



**Ndirangu v Njogu & 2 others (Environment & Land Case
E020 of 2021) [2022] KEELC 3469 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3469 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E020 OF 2021
LC KOMINGOI, J
JULY 28, 2022**

BETWEEN

JAMES KINYANJUI NDIRANGU PLAINTIFF

AND

ANNE WANJIKU NJOGU 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

**REGISTRAR OF LANDS, MINISTRY OF LANDS & PHYSICAL
PLANNING 3RD DEFENDANT**

RULING

1. This is the Notice of Motion application dated January 8, 2021. It is brought under the provisions of Section 3A of the *Civil Procedure Act* Cap 21 of the laws of Kenya, Order 50, Order 40 of the *civil procedure rules* and all other enabling provisions of the law.
2. The Plaintiff seeks orders;
 - a) Spent.
 - b) Spent.
 - c) Spent.
 - d) Pending the hearing and determination of this suit, a temporary injunction do issue to restrain the Defendants by themselves, their servants, agents, clients and /or employees from in any way dealing or interfering with the Plaintiff's rights in the property by trespassing, disposing off, wasting, damaging, alienating ,dealing, selling, transferring, constructing or in any other way encumbering the parcel of land known as Nairobi Block105/904 and /or also known as Plot No.D.168 of Share Certificate No.2371 of Embakasi Ranching Company Limited.



- e) Pending the hearing and determination of this suit, a temporary injunction do issue to restrain the 2nd & 3rd Defendants by themselves, their servants, agents, clients and/or employees from in any way issuing a title of the parcel of land known as Nairobi Block 105/904 and /or also known as Plot No.D.168 of Share Certificate No.2371 of Embakasi Ranching Company Limited in the name of the 1st Defendant.
 - f) The foresaid activities be enforced and supervised by the officer commanding Police Division (OCPD) and /or OCS officer in charge of station, Embakasi Police Station.
 - g) The costs of this application be borne by the Defendants.
 - h) Any other or further relief or order that meets the ends of justice be made as this Honourable court may deem fit to grant.
3. The application is based on nine grounds set out on the face of the Notice of Motion. The application is supported by the Plaintiff's supporting affidavit sworn on January 8, 2021. The Plaintiff deponed that he is the lawful purchaser and the bona fide purchaser for value of the suit land having purchased the same from one Nduthi Muigai at ksh.250,000=.
 4. He deponed that after the purchase, Nduthi Muigai handed him the share certificate No.2371 of the 2nd Defendant which he held onto until sometime in 2019 when he lost it and he reported the loss at Kiambu Police station under OB No.21/31/12/19 and an affidavit of lost documents reflecting the same which he presented to the 2nd Defendant who issued him with duplicate receipts for a replacement of the said share certificate.
 5. The Plaintiff also deponed that in 2020, when the President of the Republic of Kenya Mr. Uhuru Kenyatta issued titles to Members of Embakasi Ranching Company Limited, he went to collect his only to realize that it had been processed in the 1st Defendant's name through illegal and unprocedural means. He pointed out that he has been able to obtain a copy of an invoice printout made out unprocedurally to the 1st Defendant for legal fees for processing of title to the suit property by M/S Ngata Kamau & Company Advocates and letters dated 29th June and November 3, 2020 addressed to the 3rd Defendant which confirm that the Plaintiff is the owner of the suit land. He further deponed that he is apprehensive that the 1st Defendant will encumber the suit property which will cause him to suffer irreparable damage that cannot be valued monetarily.
 6. The application is opposed by the 1st Defendant by way of a replying affidavit sworn on April 22, 2021. She deponed that she is the lawful registered lessee for 99 years with effect from 1st January 1988 of all that parcel of land known as Nairobi Block 105/904 and that she has had possession from 1990. She further deponed that prior to the Lease being issued, she held and owned the suit land by virtue of her being a shareholder of the 2nd Defendant since 1978 and having duly paid for the shares that entitled her to be allocated the plot.
 7. The 1st Defendant also deponed that as at December 11, 2020 when the Plaintiff was purportedly purchasing the plot from one Nduthi Muigai, the suit land belonged to her thus the sale agreement between Nguthi Muigai and the Plaintiff is fictitious.
 8. On the June 9, 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.



The Plaintiff's submissions.

9. They are dated April 25, 2022. Counsel for the Plaintiff submitted that the Plaintiff has established a prima facie case since he has in his possession a sale agreement, transfer documents and a share certificate No.2371 from the 2nd Defendant(though misplaced), issued after the sale of the suit property. He relied on the case of *Gitao & 5 others v Kenya National Chamber of Commerce & Another; industry* [1990] KLR 360.He also submitted that if the orders sought are not granted, the Plaintiff will shall suffer irreparably and that the balance of convenience lies in allowing the application.

The 1st Defendant's submissions

10. They are dated May 5, 2022.Counsel for the 1st Defendant submitted that the application should be dismissed with costs as it does not meet the threshold under Order 40 of the Civil Procedure Rules and upon grounds set by the courts for granting a temporary injunction. He put forward the case of *Giella v Cassman Brown [1973] EA 358*.
11. It was also counsel's submission that the 1st Defendant being the registered owner is adequately protected by Section 26 of the *Land Registration Act, 2012*.
12. I have considered the notice of motion and the affidavit in support together with the annexures. I have also considered the affidavits in response, the written submissions and the authorities cited. The issues for determination are:-
 - (i) Whether the Plaintiff's/Applicant's application meets the threshold for grant of temporary injunction.
 - (ii) Who should bear costs of this application?
13. The Plaintiff seeks an injunction restraining the 1st Defendant from interfering with the suit land. The principles for grant of interlocutory injunctions were set in the case of *Giella v Cassman Brown [1973] EA 358*.They were reiterated by the Court of Appeal in the case of *Nguruman Ltd v Jan Bonde Nielsen & Others [2014] eKLR* where the court stated;

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to:

 - a. Establish his case only at prima facie level,
 - b. Demonstrate irreparable injury if a temporary injunction is not granted, and
 - c. Allay any doubts as to (b) by showing that the balance of convenience is in his favour.

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.”
14. Further, a prima facie case was defined in the case of *Mrao Limited v First American Bank of Kenya & 2 Others [2003] eKLR* as follows:-

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself



will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

15. The Plaintiff's claim over the suit land is based on the sale agreement between him and one Nduthi Muigai who handed him share certificate No.2371 from the 2nd Defendant. The Plaintiff contended that he misplaced and/or lost it. At Paragraph 5 of his supporting affidavit, he states that he was issued with a receipt for site visit by the 2nd Defendant. Clearly, the Plaintiff could not ascertain the suit land and its beacons and he is not in possession of the suit land. On the other hand, the Plaintiff has a title to the suit land and is in possession. Applying the decision in *Mrao Limited v First American Bank of Kenya & 2 Others* (supra), the Plaintiff has not established a prima facie case.
16. In conclusion, I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 28TH DAY OF JULY 2022.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

Mr. Onyango advocate for the 1st Defendant

No appearance for 2nd – 3rd Defendants

Steve - Court Assistant

