



**Gona v Salimu (Environment & Land Case 57 of 2018)
[2022] KEELC 15164 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15164 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 57 OF 2018
NA MATHEKA, J
DECEMBER 7, 2022**

BETWEEN

MAULID MOHAMED GONA PLAINTIFF

AND

JIKOMI SALIMU AKA JIKOMI SAID MARO DEFENDANT

RULING

1. The application is dated July 21, 2022 seeking the following orders;
 1. That the application herein be certified as urgent and be heard *ex-parte* in the first instance.
 2. That the defendant/respondent, by himself, his servants, agents or any other third party be restrained by an injunction order from transferring, leasing, selling, charging, fencing, digging and wasting or in any manner, dealing thereof with the suit land property known as Kilifi/Kijipwa/54 situated at Kikambala within the County Government of Kilifi measuring approximately 1. 003 Ha which the said suit land property is delineated, demarcated and described on the Land Survey Registry Map Sheet No 2 (two) on the title deed pending the hearing of this application.
 3. That the defendant/respondent, by himself, his servants, agents or any other third party be restrained by an injunction order from transferring, leasing, selling, charging, fencing, digging and wasting or in any way dealing thereof with the suit land property known as Kilifi/Kijipwa/54 situated at Kikambala within the County Government of Kilifi measuring approximately 1. 003 Ha which the said suit land property is delineated, demarcated and described on the Land Survey Registry Map Sheet No 2 on the title deed pending the hearing of this application the originating summons filed herein.
 4. That the Registrar of Titles be directed to register a prohibition order in terms of prayer three (3) above.



5. That the costs of this application be provided for.
2. It is based on the grounds that the applicant was surprised with court judgment resulting from consent which she was not a participant and fraudulent. That the applicant's land known as LR No Kilifi/Kijipwa/54 is now being invaded with strangers and being fenced and trenches being dug for ready construction. That the respondent is encroaching on the land being, accompanied by administration police officers and the applicant and with her family is watching helplessly. That the suit had been concluded at Kilifi SRMCC No 53 of 2011 in favour of the applicant. That the respondent filed this suit with an aim to collude with other parties to deprive the applicant her rights of ownership of her land. That for the interest of justice that this application is heard on priority basis and orders sought be granted. That the applicant shall suffer irreparable loss and damage as she is being threatened with eviction, yet the case is pending in this honourable court.
3. This court has considered the application and submissions therein. The power of court in an application for interlocutory injunction is discretionary, the discretion is judicial and is exercised on the basis of law and evidence. The principles which guide the court in deciding whether or not to grant an interlocutory injunction are well settled. *Giella vs Cassman Brown & Co Ltd* (1973) EA 358, set out the three requirements that has to be satisfied in an interlocutory injunction application. The applicant has to establish his case only at a *prima facie* level, demonstrate irreparable injury if a temporary injunction is not granted, and where the court has any doubts, it will be decided on a balance of convenience.
4. The court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* (2003) KLR 125 defined a *prima facie* case is. It held that;

"So what is a *prima facie* case? I would say that in civil cases it is a case in 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." The court went further to hold that "A *prima facie* case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant case upon trial. That is clearly a standard which is higher than an arguable case."
5. The defendant/applicant states that she was surprised with court judgment resulting from consent which she was not a participant and fraudulent. That the applicant's land known as LR No Kilifi/Kijipwa/54 is now being invaded with strangers and being fenced and trenches being dug for ready construction. That the respondent is encroaching on the land being, accompanied by administration police officers and the applicant and with her family is watching helplessly. That the suit had been concluded at Kilifi SRMCC No 53 of 2011 in favour of the applicant. That the respondent filed this suit with an aim to collude with other parties to deprive the applicant her rights of ownership of her land. She has since changed her advocates to the current one.
6. The Court of Appeal in *Nguruman Limited vs Jan Bonde Nielsen & 2 others* (2014) eKLR the court held that;

"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.”

7. The applicant/defendant has proved that she would suffer irreparable damage and the balance of convenience is in her favour as she has lived on the suit land with her family for over 40 years. The court in *Nguruman Limited (supra)*, found that the three conditions and stages have to be applied as separate, distinct and logically. It was held that;

“If the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

8. I find that the defendant/applicant has established a *prima facie* case and order that the status quo be maintained pending the hearing and determination of the application dated March 21, 2022. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 7TH DAY OF DECEMBER 2022.

N.A. MATHEKA

JUDGE

