



**Prilscot Company Limited v Kiilu (Environment & Land Case
E026 of 2022) [2022] KEELC 14982 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14982 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E026 OF 2022
CA OCHIENG, J
NOVEMBER 23, 2022**

BETWEEN

PRILSCOT COMPANY LIMITED PLAINTIFF

AND

LUCIA MUTHUSI KIILU DEFENDANT

RULING

1. What is before court for determination is the plaintiff's notice of motion application dated the March 30, 2022 where it seeks the following orders:
 - a. Spent
 - b. That the honourable court be pleased to issue inhibition orders to prohibit the registration of any and all dealing on all the registers of the properties known as LR No 7149/195 (original number 7149/53/1), LR No 7149/196 (original number 7149/53/2) and LR No 7149/199 (original number 7149/53/5) pending the hearing and determination of the main suit.
 - c. Spent
 - d. Spent
 - e. That the honourable court be pleased to issue a temporary injunction directed at the defendant, whether acting by herself, her servants, agents, contractors and/or any other person whatsoever, from selling, constructing on, developing or in any manner whatsoever further interfering with the properties known as LR No 7149/195 (original number 7149/53/1), LR No 7149/196 (original number 7149/53/2) and LR No 7149/197 (original number 7149/53/3) LR No 7149/198 (original number 7149/53/4) LR No 7149/199 (original number 7149/53/5) pending the hearing and determination of the main suit.
 - f. That costs of this application be in the cause.



2. The application is based on grounds on the face of it and supported by the affidavit of one Luka Kipkorir Kigen, the director of the applicant. He deposes that on December 19, 2005, the applicant entered into an agreement for sale and purchase of the property known as LR No 7149/53 together with other adjacent land 7149/52 and 7149/54 which are not subject to this suit from one Raphael Muli Kiilu (deceased). He states that the sole purpose of acquiring the land was to develop a residential real estate project known as Elan Park which had been designed to occupy the three (3) properties. He avers that he had paid a deposit of two million and one hundred thousand (Kshs 2,100,000) as per the sale agreement and a further one million, two hundred and thirty thousand shillings (Kshs 1,230,000) amounting to a total of Kenya shillings three million, three hundred and thirty thousand shillings (Kshs 3,580,000) for 7149/54 and afterwards the firm of Cheptumo & Company Advocates issued a professional undertaking for the payment of the balance upon successful registration of the transfer or within 120 days from the execution of the Sale agreement. He contends that the vendor passed away, before he could issue the transfer documents as per the sale agreement and the defendant as the administrator of the deceased estate, facilitated the transfer of the other two properties, being LR Nos 7149/52 and 7149/54 respectively but declined to facilitate the transfer of LR No 7149/53 which is the subject of this suit. He states that despite several attempts to amicably reach a way forward with the defendant, she has remained, adamant and has even advertised the property for sale after subdividing it, into five (5) parcels. He reiterates that the defendant's refusal to complete the sale of the parcel No LR 7159/53 as the administrator of the deceased's estate has occasioned the applicant great irreparable financial loss since it is unable to develop the property and get proceeds from the same as intended.
3. The application is opposed by the defendant who filed a replying affidavit where she acknowledged existence of three (3) separate agreements entered into between her late husband and the applicant herein. She further acknowledges the payment of the deposit for each parcel of land by the applicant. She however avers that the contract on parcel number 7149/53 terminated automatically when the applicant failed to pay the balance within the stipulated timelines of 120 days from the date of signing the said sale agreement. She explains that the applicant had later paid for and acquired the other two parcels via separate sale agreements with her, but that they had not agreed on the suit land. She avers that the applicant was trying to deny her proprietorship over suit property which she had rights to subdivide and dispose of, as she wills.

