



Kinyanjui & another v Kabati & 3 others (Environment & Land Case E051 of 2024) [2025] KEELC 3258 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3258 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E051 OF 2024**

JM ONYANGO, J

APRIL 8, 2025

BETWEEN

JUDY WAMBUI KINYANJUI 1ST PLAINTIFF

TERESIA WANJIKU WAITHAKA 2ND PLAINTIFF

AND

DAVID NGUGI KABATI 1ST DEFENDANT

DAVID WAITHAKA KINYANJUI 2ND DEFENDANT

THE LAND REGISTRAR KIAMBU 3RD DEFENDANT

KCB BANK KENYA LIMITED 4TH DEFENDANT

RULING

1. The Plaintiff/ Applicant filed a Notice of Motion dated 12th April 2024 seeking an order of injunction restraining the Respondents whether by themselves, their agents or any other person acting under their instructions howsoever under their instructions from transferring, alienating disposing, selling, encumbering, assigning or in any other manner dealing with land parcel number Ndumberi/ Ndumberi/3212 pending the hearing of the main suit.
2. The application is based on the grounds set out on the face of the Notice of Motion and the supporting affidavit of Judy Wambui Kinyanjui, the 1st Plaintiff/Applicant herein, sworn on 12th April 2024.
3. In the said affidavit she deposes that land parcel number Ndumberi/ Ndumberi/3212 emanated from land parcel number Ndumberi/ Ndumberi1891 which was owned by her late father Stanley Kinyanjui Kiru together with his brother Waithaka Keru Peter (Deceased) but registered in the name of Waithaka Peter Keru (Deceased). That despite the land being registered in the name of Waithaka Keru Peter, they had shared the land equally and each of them had developed their respective share.



4. That on his part, Stanley Kinyanjui Kiru had sub-divided his land into 12 portions namely Ndumberi/ Ndumberi 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220 and 3221 with a view to dividing them among his children including the 2nd defendant who was allocated land parcel number Ndumberi/ Ndumberi/3213 but the said Stanley Kinyanjui Kiru died in 2013 before effecting the transfer of the various portions to his children.
5. She deposes that following her father's demise they instituted succession proceedings in respect of his estate but before the Grant was confirmed on 23.10.22, the 2nd Defendant who is one of the beneficiaries of the estate of the deceased fraudulently transferred some of the portions to his name and sold land parcel number Ndumberi/ Ndumberi/3212 (hereinafter referred to as the suit property) to the 1st defendant yet the same had been assigned to Kennedy Kimando Kinyanjui. The 1st Defendant in turn charged the suit property to the 4th Defendant on 4th October 2022.
6. It is her further deposition that owing to the actions of the 2nd defendant, the 1st and 2nd Plaintiffs are unable to distribute the estate of Waithaka Peter Keru in accordance with the directions issued by the Probate court. She adds that if the orders sought are not granted, the Applicants shall suffer irreparable loss. She therefore urges the court to grant an inhibition order to restrict further dealings with the suit property.
7. The 2nd defendant opposed the application through his Replying affidavit sworn on 2nd October 2024. He conceded that his late father Stanley Kinyanjui Kiru jointly owned a piece of land with his brother Peter Waithaka Keru and the land was sub-divided with each of the two families getting their share. He deposes that his late father's land was sub-divided into 11 plots including the suit property. Out of the 11 plots, 8 were allocated to the 2nd defendant and his brothers while 3 were allocated to his sisters including the 1st Plaintiff. He stated that the suit property was given to him by his father during his lifetime with the full knowledge of the 2nd plaintiff. He denies any wrongdoing on his part and states that the transfer of the suit property to the 1st defendant was lawful.
8. The 2nd Defendant deposes that he has challenged the grant issued to the plaintiffs and the matter is still pending before the Probate court. He points out that this suit has been filed on behalf of Kennedy Kimando Kinyanjui yet he has not been joined to the suit. He urged the court to dismiss the application.
9. The application was disposed of through written submissions and the Plaintiffs, 2nd and 4th Defendants filed their respective submissions which I have considered in arriving at my decision.

Analysis and Determination

10. After a careful consideration of the application, replying affidavit, further affidavit and the rival submissions, the main issue for determination is whether the Plaintiffs are entitled to an order of injunction.
11. In order to succeed in their application for injunction the Applicants have to satisfy the conditions set out in the celebrated case of *Giella v Cassman Brown Company Limited (1973) E.A 358* which are as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”



12. Additionally, in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR where the court held that: -

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. 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 recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.

13. With regard to a prima facie case Bosire JA (as he then was) in the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR stated as follows:

“A prima facie case is one 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.”

14. I will now proceed to determine whether the plaintiffs have established a prima facie case with a probability of success. The Applicants are the administrators of the estate of Stanely Kinyanjui Kiru who owned land parcel number Ndumberi/Ndumberi 1891 jointly with his brother Peter Waithaka Keru. They rely on the Certificate of Confirmation of Grant issued in HC Succession Cause No. 2127 of 2015 to demonstrate that the 2nd Defendant is not the owner of the suit property. However, the 2nd Defendant has stated that the suit property was given to him by his late father during his lifetime. This means that the question as to whether the suit property was one of the free properties of the deceased that was available for distribution has not been settled. He has also indicated that he has challenged the said Grant and the matter is still pending before the Probate court. On the material placed before the court so far, it is my finding that the plaintiffs have not established a prima facie case with a probability of success.
15. Since the plaintiffs have failed to demonstrate that they have a prima facie case with a probability of success, I need not consider whether they have met the other conditions. Be that as it may, the applicants have not demonstrated that they will suffer irreparable loss if the order of injunction is not granted as they are not in possession of the suit property. Furthermore, it is not clear why Kennedy Kinyanjui whom they Applicants claim is entitled to the suit property has not been made a party to the suit.
16. On its part the 4th Respondent has stated that they conducted due diligence and established that the suit property was registered in the name of the 1st Respondent before they charged it as security for a loan advanced to the 1st Respondent. The question as whether the transfer of the suit property to the 1st Respondent was fraudulent can only be established after a full hearing.
17. In view of the foregoing, the application lacks merit and it is hereby dismissed.
18. The costs of the application shall be in the cause.



DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 8TH DAY OF APRIL 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Mrs Morara for the Applicants

Mr Wahome for the 1st and 3rd Defendants

Miss Waigwa for the 4th Defendant

Court Assistant: Hinga

