



**Mogoon Enterprises Limited v Nairobi City County & another (Environment & Land Case E385 of 2021) [2022] KEELC 15518 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15518 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E385 OF 2021  
LC KOMINGOI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**MOGOON ENTERPRISES LIMITED ..... PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI METROPOLITAN SERVICES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the notice of motion dated November 12, 2021 brought under section 1A, 1B, 3A and 63 (c) and (e) of the [Civil Procedure Act](#) and under order 40 rules 1, 2 and 9 of the [Civil Procedure Rules](#) and all other enabling provisions of law.
2. It seeks orders:-
  1. Spent.
  2. Spent.
  3. That a temporary injunction do issue restraining the defendants whether by themselves, their servants, employees, agents, or any other persons from trespassing, alienating, forcefully taking possession, entering, committing acts of waste on LR Nairobi/Block 37/151 Parklands, Nairobi, or interfering with the plaintiff's interest to the said property and/or from dealing with the aid property in any way whatsoever or in any other manner whatsoever, depriving the plaintiff's right to the said suit property, Nairobi/Block 37/151 Parklands, Nairobi pending the hearing and determination of this suit.
  4. Spent.



5. That this honourable court is pleased to issue an order directing the plaintiff to fence its property with a perimeter wall to avoid unlawful trespass by the defendants or any other person whatsoever pending the hearing and determination of this suit.
  6. That the officer commanding station (OCS) Parklands Police Station for that matter do assist to enforce, supervise and ensure compliance with the orders issued herein.
  7. That this honourable court do grant such orders it deems fit and convenient to meet the ends of justice.
  8. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (l).
  4. The application is supported by the affidavit of Adan Gure Disow, a director of the plaintiff/applicant sworn on the November 12, 2021.
  5. The application is opposed. There are grounds of opposition filed by the 1<sup>st</sup> defendant/respondent dated May 5, 2022. There are also grounds of opposition filed by the 2<sup>nd</sup> defendant/respondent dated February 10, 2021.
  6. On the April 27, 2022, the court with the consent of the parties directed that the application be canvassed by way of written submissions.

#### **The plaintiff's/applicant's submissions**

7. They are dated June 20, 2022. It is submitted that the plaintiff/applicant is entitled to the reliefs sought. Counsel has put forward the case of *Lucy Wangui Gachara vs Minudi Okemba Lore [2015] e KLR* which reiterated the principles set out in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others, CA No 77 of 2012*; *Joyce Sarange Kenyatta vs Lucas Nyambegera Nyangweso [2015] e KLR*; *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125*.
8. Counsel further submitted that the plaintiff/applicant is the bonafide, lawful and registered proprietor of Nairobi/Block 37/151 Parklands. He has relied on section 26(1) of the *Land Registration Act, 2012*. He has put forward the case of *Lensol Limited vs Simon Muchai Mungai & 7 Others [2012] e KLR*. It is submitted that the plaintiff/applicant has proved that it is the registered owner of the suit property.
9. It is also submitted that the defendants are trespassers on the suit property and that this court ought not to allow the defendants to remain on the suit property. He has put forward the cases of *Furaha Sea Chalets Ltd vs Hassan Juma & 2 Others [2017] e KLR*; *Paul Thuo Njambi vs James Waweru Muturi [2017] e KLR*; *Ramadhan Makal Lalangole vs Lopusikou Kori Lokamar [2015] e KLR*; *Kenya National Highways Authority vs Shalien Masood Mughal & 5 Others [2017] e KLR*; *Devani vs Bhadresa & Another [1972] EA 22*; *Mobile Kitale Service vs Mobile Oil Kenya Limited & Another [2004] e KLR*.
10. It is submitted that the plaintiff/applicant has established a prima facie case as per the conditions set out for grant of injunctions in the case of *Giella vs Cassman Brown & Co Ltd [1973] EA 358*. It says that the application be allowed.
11. It appears the 1<sup>st</sup> defendant did not put in written submissions despite seeking time to do so. By the time of writing this ruling, there are no submissions on record.



## The 2<sup>nd</sup> defendant's submissions

12. They are dated July 5, 2022. They raise two issues for determination:-
  - i. Whether the plaintiff has met the conditions requisite for the granting of injunctive orders.
  - ii. Whether there is a reasonable cause of action against the 2<sup>nd</sup> defendant.
13. Counsel submitted that the precedent was set out in the case of *Giella vs Cassman Brown & Co Ltd [1973] EA 358*. She has also put forward the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125*.
14. It is submitted that the Plaintiff/Applicant has not demonstrated that it stands to suffer irreparable damage that cannot be compensated by an award of damages.
15. It is also submitted that the Plaintiff/Applicant has failed to demonstrate that the 2<sup>nd</sup> Defendant has infringed on its rights. Counsel prays that the Application be found not to be merited and be dismissed with costs.
16. I have considered the pleadings, the notice of motion and the affidavit in support together with the annexures. I have also considered the grounds of opposition, 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 injunctions.
  - ii. Who should bear costs of this application?
17. It is now appropriate to consider the facts that have emerged and the legal principles applicable. The principles were set down in the precedent setting case of *Giella vs Cassman Brown & Co Ltd [1973] EA 358*
18. In the case of *Mrao Ltd vs First America Bank of Kenya Ltd & 2 Others [2003] KLR 125* the Court of Appeal gave a definition of what amounts to a prima facie case. It stated;

' A prima facie case in a civil application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter'.
19. It is the Plaintiff's/Applicant's case that it is the registered proprietor of Nairobi/Block/37/151. In paragraph 8 of the supporting affidavit, the deponent states:-

' That the Plaintiff avers that on October 24, 2021, the Defendants without any lawful authority and in violation of Plaintiff's constitutional rights to property, the Defendants wrongfully and unlawfully trespassed on the Plaintiff's property without any colour of right'.
20. I have gone through the annexures and I find no evidence to confirm any trespass on the Plaintiff's/Applicant's suit property. Sufficient evidence has not been adduced to show that the 1<sup>st</sup> Defendant's employees and or agents have been harassing the Plaintiff's/Applicant's workers.



21. The Plaintiff/Applicant has also failed to demonstrate that it applied for and was denied necessary licenses by the 1<sup>st</sup> Defendant/Respondent. From the foregoing, I find that the Plaintiff/Applicant has failed to establish a prima facie case with a probability of success at the trial.
22. I also find that the Plaintiff/Applicant has failed to demonstrate that it stands to suffer irreparable harm that cannot be compensated by an award of damages. I rely on the case of *Fredrick Nganga Thuo vs Peter Mungai Njuho [2019] e KLR*.
23. 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 VIRTUALLY THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022.**

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Court Assistant - Mutisya

