



REPUBLIC OF KENYA



KENYA LAW
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**Kiplagat v Wakibia & another (Environment & Land Case
47 of 2023) [2025] KEELC 86 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 86 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 47 OF 2023
MAO ODENY, J
JANUARY 24, 2025**

BETWEEN

CALEB KIPLAGAT PLAINTIFF

AND

SUSAN MUTHONI WAKIBIA 1ST DEFENDANT

COUNTY LAND REGISTRAR 2ND DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 30th November, 2023 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit, this Honourable court be pleased to issue an order of temporary injunction restraining defendants either by themselves, agents, or servants howsoever from entering, trespassing constructing a permanent building, selling, transferring, or in any way dealing with the Plaintiff's parcel of land known and fully described as L.R No Nakuru Nakuru Municipality Block 23/44.
 - d. That the cost of this application be in the cause.
2. The application was supported by the affidavit of Caleb Kiplagat, sworn on 30th November, 2023 where he deponed that he is the registered and absolute owner of all that parcel of land known as L.R No Nakuru Municipality Block 23/44 measuring 0.0872 hectares or thereabout. He further stated that there has been express and active manipulation or alteration of the records to have the 1st Defendant acquire the suit property in collusion with the 2nd Defendant and other Land officials in Nakuru. The Applicant urged the court to allow the orders as prayed in the application.



3. The 1st Defendant/Respondent filed a Replying Affidavit sworn on 27th February, 2024 and deponed that she is currently registered as a sole proprietor of all that parcel of land known as Land Reference No: Nakuru/Municipality Block 23/44 measuring approximately 0.0872 hectares which they acquired jointly with her late husband John Gakuo Kaniu from one Caleb Kiplagat in 2003. She deponed that her husband passed on in 2017 by which time she had been registered as the sole proprietor of the property during his lifetime.
4. The 1st Defendant/Respondent further deponed that on or around 29th September 2023, she sold the said parcel to Ngechu Wanjohi and if the application is allowed she is bound to suffer losses of not less than Ksh 5,900,000/= arising from her inability to fulfill her obligations in line with the pending sale transaction. She urged the court to dismiss the application with costs.
5. The Plaintiff/Applicant filed a further affidavit sworn on 4th April, 2024 and deponed that the certified copy of the green card annexed to the 1st Defendant's affidavit is non-existent and parallel to the original legal records. He deponed that he neither sold the suit property to the 1st Defendant in 2003 nor signed a transfer form annexed by the 1st Defendant.
6. The Plaintiff/Applicant further deponed that in the absence of any identification, it can only be deduced that the 1st Defendant never bought the suit property from Mr. Caleb Kiplagat but used her office to illegally and fraudulently acquire title documents as copies of the certificate of lease in the 1st Defendant's Replying affidavit are fraudulent.

Plaintiff's/Applicant's Submissions

7. Counsel for the Plaintiff/Applicant filed submissions dated 18th April, 2024 and identified the following issues for determination:
 - a. Whether the 1st Defendant is a bona fide purchaser for value of L.R Nakuru Municipality Block 23/44?
 - b. Whether the title documents in possession of the 1st Defendant are a culmination of fraudulent dealings?
 - c. Whether the 2nd Respondent is aware and therefore culpable of participating in the fraudulent acquisition of the 1st Defendant's title documents?
 - d. Whether this Honorable Court should grant interlocutory injunctions against the 1st and 2nd Defendants?
8. On the first issue, counsel submitted that the 1st Defendant failed to conduct due diligence and had it conducted a historical search, it would have discerned that the suit property had a registered owner. Counsel submitted that the 1st Defendant has not demonstrated that she has an absolute and indefeasible title and relied on the cases of Arthi Highway Developers Limited vs West End Butchery Limited & 6 others [2015] eKLR and Gitwany Investments Limited vs Tajmal Limited & 3 others [2006] eKLR.
9. On the second issue, counsel submitted that the Plaintiff has in title documents that are earlier in time and recognized under the law and that the 1st defendant's title was either issued fraudulently or that she was not a bona fide purchaser of land for value. Counsel relied on the case of Nicholas Kioko Muoki & Another vs Omar Fezal Mohammed [2021] eKLR.
10. On the third issue, counsel submitted that the office of the 2nd Defendant/Respondent is the office charged with the issuance of clean titles and as the custodian of the Land Register ought to have



discerned that there was an entry entered beforehand in the name of the Plaintiff and as such should not have effected the purported transfer without establishing the required procedures have been adhered to. Counsel relied on the case of Republic vs County Land Registrar, Makueni Lands Registry Ex-Parte Philes Mwikali Kioko & 2 others [2021] eKLR.

