



Njora (Being the administrator of Estate of Priscillah Muthoni Njora alias Priscillah Muthoni Njora (Deceased))) v Chumo & another (Environment & Land Case 87 of 2021) [2022] KEELC 2411 (KLR) (11 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2411 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 87 OF 2021**

MAO ODENY, J

MAY 11, 2022

BETWEEN

**CHRISTOPHER WAWERU E NJORA PLAINTIFF
BEING THE ADMINISTRATOR OF ESTATE OF PRISCILLAH MUTHONI
NJORA ALIAS PRISCILLAH MUTHONI NJORA (DECEASED))**

AND

**MIRIAM JEROP CHUMO 1ST RESPONDENT
THE LAND REGISTRAR, KILIFI COUNTY 2ND RESPONDENT**

RULING

- 1 This ruling is in respect of a Notice of Motion dated November 1, 2021 seeking the following orders;
1. Spent
 2. Spent
 3. That pending the hearing and determination of the main suit this honourable court be pleased to grant n order of temporary injunction restraining the 1st defendant by herself, her servants, agents and/or whomsoever in any means howsoever from entering into encroaching, invading, erecting any structures, sub-dividing, selling,leasing,transferring, charging and/or in any way interfering with the parcel of land being Title No. Kilifi/Mbaraka/Chembe/221.
 4. That the OCS, Kizingo police station do oversee the enforcement of the court orders issued.
 5. That costs of this application be provided for.

Counsel agreed to canvas the application vide written submissions which were duly filed



Plaintiff/applicant's Case

- 2 The application is supported by the annexed affidavit of Christopher Waweru E. Njora who deponed that he is the administrator of the estate of Pricilla Muthoni Njora alias Pricillah Muthoni Njorah (Deceased) who was the registered owner of the suit property which she purchased for valuable consideration from one Katana Karisa and was issued with title (Land Certificate) on November 1, 1976.
- 3 The applicant further deponed that while in the process of conducting a search for the suit property in pursuance of a discharge of charge registered against the property by Kenya Commercial Bank Ltd, he was surprised to discover that the suit property had been fraudulently transferred to the 1st defendant and title deed issued in her name on June 14, 2019.
- 4 It was the applicant's case that the beneficiaries are apprehensive of losing their intended inheritance, the suit property being part of the deceased Estate in High Court Succession Cause No. 19 of 2019 Malindi, Estate of Priscilla Muthoni which is yet to be determined.
- 5 The applicant deponed that he filed a complaint with the 2nd defendant's office who commenced investigations and confirmed that there were elements of fraud in the transfer and registration of the suit land and referred the matter to the County Criminal investigation office Kilifi.
- 6 The applicant therefore urged the court to grant an injunction to preserve the suit land pending the determination of this case as they are apprehensive that the suit land may change ownership while the case is still pending.

1st Defendant/ Respondent's Case

- 7 The 1st defendant filed a replying affidavit and stated that she bought the suit property on August 15, 2007 and that she is a bona fide purchaser for value. She also deponed that this matter was reported for investigation to the DCIO and the DPP and that the suit should await the findings.
- 8 It was the respondent's case that the applicant is guilty of laches as they only filed a Succession Cause after 8 years and that it is suspect how the applicant obtained the original title and yet it was charged to the bank. The respondent urged the court to refer the matter back to the DCIO and prayed that the application be dismissed with costs.

Plaintiff/applicant's Submissions

- 9 Counsel relied on Order 40 Rules 2, 3 and 4 of the *Civil Procedure Rules*, 2014 and the case of *Giella v Cassman Brown Co Ltd* [1973] EA 358 on the principles for grant of injunctions and submitted that the applicant has established a prima facie case with a probability of success. Further that the plaintiff has annexed a Land Certificate (title) to the suit property in the name of the deceased issued on 1st November, 1976 and explained how the deceased had purchased the suit property for valuable consideration from the previous owner, one Katana Karisa..
- 10 Mr Gacau relied on the case of *James Mwaniki Mukua & another v Mark Mugekenyi Kariuki & 2 others* [2018] eKLR and submitted that the plaintiff annexed a Charge instrument dated July 10, 1995 registered against the suit property where the deceased is described as the chargee and the suit property was charged by KCB Ltd as security towards a loan facility granted to one Stephen Kamanjiri Njora, the deceased son.



