



**Mogi v Omumu & 3 others (Environment & Land Case
E332 of 2021) [2022] KEELC 3073 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3073 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E332 OF 2021**

**MD MWANGI, J
MAY 31, 2022**

BETWEEN

CHARLES MAKORI MOGI PLAINTIFF

AND

FRANCIS N OMUMU 1ST DEFENDANT

EMBAKASI RANCHING CO. LTD 2ND DEFENDANT

LAND REGISTRAR NAIROBI 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

(In respect of the plaintiff's notice of motion application dated September 15, 2021 seeking an interlocutory injunction pending the hearing and determination of the main suit)

Background.

1. The application before me for consideration is the notice of motion application dated September 15, 2021. The application was filed by the plaintiff herein seeking for orders that an injunction be issued restraining the defendants, their servants, agents or any one claiming under them or on their behalf from interfering with the quiet possession by the plaintiff/applicant herein pending hearing and determination of this suit.
2. The application is brought under the provisions of order 40 and order 51, rule 1 of the [Civil Procedure Rules](#) and sections 3, 3A of the [Civil Procedure Act](#) and the Land Registration Act.
3. The Application is based on the 5 grounds on the face of it, namely:
 - a. That the 1s defendant has trespassed to the plaintiff's land reference Nairobi Block 105/14186 and started excavating stones in the said land claiming ownership.



- b. That it is only through this Honourable court's intervention that the parties herein can be heard on merit and issues be determined by the court to avoid violence.
 - c. That unless the honourable court issued orders sought herein, the defendants may proceed to issue double allocation documents to fraudulently prejudice the plaintiff/applicant who has all documents of ownership waiting for the title thereof.
 - d. That unless the defendants are restrained by way of an injunction, the defendants are likely to sanitize the fraudulent occupation by the 1st defendant into the plaintiff/applicant's land.
 - e. That it is fair and just in the circumstances to issue the orders sought to restrain the defendants from causing any illegality on the land.
4. The application is further supported by the affidavit of the plaintiff sworn on September 15, 2021.
 5. In his supporting affidavit, the plaintiff has exhibited his share certificate number 024000 issued to him by the 2nd defendant, Embakasi Ranching Co. Ltd on 13/3/2019.
 6. The plaintiff accuses the 1st defendant of illegally trespassing into his land, L.R Nairobi Block 105/14186 whereby he has even started constructing a perimeter wall around it, without the Plaintiff's authority. further the plaintiff alleges that the first defendant is also illegally excavating stones from the land. He has exhibited photos of the activities on the suit property.
 7. The plaintiff deposes that unless the court issues orders restraining the defendants, his property will be wasted and violence may result. He urges the court to issue restraining orders pending the hearing and determination of the suit.
 8. Further the plaintiff expresses his suspicion that the 1st defendant may introduce fake and fraudulent documents of ownership of the suit property with the intention of dispossessing him of his land.
 9. The plaintiff states that he was issued with a certificate of lease on 12th March 2020. Finally, the plaintiff alleges that he has been in possession of the suit property for many years.

Response by the 1st Defendant

10. The 1st defendant opposes the application by the plaintiff by way of a replying affidavit sworn on the September 24, 2021.
11. The 1st defendant deposes that he is the bona fide registered owner of all that parcel of land known as Nairobi/Block 105/14186. He has attached a copy of the lease document issued to him.
12. The 1st defendant avers that he purchased the suit property way back in the year 2007 from one Martin Gideon Wambaa who was the administrator of the estate of Henry Kioi Wambaa. He has attached a copy of the sale agreement.
13. The suit property had been allocated to the late Henry Kioi Wambaa vide a share certificate number 1417. The 1st defendant avers that he bought the suit property for valuable consideration making him the bona fide legal owner thereof. The suit property was transferred to him on conclusion of the transaction, and he was issued with a share certificate No. 4081 by the 2nd defendant who sanctioned the transfer to him.
14. The 1st defendant avers that the plaintiff called him on July 1, 2019 accusing him of trespassing into his land. The 1st defendant denied the accusation and proceeded to report the matter at Ruai Police Station where the plaintiff was summoned but failed to turn up. The plaintiff's advocate however, later,



went to the police station and produced a document showing that the plaintiff's land was described as "V14065".