11. On the fourth issue, counsel relied on the cases of National Bank of Kenya Ltd & 2 others vs Sam-Con Ltd [2003] eKLR, Abel Salim & Others vs Okong'o & Others [1976] KLR and Giella vs Cassman Brown and Co Ltd [1973] EA and submitted that the Plaintiff has established a prima facie case. Counsel relied on the case of Chebii Kipkoech vs Barnabas Tuitoek Bargarioria & Another [2019] eKLR.
12. Counsel further submitted that the Applicant stands to lose his valuable consideration paid at the time of acquisition of the parcel; the expenses incurred developing the land as well as sentimental attachment.

1st Defendant/Respondent's Submissions

13. Counsel for the 1st Defendant/Respondent filed submissions dated 25th September, 2024 and identified the following issues for determination:
 - a. Whether the Plaintiff/Applicant has satisfied the conditions for grant of a temporary injunction as set out in the case of Giella vs Cassman Brown & Company Ltd (1973) EA 358?
 - b. Who should bear the costs for this Application?
14. Counsel submitted that the Plaintiff/Applicant has not established a prima facie case to warrant a grant of a temporary injunction and relied on the case of Mrao vs First American Bank of Kenya Limited & 2 others [2003], KLR 125. Counsel further submitted that the 1st Defendant/Respondent purchased the suit property in 2003, was issued with a certificate of lease on 18th March 2006 and registered as a sole proprietor on 17th September 2014.
15. It was counsel's submission that the 1st Defendant has been in continuous and uninterrupted occupation for over 20 years and relied on Sections 24, 25 and 26 of the Land Registration Act, 2012 and the cases of Koinange & 13 others vs Charles Karuga Koinange [1986] eKLR and Violet Omungo vs Grace Awino Otieno (2018) eKLR.
16. Mr. Muthomi submitted that the Plaintiff/Applicant has not shown the injury/loss he is likely to suffer in the event that orders are not granted and relied on the cases of Francis Jumba Enziano and others vs Bishop Philip Okeyo and others Nairobi High Court Civil Case Number 1128 of 2001 (Unreported), East African Development Bank vs Hyundai Motors Kenya Limited [2006] eKLR and Mugo vs Equity Bank Ltd [2003]. Counsel further submitted that the loss to be suffered by the 1st Defendant/Respondent is far greater than what the Plaintiff/Applicant is bound to suffer if orders sought are granted and relied on the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR.

Analysis and Determination

17. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of this suit. The principles for the grant of a temporary injunction are well set out in the case of Giella vs. Cassman Brown & Co. Ltd (1973) EA 358.
18. A party seeking such orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not adequately be compensated



by an award of damages, if the order is not granted and if the court is in doubt it will decide the application on a balance of convenience.

19. The purpose of a temporary injunction is to preserve the substratum of the suit property pending the hearing and determination of the suit. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

20. It was the Applicant's case that he is the rightful owner of the suit property and that the 1st defendant's title is either fraudulent or fake having been acquired illegally. The Applicant further stated he is likely to suffer irreparable harm, which cannot be compensated by way of damages if the order sought are not granted. In the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

21. The Applicant has not demonstrated the nature of the harm that he is likely to suffer if the order is not granted. The mere mention that a party is likely to suffer irreparable harm without substantiation is not enough to persuade the court to grant orders of temporary injunction.
22. This is a disputed property where two parties have a title to the suit land, where a property has more than one title, which is irregular as one of the two titles must either be irregular or fake, the court has to go to the root of the title during the hearing to establish which of the two is genuine.
23. It is on record that the 1st Defendant stated in her replying affidavit that she is in the process of disposing the suit property to a third party. This shows that if an order stopping the disposal of the suit land in necessary to preserve the substratum of the case pending the hearing and determination as to who is the rightful owner of the same.



24. I have considered the application, the submissions by counsel and find that the application for a temporary injunction is merited. Each arty to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JANUARY 2025.

M. A. ODENY

JUDGE

