



REPUBLIC OF KENYA



KENYA LAW
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Singh v Cisco Kenya Limited & another (Environment & Land Case E015 of 2023) [2025] KEELC 4013 (KLR) (27 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4013 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E015 OF 2023**

AY KOROSS, J

MAY 27, 2025

BETWEEN

KIRPAL SINGH PLAINTIFF

AND

CISCO KENYA LIMITED 1ST DEFENDANT

HASSAN ZUBEIDI 2ND DEFENDANT

RULING

Plaintiff's case

1. This is a ruling in respect of the notice of motion dated 29/08/2023 filed by the plaintiff, where he seeks the following orders from this court: -
 - a. Spent.
 - b. Spent.
 - c. A temporary injunction order be issued restraining the 1st defendant by itself, its servants, shareholders, employees, agents, or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any manner interfering with the plaintiff's peaceful occupation of land parcel no. LR. 8784/6 (original no. 8784/2/3) situated at Athi River, Machakos County, pending hearing and determination of the suit.
 - d. The plaintiff be declared the lawful exclusive owner of LR. 8784/6 (original no. 8784/2/3) situated at Athi River, Machakos County.
 - e. The officer commanding station Athi River police station to aid in ensuring compliance with orders (c) above.



- f. Costs of the motion be borne by the 1st defendant.
2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn on 29/08/2023.
3. A summary of the grounds in support of the motion are that a) the plaintiff was one of the co-owners of LR. 8784/6 (original no. 8784/2/3) ["suit property"] having purchased it from Kimani Wa Nyoike and title duly issued on 8/12/2010, b) the plaintiff had been in active occupation of the suit property, c) the 1st defendant's servants/agents had commenced construction on the suit property; and
- d) The 1st defendant is a stranger to the plaintiff and his deceased co-registered owner Gurcharan Singh as they had never sold the suit property to it, e) the original title deed of the suit property had been the subject Nairobi HCCC No. 467 of 2015 and held by the Kenya Depository Insurance Corporation (KDIC) and thus, it was not tenable for it to be transferred.

Defendants' case

4. The motion is opposed vide replying affidavit sworn by the 1st defendant's director, Francis Mureithi, on 16/10/2023. He avers that: a) the 1st defendant is the registered owner of the suit property, having purchased it by the purchase of shares from Lawrence Douglas Roberts and Lorna Sylvie Akello Abuodha on 30/06/2016, who had themselves equally purchased the suit property from the plaintiff and his co-registered owner on 12/11/1998; and
- b) That as per the terms of the latter agreement, the suit property was at the time still in the names of Kimani Wa Nyoike pending a transfer to the plaintiff's name and that of his co-registered owner, c) lastly, the 1st defendant received all the completion documents from Lawrence Douglas Roberts and Lorna Sylvie Akello Abuodha, including the original title deed. The 2nd defendant did not oppose the motion.

Submissions

5. As directed by the court, submissions were received from the law firms of Mss. Githu Partners Advocates on record for the plaintiff, and Sam Ogola & Co. Advocates on record for the 1st defendant, and they were respectively dated 3/06/2024 and 15/10/2024.

Issues for determination, Analysis and Determination

6. Having considered the motion, its grounds, affidavits, and well-written rival submissions, the singular issue for determination is whether the motion is merited.
7. This court's invitation to intercede has been moved pursuant to the provisions of Order 40 Rule 1 of the *Civil Procedure Rules* (CPR), which empowers this court to grant an injunctive relief by stating as follows: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction



to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

8. Interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit, and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.
9. The decision of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR reminds this court that its power in an application for interlocutory injunction is discretionary. Such discretion is judicial, and as is always the case, judicial discretion has to be exercised based on the law and evidence.
10. The principles that guide this court in determining whether a temporary injunction ought to be issued were settled in the celebrated case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. It is trite law that an applicant has to meet the threshold of the 3 tests, which are inter alia, establish a prima facie case; demonstrate irreparable injury; and that the balance of convenience tilts in his favour.
11. These principles were restated in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR in the following manner: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

