



Chege v E3 Energy Kenya Limited & 2 others (Environment & Land Case E089 of 2021) [2022] KEELC 13490 (KLR) (17 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13490 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E089 OF 2021
BM EBOSO, J
OCTOBER 17, 2022**

BETWEEN

CRISTOPHER MBOTE CHEGE PLAINTIFF

AND

E3 ENERGY KENYA LIMITED 1ST DEFENDANT

ANNE NJERI MBOTE 2ND DEFENDANT

KYMA ENERGIES LIMITED 3RD DEFENDANT

RULING

1. A brief summary of the dispute in this suit was set out in the preceding ruling rendered on December 3, 2021. For a proper understanding of the context in which this ruling is being rendered, I will, once more, set out the summary.
2. The plaintiff, Christopher Mbote Chege, initiated this suit through a plaint dated August 23, 2021. His case was that he was the registered proprietor of Land Reference Number 13537/137 comprised in Title Number IR xxxxx, measuring approximately 0.2132 of a hectare, situated within Juja, Kiambu County. He bought the suit property in 2000. Without his knowledge, permission or authority, the defendant, E3 Energy Kenya Limited, had encroached and trespassed on the said land and had commenced construction works, renovation, furnishing, branding and rebranding thereon.
3. Aggrieved, he sought the following reliefs against the defendant:
 - a. That a permanent injunction do issue restraining the defendants whether by themselves, their directors, shareholders, agents and/or servants from leasing, transferring alienating, developing, constructing, furnishing, renovating, branding or rebranding or in any way dealing with the plaintiff's property Title No xxxxx LR No 13537/137 measuring 0.2132 ha



situate within Juja, Thika Municipality, in Kiambu County, in any manner infringing on the plaintiff's proprietary rights and interests.

- b. The honourable court be pleased to find that the defendant's possession, occupation and continued occupation and activities being undertaken on the said land Title No xxxxx LR No 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County is illegal, unlawful and amounts to trespass ab initio.
 - c. The honourable court be pleased to find that any contract or agreement real or imagined, purported to permit or grant the defendant, any rights, interest or possession of the property Title No xxxxx LR No 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County is null and void ab initio.
 - d. That an order do issue directing the defendant to vacate the plaintiff's land Title Number xxxxx LR 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County with immediate effect, in default, the defendant to be forcefully evicted therefrom.
 - e. General damages for loss of user and mesne profits
 - f. Costs of this suit
 - g. Interest on (d) above
 - h. Any other relief that this honourable court may deem fit to grant.
4. Together with the plaint, he brought a notice of motion dated August 23, 2021 seeking interlocutory injunctive reliefs, pending the hearing and determination of the suit. The application dated August 23, 2021 was subsequently amended on February 16, 2022 and it is one of the two applications that fall for determination in this ruling.
 5. The defendant opposed the application through a replying affidavit sworn on September 22, 2021 by Deepak Gadhavi in which he deponed that he was a director of the defendant company. He added that the defendant company was a limited liability company carrying on the business of supplying and marketing of petroleum products. He added that the defendant had no interest in ownership of the suit property and was not in occupation or possession of the suit property. He further deponed that the defendant entered into a dealership agreement with the plaintiff's wife and son, Anne Njeri Mbote and Kepha Mbote through their company, Kyma Energies Limited. The dealership agreement allowed the defendant to, inter alia, advertise and promote sales, advise on the use of image of the business logo, brand the petrol station, and provide coaching in the operation of the business. In pursuance of the said dealership agreement, the defendant had spent Kshs 4.3 million in branding, marketing expenses, legal fees, station sourcing consultancy, among others. Mr Gadhavi further deponed that upon the defendant being served with the court papers, he contacted the plaintiff's son, Kepha Mbote, who informed him that there was an existing matrimonial property dispute, to wit, Nairobi HCCC No 64 of 2013 (OS) and the suit property was one of the properties that were the subject of the said matrimonial property dispute that was pending in the High Court. He added that, in the circumstances, the wife and son of the plaintiff were necessary parties to this suit.
 6. The second application falling for determination in this ruling is the 1st defendant's notice of motion dated April 28, 2022 through which the 1st defendant seeks an order striking its name from this suit. I will first dispose the 1st defendant's application dated April 28, 2022.
 7. The 1st defendant's application dated April 28, 2022 was canvassed through written submissions dated May 23, 2022. The 1st defendant contends that it is not a necessary party in this suit. Its case is that it carries on the business of supplying and marketing of petroleum products and that his only link to



