



Landmerk International Properties Limited v Munene; Maisha Steels (East)Africa Ltd (Interested Party) (Environment & Land Case E087 of 2021) [2022] KEELC 13429 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 13429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E087 OF 2021
BM EBOSO, J
SEPTEMBER 28, 2022**

BETWEEN

LANDMERK INTERNATIONAL PROPERTIES LIMITED PLAINTIFF

AND

ANNE WANGARI MUNENE DEFENDANT

AND

MAISHA STEELS (EAST)AFRICA LTD INTERESTED PARTY

RULING

1. The plaintiff initiated this suit through a plaint dated August 13, 2021. Its case was that it entered into a sale agreement dated July 14, 2018 with the defendant, pursuant to which it agreed to sell to the defendant land parcel Number Ruiru Township/260 [hereinafter referred to as 'the suit property'] at a purchase price of Kshs 33,000,000. The defendant made a partial payment of Kshs 16,500,000 but failed to pay the balance. Consequently, it rescinded the sale contract. It added that upon rescinding the contract, the defendant hurriedly transferred the suit property into her name, using some of the completion documents which it had entrusted to her.
2. Consequently, it sought the following reliefs against the defendant:
 - a. Cancellation of the registered transfer and the subsequent title deed issued to the defendant;
 - b. A permanent injunction restraining the defendant whether by herself or her agents from further transferring ownership, selling, charging, interfering or dealing with the property;
 - c. Damages for breach of contract;
 - d. Costs of this suit; and



- e. Interest on (c) and (d) above at court rates.
3. Together with the plaint dated August 13, 2021, the plaintiff filed a notice of motion of even date, seeking the following injunctive reliefs: (i) an interlocutory order restraining the defendant against transferring, selling, charging or interfering with the suit property; (ii) an interlocutory order restraining the defendant against interfering with their (the plaintiff's) quiet possession of the suit property; (iii) an order compelling the defendant to deposit the original certificate of title in court, pending the hearing and determination of this suit; and (iv) any other or further order the court may deem fit and in the interest of justice to grant.
 4. The application was supported by the affidavit of Patrick Nderitu, a director of the plaintiff, sworn on August 13, 2021. He deposed that the plaintiff entered into a sale agreement dated July 14, 2018 with the defendant, pursuant to which the plaintiff agreed to sell to the defendant land parcel Number Ruiru Township/260 at a purchase price of Kshs 33,000,000. The defendant made a partial payment of Kshs 16,500,000 but failed to pay the balance. On October 17, 2018, the plaintiff issued a 21 days' completion notice pursuant to clause 12 of the agreement for sale. Further, on November 9, 2018, the plaintiff issued to the defendant a 7 days' rescission notice.
 5. Mr Nderitu added that out of trust, the defendant handed over some of the completion documents to the defendant at the time of execution of the sale agreement. He further deposed that on February 2, 2021, the plaintiff's advocates wrote to the defendant, informing the defendant that they intended to register a caution against the title. He contended that on receipt of the letter, the defendant swiftly caused the suit property to be transferred into her name.
 6. The defendant opposed the application through her replying affidavit dated October 18, 2021. She deposed that Mr Patrick Nderitu presented himself as a director of the plaintiff with the full capacity to transact and bind the plaintiff. She added that subsequent to the execution of the sale agreement dated July 14, 2018, parties to the sale agreement held further discussions and executed an addendum agreement dated May 26, 2021 in which it was agreed that: (i) parties to the agreement dated July 14, 2018 had fulfilled their respective 'terms and conditions'; (ii) the plaintiff had given vacant possession of the suit property to the defendant; (iii) the plaintiff did not have any claim against the defendant; and (iv) the plaintiff had unconditionally discharged the defendant from any claims in relation to the suit property.
 7. The defendant added that besides entering into the above addendum agreement, the plaintiff's director delivered to her the duly executed transfer which the plaintiff had held since its execution in July 2018. In response to the plaintiff's contention that she only paid a deposit of Kshs 16,500,000, the defendant deposed that on diverse dates in 2018, she advanced to the plaintiff a total of Kshs 18,031,713 and being unable to repay the debt, the plaintiff offered to transfer the suit property in settlement of the debt. She contended that the notices alluded to by the plaintiff were a fabrication and an attempt to defraud her. She denied being indebted to the plaintiff in any way.
 8. The plaintiff filed a supplementary affidavit sworn by Patrick Nderitu in which he deposed that he was not privy to the addendum agreement exhibited by the defendant. He added that the loan alluded to by the defendant was a separate issue that was not the subject of this suit. He admitted that a transfer was executed and given to the defendant but added that the execution was done in good faith and the plaintiff did not anticipate that the defendant would 'clandestinely' register the transfer without paying the balance of the purchase price.



