



REPUBLIC OF KENYA



KENYA LAW
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**Kathiri v Chege & another (Environment & Land Case E005 of 2022)
[2022] KEELC 15308 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15308 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E005 OF 2022**

CK NZILI, J

DECEMBER 7, 2022

BETWEEN

DELFIN KATHIRI PLAINTIFF

AND

SARAH WANGARI CHEGE 1ST DEFENDANT

MARY NKIROTE MUTHURI 2ND DEFENDANT

RULING

1. By an application dated March 16, 2022, the plaintiff seeks for a temporary injunction barring and restraining the defendants, their agents, servants or employees from interfering with the applicant's use and occupation of two plots measuring 30ft by 50 ft and 40 ft by 80 ft within LR No Ntima/Igoki/5223 till the hearing and determination of this suit. The application is supported by an affidavit of Delfine Kathiri on March 16, 2022 in which she stated that she bought the two plots in 1975 from the father-in-law and grandfather of the defendants, facts well known to the 1st defendant. She attached a copy of the green card, a sale agreement and photos showing the developments thereon as annexures DK "1" "2" and "3" respectively.
2. The application is opposed through the replying affidavit by Sarah Wangari Chege, the 1st defendant, sworn on March 31, 2022 in which she denies that their late husband was the owner of LR No Ntima/Igoki/4514 later subdivided into LR Nos 5222 and 5233. She averred that the land was only transferred to her after the letters of grant of administration. Further, she denied that the plaintiff ever occupied LR No Ntima/Igoki/516 now LR No Ntima/Igoki/4514.
3. The defendant averred that the plaintiff had previously attempted to sue her father in law in Misc Case No 114 of 2004 whose replying affidavit he attached as annexures marked SWC "2". Additionally, the defendant averred that the plaintiff only filed this suit after she was sued in Meru CM ELC NO 138 of 2021 as per attached documents.



4. In *Katsran Logistics Ltd v Gulf Africa Bank Ltd* (civil) case E014 of 2022 [2022] KEHC 259 (KLR) Commercial/Tax March 25, 2022) (Ruling) the court cited with approval *Nguruman Ltd v Jan Bonde Nielsen & 2 others* [2014] eKLR where the Court of Appeal reiterated the three conditions to be fulfilled before an interim injunction is granted as set out in *Giella v Cassman Brown* [1973] EA 358 and further clarified that the three are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially such that if a party fails to establish a *prima facie* case, then irreparable injury and a balance of convenience do not require consideration.
5. What amounts to a *prima facie* case, was defined by the court in *Mrao Ltd v First American Bank of Kenya Ltd & 3 others* [2003] eKLR. The court said it includes but was not confined to a genuine and arguable case, which a tribunal or a court directing its mind on the material presented will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
6. In *Mbutia v Jimba Credit Finance Corporation Ltd & another* [1988] eKLR, it was held that in an application for interlocutory injunction, the court is not required to make final findings on contested facts and law but only to weigh the relative strengths of the party's cases.
7. Similarly, in *Virginia Edith Wambui v Joash Ochieng Ougo & another* [1987] eKLR, the Court of Appeal held that at an interlocutory stage there are serious conflicts of facts and the trial court should maintain the status quo until the dispute has been decided on a trial.
8. As regards irreparable injury, in *Nguruman Ltd v Bonde Nielsen* (*supra*), the court held that irreparable damages were that which could not be remedied by way of damages in the absence of an injunction and the burden was on the applicant to demonstrate the nature and extent of the injury, which must not only be speculative, but more than an unfounded fear or apprehension on the part of an applicant. The court said that the injury must be actual, substantial, demonstrable and that irreparable damage was that which there was no stand by which it could be measured with reasonable accuracy or harm which no monetary compensation of whatever amount would be adequate remedy.
9. Applying the foregoing principles and caselaw, the applicant has produced a sale agreement in which she bought for a consideration the two plots. The applicant has also produced photographs indicating her occupation of the two plots since 1975. The defendant has also admitted that she had sued the plaintiff for trespass in Parcel No LR Ntima/Igoki/5223 a subdivision of LR No Ntima/Igoki/516.
10. Given the admission of trespass, in my considered view the applicant has established a right or interest which requires the preservation of the suit land pending the hearing of the suit on merits.
11. The applicant has also demonstrated irreparable loss or injury which may not be quantifiable or compensable by way of damages. The balance of convenience also tilts in favour of preserving the suit property.
12. Consequently, a temporary injunction restraining the defendants their agents, servants or employees from interfering with the plaintiff's quiet enjoyment and occupation of the two plots sitting on parcels LR No's Ntima/Igoki/5222 and 5223 is hereby issued to last for one year only.
13. The plaintiff shall file an undertaking as to damages for Kshs 2000,000/= within 14 days from the date hereof in default of which the orders shall stand vacated.
14. Parties to comply with order 11 of the *Civil Procedure Rules* and list the suit for hearing.

Orders accordingly



DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 7TH DAY OF DECEMBER, 2022.

In presence of:

C/A: Kananu

Kyule for respondents

HON CK NZILI

ELC JUDGE

