well grounded and has high chances of success but the same will be rendered nugatory unless the above orders are granted as a result of the said judgment and decree made thereof.
 - c. That the decision of the Honourable Court was arrived at on reliance on a fake document adduced by the respondent.
 - d. That the Appellant has obtained new and credible evidence discrediting the letter of allotment relied upon by the Respondent and the trial court in making the impugned judgment.
 - e. That the suit property and the proceeds thereof ought to be preserved to prevent the Respondent's from misusing the same so as to avoid complications arising from compensation when the appeal succeeds.
 - f. That the instant appeal challenges ownership of the suit property which also in turn determines who should enjoy the rental proceeds thereon and therefore it is in the best interest to allow the application.
 - g. It is in the interest of justice that he is afforded ample opportunity to exercise his right of appeal.



10. The respondent in his submissions concludes by urging this court to find that the appellant is on a mission to frustrate his entitlement of the suit property by delaying and unduly prolonging the litigation process. He urges the court to dismiss this application with costs.
11. I have carefully considered all the issues raised by the parties to buttress their diametrically incongruent assertions. I am persuaded that the appellant has satisfied requirements for a grant of a temporary injunction as prayed in prayer 5 of the application pending the hearing and determination of the appeal. Prayer 8 is also merited in order to preserve the subject matter.
12. The court is cognizant of the fact that this is an interlocutory application. In making decisions concerning an interlocutory application in an appeal, a court of law ought to desist from making decisions which could tend to give orders akin to orders which ought to be issued upon full determination of the appeal. I do opine that the determination concerning production of new evidence should be considered during the hearing and determination of the appeal. Accordingly, I decline to allow prayer 9 in the application.
13. Consequently, I hereby issue the following orders;
 - a. Prayers 5 and 8 in the application are granted.
 - b. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 4TH DAY OF DECEMBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Brian Mwirigi for the Appellant.

Miss Mwiti holding brief for Owande for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