9. I have considered the application, the response to the application and the parties' respective submissions. The single question falling for determination in this application is whether the applicant has satisfied the criteria for grant of an interlocutory injunctive relief.
10. The principles upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs are well settled [See *Giella vs Cassman Brown*[1973] EA 358] First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the injunctive relief is not granted, he would stand to suffer damage that may not be indemnifiable through an award of damages. Third, should the court have doubt about either or both of the above two requirements, the application is to be determined on the basis of the balance of convenience. Lastly, it is now an established principle in Kenya's jurisprudence that at the stage of disposing an application for interlocutory injunctive relief, the court does not make definitive or conclusive pronouncements on the issues in contest.
11. There is common ground that parties to this suit entered into a sale agreement dated July 14, 2018, pursuant to which the plaintiff sold to the defendant the suit property at Kshs 33,000,000. The plaintiff contends that the defendant paid a sum of Kshs 16,500,000, leaving a balance of Kshs 16,500,000.
12. The plaintiff further contends that it rescinded the sale agreement. The plaintiff is, however, quiet about the sum of Kshs 16,500,000 that it acknowledges was paid by the defendant. Among the reliefs sought by the plaintiff is a plea for damages for breach of contract. On her part, the defendant contends that the entire purchase price was paid to the plaintiff and that parties to the sale agreement subsequently executed an addendum agreement through which this fact was acknowledged and the plaintiff discharged her. She further contends that upon execution of the addendum agreement, the plaintiff released to her the completion documents conveying the suit property to her. Mr Nderitu who is expressed as having executed the addendum agreement has disowned it and raised various other issues about its validity.
13. The plaintiff, however, admits that they executed instruments conveying the suit property to the defendant and gave the defendant the necessary completion documents. Mr Nderitu's response to the defendants' allegations about moneys owed to her by the defendant, which led to the signing of the addendum agreement and the execution and release of the completion documents, is that the issue of the debt is separate and distinct and should not be mixed with the issue in this suit. At this interlocutory stage, it is not clear who between the plaintiff and the defendant is truthful. Put differently, the court has doubts on the first limb of the principle in *Giella vs Cassman Brown* [1973] E.A 358
14. Secondly, what emerges from the evidence presented to the court at this interlocutory stage is that the plaintiff duly executed instruments conveying the suit property to the defendant and gave the necessary completion documents to the defendant. If indeed the plaintiff is owed money, the money can be quantified and awarded to the plaintiff as damages. Indeed, one of the reliefs sought in the main suit is a plea for damages for breach of contract. The plaintiff cannot, in the circumstances, be said to have satisfied the second limb of *Giella vs Cassman Brown*[1973] E.A 358
15. The result is that this court is not satisfied that the plaintiff has met the criteria for grant of an interlocutory injunction. Consequently, the application dated August 13, 2021 is rejected for lack of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 28TH DAY OF SEPTEMBER 2022

B M EBOSO



JUDGE

In the Presence of: -

Ms Olwe for the Plaintiff

Mr Mukobi holding brief for Mr Olao for the Defendant

Mr Mariaria for the Interested Party

Court Assistant: Sydney

