



**Milfan Developers Limited v Sharbaid & another (Environment & Land  
Case 14 of 2022) [2022] KEELC 13698 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13698 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 14 OF 2022**

**M SILA, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**MILFAN DEVELOPERS LIMITED ..... PLAINTIFF**

**AND**

**LEILA SULEIMAN SHARBAID ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, MOMBASA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(Application for injunction; principles to be applied; plaintiff asserting to be owner of the suit land and contending that she never sold it to the 1st defendant; 1st defendant alleging that the suit land was sold to her by the plaintiff and that the consideration was paid and transfer registered; from the material presented, no evidence of any sale agreement; no evidence of any payment of the purchase price; date of transfer indicated by the 1st defendant also different from the date of transfer in the extract of title; *prima facie* case established by the plaintiff; order of injunction issued)

1. The application before me is that dated 7 February 2022 by the plaintiff. It is an application that was filed contemporaneously with the plaint, and it seeks orders of interlocutory injunction to stop the defendants from charging, leasing, selling, transferring or in any other way dealing with the land parcel Subdivision Number 3448 Section III, Mainland North (the suit land) pending hearing and determination of the suit. The application is opposed.
2. The case of the plaintiff as discernible from the plaint, is that the plaintiff was the registered proprietor of the suit land. On 24 June 2021, she registered a general power of attorney in favour of one Mbaruk Ayub Ali Mbaruk so as to facilitate a joint venture between the plaintiff and the said Mr Mbaruk. It is said that the joint venture failed and the plaintiff made a decision to sell the suit land to the interested party, one Mzee Habib Amri. In November 2021, the plaintiff wished to register a revocation of the power of attorney together with the transfer to the interested party but found the property already



transferred to the 1<sup>st</sup> defendant. The plaintiff contends that she did not sell the suit land to the 1<sup>st</sup> defendant and neither did she receive any consideration from the 1<sup>st</sup> defendant and that the transfer to the 1<sup>st</sup> defendant was thus fraudulent. In the suit, the plaintiff seeks orders to declare the transfer to the 1<sup>st</sup> defendant a nullity, a permanent injunction to stop the defendants from dealing with the suit land, and an order of cancellation of the title of the 1<sup>st</sup> defendant.

3. The supporting affidavit to the application is sworn by Moses Waweru Ndungu, a director of the plaintiff. He has annexed a copy of the title in the name of the plaintiff and the registered power of attorney in favour of Mr Mbaruk. He has also annexed a copy of the joint venture agreement that was entered between the plaintiff and Mr Mbaruk which venture he stated failed. He has deposed that when he discovered that the property had already been transferred to the 1<sup>st</sup> defendant, he tried to register a restriction but was informed that the land parcel file has disappeared. He has stated that the plaintiff sold the land to the interested party who has paid the purchase price in full and thus is the beneficial owner of the suit land. He has averred that the transfer to the 1<sup>st</sup> defendant is fraudulent and unless the injunction is granted, the plaintiff stands to suffer irreparable loss.
4. The 1<sup>st</sup> defendant filed a replying affidavit to oppose the motion. She has deposed that she legally acquired the property from the plaintiff after following all legal procedures and that the plaintiff signed the transfer dated 7 December 2016. She has deposed that the transfer instrument contains an acknowledgment of the sum of Kshs 10,000,000/= and that after this payment was made the directors of the plaintiff signed the transfer instrument and handed over the original title, transfer and identification documents to enable transfer of the property to her. She has deposed that the transfer in her favour was registered on 15 July 2021. She points out that the plaintiff has not in the particulars of fraud challenged the authenticity of the signatures in the transfer instrument. She has annexed copies of the identity cards and pin certificates of the directors of the plaintiff and stated that they were handed over to her to effect the transfer. She asserts that she is the *bona fide* owner of the suit land and that the plaintiff could not make a second sale to the interested party. She argues that the plaintiff has not demonstrated a *prima facie* case with a probability of success.
5. The 2<sup>nd</sup> defendant filed grounds of opposition through the State Law Office. I will ignore the same as they were filed on 4 July 2022 after this application had already been heard on 27 June 2022. If the 2<sup>nd</sup> defendant still wishes to address the issues raised therein, a formal application can be filed, but it will be improper for this court to address the grounds when they had not been filed and served before the application was heard, as the plaintiff will not have an opportunity to canvass the same.
6. What is before me is an application for injunction and the principles upon which such an application is decided were set out in the case of *Giella vs Cassman Brown* (1973) EA 358. The applicant needs to demonstrate a *prima facie* case with a probability of success; show that she stands to suffer irreparable loss if the injunction is not granted; and where the court is in doubt, it will decide the application on a balance of convenience.
7. The case of the plaintiff is that she never sold the suit land to the 1<sup>st</sup> defendant and is at a loss as to how the suit land came to be registered in the name of the 1<sup>st</sup> defendant. The position of the 1<sup>st</sup> defendant is that the plaintiff sold to her the suit land for Kshs 10,000,000/= and that a transfer in her favour was registered on 15 July 2021.
8. I have gone through what the parties furnished. To support the alleged sale, the 1<sup>st</sup> defendant has annexed a copy of the transfer, identity cards and PIN certificates, and extracts of the title. There are a few issues with these. First, and I find it striking, there is not annexed a copy of any sale agreement. You would expect that there be a sale agreement between the two parties before an instrument of transfer is executed. The 1<sup>st</sup> defendant has also not annexed any proof of payment of the alleged purchase price of