Submissions

Respondent's Submissions

4. In her submissions, the respondent contends that the instant application lacks merit since the applicant was barred by the provisions of section 4(1) of the *Limitations of Actions Act*, which bars it from bringing any action on a contract entered into in 2005, almost 17 years later. She argues that the applicant had not met the threshold for grant of injunctive orders as set out in the case of *Giella v Cassman Brown & Co Ltd (1973), EA 356*.
5. The applicant did not file any submissions in support of its application.

Analysis and Determination

6. Upon consideration of the instant notice of motion application including the respective affidavits, annexures and submissions, the only issue for determination is whether the plaintiff is entitled to orders of a temporary injunction in respect to LR Nos 7149/195 (original number 7149/53/1), LR No 7149/196 (original number 7149/53/2) and LR No 7149/197 (original number 7149/53/3) LR No 7149/198 (original number 7149/53/4) LR No 7149/199 (original number 7149/53/5), pending the hearing and determination of this suit.



7. The principles for granting of interlocutory injunctive orders are well outlined in the renowned case of *Giella v Cassman Brown & Co Ltd* (1973), EA 356 while in the case of *Mrao Ltd v First American Bank Ltd & 2 Others, (2003) KLR 125* the court aptly provided a definition of a prima facie case.
8. As to whether the plaintiff has established a prima facie case to warrant the orders sought. it is not in dispute that the defendant is the administrator of the estate of the vendor Raphael Muli Kiilu (deceased). It is further not in dispute that the plaintiff entered into a sale agreement dated the December 19, 2005 for sale of land parcel number LR Nos 7149/52, 7149/53 and 7149/54 but only paid a deposit of two million and one hundred thousand (Kshs 2,100,000) as per the sale agreement and a further one million, two hundred and thirty thousand shillings (Kshs 1,230,000) amounting to a total of Kenya shillings three million, three hundred and thirty thousand shillings (Kshs 3,580,000). Further, that the firm of Messrs Cheptumo & Company Advocates issued a professional undertaking dated the January 12, 2006 for the payment of the balance upon successful registration of the transfer or within 120 days from the execution of the sale agreement. It is also not in dispute that the defendant is the registered owner of LR No 7149/53 which has since been subdivided into five (5) portions.
9. Looking at the respective documents presented by the parties herein, I note the plaintiff entered into separate agreements with the defendant and it is not clear why the plaintiff proceeded to renegotiate with her. Further, the plaintiff has not indicated whether it paid any further sums of monies towards the purchase price, to the vendor's family for the suit land, and yet it proceeded to develop it. I note the plaintiff has not furnished an affidavit from the firm of Messrs Cheptumo & Company Advocates, to confirm if the professional undertaking they issued in 2006 still subsists. I further note that there were several correspondence in respect to fresh negotiations between the plaintiff and defendant as well as an indication of a boundary dispute, which facts the plaintiff has not controverted nor challenged. The plaintiff argues that the defendant breached the contract between itself and the vendor by failing to provide the completion documents as the administrator of the estate of the deceased vendor, but the defendant insists the sale agreement was long terminated and a claim cannot subsist by virtue of the provisions of section 4(1) of the *Limitation of Actions Act*. The plaintiff has not explained why it failed to take any action since the time that it realised that the defendant was reluctant in completing the transaction over the suit land. Based on the facts as presented including the pleadings herein while relying on the two decisions I have cited, I find that the plaintiff has not established a prima facie case to warrant the orders of injunction as sought.
10. In further associating myself with the decision *Nguruman Limited vs Jan Bonde Nielsen & 2 Others 2014) eKLR, CA No 77 of 2012*, where the Court of Appeal held that in instances when a party has failed to establish a prima facie case on the first limb on injunctions, the court need not proceed to make a determination of the other two limbs and I will hence decline to do so.
11. It is against the foregoing that I find the notice of motion application dated the March 30, 2022 unmerited and will proceed to dismiss it.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 23RD DAY OF NOVEMBER, 2022

CHRISTINE OCHIENG

JUDGE