 - a. establish his case only at a prima facie level,
 - b. demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.
12. When determining an interlocutory application such as the one before this court, the court has to be careful and not prejudice a party by making conclusive findings of fact or law on substantive issues that are the preserve of trial as was stated by Ringera, J (as he then was) in *Airland Tours & Travel Limited vs. National Industrial Credit Bank* Nairobi (Milimani) HCCC No. 1234 of 2002.
13. The 1st test to establish is whether the plaintiff has a prima facie case, and the definition of the term was defined by the Court of Appeal decision of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR, thus: -

“In civil cases a prima facie case 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
14. Typically, on the preponderance of probabilities, the onus is on the applicant to prove a prima facie case. In this case, both parties have presented a title document that shows that the plaintiff and Gurcharan Singh were registered as its owners on 8/12/2010.
15. As can be seen from this title document, a transfer was effected in the 1st defendant’s name on 19/04/2023. Nevertheless, the legitimacy of the transfer has been contested by parties, and for reasons



that this is not a substantive hearing, and so as not to prejudice a party, this issue of legality has to await the main hearing of the suit.

16. In this case, the plaintiff has made heavy weather of Nairobi HCCC No. 467 of 2015, which was a suit by KICD against the 2nd defendant and other parties. From the record, in this particular case, a ruling was rendered on an application dated 23/06/2016 by Justice G.L. Nzioka on 28/03/2017 whereby the learned hon. Judge ordered that there shall be no disposal of properties in either the custody of KICD or of the 2nd defendant pending hearing of other applications and/or the main suit.
17. From the record, an impression was given by the 2nd defendant that this suit was concluded. The plaintiff tabled before this court a report that was allegedly filed in Nairobi HCCC No. 467 of 2015, showing that the title deed of the suit property, which was allegedly still registered in the name of Kimani Wa Nyoike, was retrieved from the 2nd defendant by KICD.
18. At this juncture, this court is uncertain whether, in the course of the proceedings in Nairobi HCCC No. 467 of 2015, the title deed of the suit property was in the custody of KICD or the 2nd defendant.
19. In the circumstances where there seem to have been court proceedings over the suit property in Nairobi HCCC No. 467 of 2015, which had barred the disposal of certain properties, which may as well have included the suit property, this court finds the plaintiff has established a prima facie case.
20. Concerning the 2nd test, it is trite law that the court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. As stated in Halsbury's Laws of England [Halsbury's Laws of England, Third Edition, Volume 21, paragraph 739, page 352, irreparable injury is injury which is substantial and could never be adequately remedied or atoned for by damages.
21. In this case, the 1st defendant admitted he had put up a perimeter wall over the suit property and in the circumstances, this court finds that if the temporary injunction is not granted, the 1st defendant who has control of the suit property may waste it away and if the plaintiff becomes successful in his claim, no amount of damages can put him in his rightful place. As to the last test, this court finds it tilts in the plaintiff's favour.
22. On the question of declaratory relief that has been sought by the plaintiff, this court finds that this prayer is premature. Concerning the relief of police assistance, this is a civil matter and in the absence of extremely special circumstances, it finds it is inappropriate for a civil litigant to seek assistance from the police at an interlocutory stage since any default of the orders of this court can adequately be handled under the *Civil Procedure Act* and its Rules.
23. Ultimately, this court finds the relief for a temporary injunction is merited. For the reasons and findings stated above, this court allows the notice of motion dated 29/08/2023 in the following terms: -
 - a. An order of temporary injunction is issued restraining the 1st defendant by itself, its servants, shareholders, employees, agents, or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, demolishing, conveyance, transfer, arbitrary registration or in any manner interfering with the land parcel no. LR. 8784/6 (original no. 8784/2/3) situated at Athi River, Machakos County, pending hearing and determination of the suit.
 - b. Costs shall be in the cause.
 - c. A mention date shall be given for pretrial directions.
24. It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 27TH DAY OF MAY, 2025.



HON. A. Y. KOROSS

JUDGE

05.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr Mureithi holding brief for Mr Githae for plaintiff

M/s Kamau for Mr Ogola for 1st defendant

Mr Koyoko for 2nd defendant

Ms Kanja- Court Assistant