15. The 1st defendant counter-accuses the plaintiff of attempting to use fraudulent means to get a title over his parcel of land. The 1st defendant affirms that he has been issued with letters by the 2nd defendant confirming his ownership of the suit property.
16. The 1st defendant states that the 2nd defendant being the original owner is the only one capable of confirming ownership of the suit property. The 1st defendant avers that the 2nd defendant has already confirmed him as the bona fide owner thereof.
17. The 1st defendant alleges that the plaintiff is a complete stranger to the suit property. He has severally attempted to forcefully enter the land and remove him from the property thereby infringing his right to quiet possession.

Court's directions.

18. The court directed that the plaintiff's application be canvassed by way of written submissions. Both the plaintiff and the 1st defendant have complied. The other defendants have so far not participated in these proceedings.

Issues for Determination.

19. Having perused the pleadings by the parties in this matter, as well as their submissions, the only issue for determination in the court's opinion is whether the plaintiff should be granted an order of interlocutory injunction as prayed.

Analysis and determination.

20. The principles guiding the grant of an order of interlocutory injunction are well settled since the now notorious case of *Giella vs Cassman Brown & Co. Ltd* (1973) EA 358. Both parties have actually made reference to the said case.
21. The Court of Appeal in the case of *Nguruman Ltd vs Jan Bonde Nielsen & 2 others* (2014) eKLR upheld the principles spelt out in *Giella* case. The court however added that the 3 conditions and stages are to be applied as separate and distinct hurdles which an applicant has to surmount sequentially in order to qualify for an award of an order of interlocutory injunction.
22. The 1st condition that an applicant must surmount is to satisfy the court that he has a prima facie case.
23. The Court of Appeal in the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* (2003) eKLR defined a prima facie case to mean;

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

24. In the above cited case of *Nguruman Ltd vs Jan Bonde Nielsen & 2 others* (supra) the court was categorical that at this stage of the proceedings, the court must not examine the merits of the case closely. The court stated that:-

"..We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that



the court is to see is that on the face of it, the person applying for an injunction has a right which has been or its threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise as to the existence of the rights which he alleges.”

25. The 1st defendant in his submissions while acknowledging that the applicant has presented documents of ownership of the suit property argues that that the same are under investigation by the director of criminal investigations to confirm if they are forgeries. While that may be so, the investigations have not been completed.
26. In this case therefore, and considering the application by the plaintiff and the supporting affidavit thereof, I am persuaded that the Plaintiff has demonstrated a prima facie case.
27. The 2nd hurdle that the Applicant need to surmount is to establish that he stands to suffer irreparable loss/injury unless the order of interlocutory injunction is granted. In the *Nguruman Ltd* case, the court stated as follows:-

“On the 2nd factor, that the applicant must establish that he ‘might otherwise’ suffer irreparable injury which cannot adequately be remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, the nature and extent of injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant.”

28. An interlocutory injunction is issued to prevent irreparable injury. This injury must be demonstrated to be actual and substantial and that cannot adequately be compensated by an award of damages.
29. The applicant in this case has not pleaded that he stands to suffer irreparable injury unless the order of interlocutory injunction is granted. I have keenly read through the Plaintiff’s submissions as well and he has not submitted on this aspect at all.
30. The 1st defendant/respondent in his submissions points out the applicant has not shown in any way that he stands to suffer irreparable damage or any damage for that matter. He submits that it is actually the first defendant/respondent stands to suffer such loss since he is the one in possession of the land. Further, that the 1st defendant has built his whole life and livelihood on the suit property where he resides with his family.
31. I must be quick to reiterate that it is not enough for an Applicant to merely establish a prima facie case. That alone is not sufficient for the grant of an order of interlocutory injunction. The applicant must proceed farther to satisfy the court that he is likely to suffer irreparable injury if the order of interlocutory injunction is not granted. That was the gist of the holding of *Nguruman Ltd* case (supra). The court cited with approval the decision in *Kenya Commercial Finance Company Ltd vs Afraba Education Centre* (2001) Vol 1 EA 86, where the court had stated that:-

“If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages revocable in law is an adequate remedy and the respondent is capable of paying, no order of interlocutory injunction should normally be granted, however strong the applicant’s claim may appear at that stage.”



32. The applicant in this case has failed to surmount the second hurdle. He has not even attempted to demonstrate that he stands to suffer irreparable injury unless the interlocutory injunction order is granted. Accordingly, his application fails and is hereby dismissed with costs.
33. The court directs that this matter proceeds for pre-trial directions before the Deputy Registrar and thereafter be set down for hearing of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2022.

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Ms. Muthoni h/b for Osoro for the Plaintiff/Applicant

Mr. Macharia Gakuo for the Defendant/Respondent

Court Assistant: Hilda

M.D MWANGI

JUDGE