Kshs 10,000,000/= . You would also expect that if there was a sale then there would be proof of payment of the purchase price but there is none displayed by the 1<sup>st</sup> defendant. The plaintiff in her plaint pleaded that she never received any consideration from the 1<sup>st</sup> defendant as she had no sale agreement with her. Moreover, in her reply, the 1<sup>st</sup> defendant avers that the transfer was dated 7 December 2016. There is no explanation why the transfer was registered on 15 July 2021, about 5 years later. That would certainly be unusual. Apart from this, the extracts of the register annexed by the 1<sup>st</sup> defendant are different. The 1<sup>st</sup> defendant annexed two extracts of the register. One shows that the transfer that was registered is one dated 14 July 2021 for a consideration of Kshs 10,000,000/= whereas the other extract does not indicate the date of the transfer nor the consideration. I find two different extracts to be curious but apart from that, it will be observed that what was registered was a transfer dated 14 July 2021 and not 7 December 2016 as alleged by the 1<sup>st</sup> defendant.

9. Given the above, I am of opinion that the plaintiff has demonstrated a *prima facie* case with a probability of success. I am also persuaded that if the injunction is not issued, the 1<sup>st</sup> defendant may deal with the property which may lead to the property being lost. This will no doubt occasion the plaintiff substantial loss as I can see that she appears to have sold the suit land to the interested party for a consideration of Kshs 56,500,000/=. Even if I was to consider the balance of convenience, the same tilts towards maintaining the registration status of the property, so that the same is available while the suit is being heard.
10. For the above reasons, I allow the application for injunction and order as follows :-
  - i. That pending the hearing and determination of this suit, an order of injunction is hereby issued, stopping the 1<sup>st</sup> defendant from selling, charging, subdividing, leasing, or in any other way entering into any transaction or dealing over the land parcel Subdivision No 3448 (Original Number 544/24) Section III, Mainland North (simply Plot No 3448/III/MN).
  - ii. That the current *status quo* as to possession and use be maintained pending the hearing and determination of this suit.
  - iii. That an order of inhibition is hereby issued stopping the Land Registrar Mombasa, from registering any dealing or disposition, in the register of the suit land being Subdivision No 3448 (Original Number 544/24) Section III, Mainland North (simply Plot No 3448/III/MN).
  - iv. That the plaintiff will have the costs of this application as against the 1<sup>st</sup> defendant.
11. Orders accordingly.

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