- the suit property is the dealership agreement with Kyma Energies Limited where the plaintiff's wife and son are directors. The 1st defendant contends that it has no interest in the ownership of the suit property and it is not in occupation of the suit property.
8. The court understands the 1st defendant's case to be that notwithstanding the dealership agreement it has with the 3rd defendant, it has no interest in the suit property and it is not concerned about any order that this court may make in relation to the suit property. It does not have any asset on the suit property.
 9. It does emerge from the evidence placed before the court that the dispute over the suit property is between the plaintiff on one part and the 2nd defendant [Anne Njeri Mbote] on the other part. They are husband and wife. In the present application, the plaintiff has not demonstrated to this court that the 1st defendant is infringing on his property rights. What has emerged is that the plaintiff's wife is the one in possession of the suit property, and together with the plaintiff's son, the duo are carrying on business on the suit property. It is also clear that there is a matrimonial property dispute between the plaintiff and the 2nd defendant over the suit property. Further, the plaintiff has not demonstrated that their matrimonial property dispute over the suit property cannot be effectually and completely adjudicated in the absence of the 1st defendant. Consequently, I allow the 1st defendant's plea in terms of prayer 1 of the chamber summons dated April 28, 2022.
 10. There was no evidence tendered to suggest that the plaintiff was privy to the facts relating to the dealership between the 1st defendant and 2nd defendant. In the circumstances, there will be no order as to the 1st defendant's cost of this suit. I now turn to the plaintiff's amended notice of motion dated February 16, 2022.
 11. Through the notice of motion amended on February 16, 2022, the plaintiff seeks interlocutory injunctive relief against the defendants. The single issue that falls for determination in the application is whether the plaintiff has satisfied the criteria upon which our trial courts exercise jurisdiction to grant interlocutory injunctive reliefs. The criteria was outlined in the case of *Giella v Cassman Brown & Co Ltd* [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 interlocutory injunctive relief is not granted, he would stand to suffer irreparable damage that cannot be adequately indemnified through an award of damages. Third, if the court has doubts on either or both of the above two limbs, the application is to be determined based on the balance of convenience. Fourth, at the stage of disposing the plea for interlocutory relief, the court does not make conclusive or definitive pronouncements on the substantive issues in the suit. The focus of the court is to establish whether the above criteria has been satisfied.
 12. In the present suit, it does emerge that the plaintiff and the 2nd defendant are a couple in marriage. They have a matrimonial dispute over the suit property. The suit property is registered in the name of the plaintiff but the 2nd defendant is in possession and occupation of the suit property. It does also emerge that the suit property is one of the thirteen properties that are the subject matter of litigation within the framework of the matrimonial property law in Nairobi High Court Civil Case No 64 of 2013 (OS); *Cristopher Mbote Chege v Anne Njeri Mbote*. The High Court, constituted as a matrimonial property dispute court, is seized of the dispute.
 13. Given the above circumstances, it is clear that parallel adjudication of the same dispute by this court would not be proper. The proper court to adjudicate this dispute is the court seized of the matrimonial property dispute. The result is that, for the above reasons, this court shall down its tools in tandem with the principle in *Owners of Motor Vessel Lillian "S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and let the plaintiff and the 2nd defendant procure a determination of their dispute over the suit property by



the matrimonial property disputes court within the framework of the applicable matrimonial property law. I will give this matter a mention date when the parties will be expected to show cause why this suit should not be struck out for want of jurisdiction on part of this court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF OCTOBER 2022

B M EBOSO

JUDGE

In the Presence of: -

Ms Jin for the 1st Defendant

Mr Mungai for the 2nd and 3rd Defendants

Mr Munene for the Plaintiff

Court Assistant: Sydney