- 11 Counsel stated that a certificate of official search in respect to the suit property dated May 9, 2019 was also annexed to confirm that the deceased was the owner of the suit land. That on charging the property, the Land Certificate was retained by KCB Ltd as collateral for the loan facility and upon repayment, the title was released to the deceased hence the reason why the plaintiff is in possession of the title to the suit property and not the Bank.
- 12 On the allegation that the 1st defendant purchased the suit land for value in 2007, counsel submitted that the 1st defendant has neither attached any sale agreement between herself and the deceased in respect to purchase of the suit property nor any documentary proof of payment of Kshs. 6,000,000/= and/or any amount in favour of the deceased. Further that the 1st defendant has neither attached any statement/Affidavit by the alleged witness to the sale, one Thomas Mbaria Kuria nor documents in support of the alleged conveyance such as executed transfer instrument and/or consent to transfer the property obtained by the deceased in favour of the 1st defendant.
- 13 Mr Gacau submitted that it is questionable how the 1st defendant was issued with a title in the name of a deceased person long after the deceased's death, (11 years later) before a grant of letters of administration of the deceased Estate are confirmed. Further that the defendant has not explained how a title to the suit property was processed in her name yet she did not release to the office of the 2nd defendant the original title to the suit property in the name of the deceased for cancellation to pave way for issuance of another title.
- 14 Counsel cited the cases of *Kibiro Wagoro Makumi v Francis Nduati Macharia & another* [2018] eKLR and section 26 of the *Land Registration Act* and submitted that the 2nd defendant referred the matter for investigation for fraud as there were elements of fraud. Counsel urged the court to grant the orders of injunction as prayed as the plaintiff has met the threshold the orders.

1st Defendant/ Respondent's Submissions

- 15 Counsel reiterated the contents of the respondent's affidavit and submitted that the respondent has developed and is in possession of the suit property and any orders of injunction would be effectively an eviction. That the plaintiff has never been in occupation of the suit land and that the respondent will suffer prejudice.
- 16 It was counsel's submission that the only way to preserve the suit premises is to maintain the status quo and expedite the trial and urged the court to dismiss the plaintiff's application.

Analysis And Determination

- 17 The issues for determination in an application for injunction are as to whether the applicant has met the threshold for grant of temporary injunction. In determining an application for injunction it is imperative to consider whether the Applicant has satisfied the requirements for the grant of temporary injunction as laid down in the case of *Giella v Cassman Brown and co. Ltd* (1973) EA 358. The applicant must establish a *prima facie* case and the likelihood of suffering irreparable loss not capable of being compensated by way of damages and if the court is in doubt it will rule on a balance of convenience.
- 18 The applicant gave a background to the acquisition of the suit land and annexed a Land Certificate (title) to the suit property in the name of the deceased issued on 1st November, 1976 and explained how the deceased had purchased the suit property for valuable consideration from the previous owner, one Katana Karisa..



19 The plaintiff also confirmed that the suit land was charged to KCB Bank vide a Charge instrument dated 10th July, 1995 as security towards a loan facility granted to one Stephen Kamanjiri Njora, the deceased son. The applicant also annexed a certificate of official search respect to the suit property dated 9th May, 2019 to confirm that the deceased was the owner of the suit land. These documents and processes are an indication that the applicant has a *prima facie* case with a probability of success.

20 In the case of *Exclusive Estates Ltd Kenya Posts & Telecommunications Corporation & another*, Civil Appeal No 62 of 2004 the court held that:-

A temporary injunction is issued in a suit to preserve the property in dispute in the suit of the rights of parties under determination in a suit pending the disposal of the suit, to preserve the subject matter”

21 The defendant in her submissions admitted that there is a dispute over the ownership of the suit land which dispute was referred to the DCIO and the DPP to resolve the issue of alleged fraud in the registration of the suit land in her name. The defendant also urged the court to allow the dispute to be handled by the investigative agencies. This submission shows that there is a dispute and as such the substratum of the case should be preserved pending the hearing and determination of this case.

22 In the case of *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR where the court held that:

‘circumstances for consideration before granting a temporary injunction under Order 40 rule 1 of the *Civil Procedure Rules* requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts.....”

23 The applicant fears that if the injunction is not issued the suit property may be alienated and the defendant may wrongfully dispose the property to a third party. The applicant will also suffer irreparable harm if the property which is subject of a Succession case is disposed of before the distribution of the deceased assets.

24 I have considered the application, the submissions by Counsel and the relevant authorities and come to the conclusion that the applicant has established a *prima facie* case against the defendant and is therefore allowed as prayed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 11TH DAY OF MAY, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

