



**Mwaura & 6 others v Wainaina & 2 others (Environment and Land Case
Civil Suit E003 of 2024) [2024] KEELC 3269 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3269 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E003 OF 2024**

JA MOGENI, J

APRIL 9, 2024

BETWEEN

PETERSON KIMANI MWAURA 1ST PLAINTIFF
PETER THIONG'O MUCHIRI 2ND PLAINTIFF
JESSE MBUTHIA GACOKA 3RD PLAINTIFF
JOYCE NYAMBURA JANE 4TH PLAINTIFF
LUCY WANJIKU MWANGI 5TH PLAINTIFF
SAMUEL RUGU CHEGE 6TH PLAINTIFF
ANN KAHAKI NJUGUNA 7TH PLAINTIFF

AND

MARGARET WAMBUI WAINAINA 1ST DEFENDANT
DAMARIS NJERI 2ND DEFENDANT
**GRACE MWAURA T/A IGM GENERAL LAND CONSULTANTS 3RD
DEFENDANT**

RULING

1. Before this Court for determination is a Notice of motion dated 9/01/2024 brought pursuant to Section 1A, 1B & 3A of the *Civil Procedure Act*, Order 40 Rule 1 (a), (c) & Order 51 Rule 1 of the *Civil Procedure Rules 2010* and all other enabling provisions of the law. The Plaintiff/Applicant seeks the following orders:
 1. Spent.
 2. Spent.



3. That the Honourable Court be pleased to grant an order of temporary injunction do issue against the Respondents, their agents, assigns, beneficiaries, or relatives restraining them from selling, assigning, disposing of or in any way whatsoever interfering with the land registration number Nairobi/Block 126/339 pending the hearing and determination of the main suit.
4. Costs of the application be provided.
2. The Application was supported on the grounds stated in paragraph (a) – (o) on the face of the Application, the annexed affidavits sworn on 9/01/2024 by Peterson Kimani Mwaura, Peter Thiong'o Muchiri, Jesse Mbuthia Gacoka, Joyce Nyambura Jane, Lucy Wanjiku Mwangi, Samuel Rugu Chege and Ann Kahaki Njuguna, the Plaintiffs/Applicants herein.
3. The Application is opposed by the Defendants/Respondents through a Replying Affidavit of Margaret Wambui Wainaina, the 1st Defendant/Respondent herein sworn on 9/02/2024 and by way of Grounds of Opposition dated 19/02/2024. The opposition is on the following grounds: -
 1. That the application as drawn and filed, lacks merit, misconceived, an abuse of the Court's time since the firm of Mathenge & Mathenge Advocates are the custodian of the original mother title of Nairobi Block 126/339.
 2. That the applicants are in Court with very unclean hands, for they are demanding completion of the process and issuance of individual titles when they are the same individuals who instructed the firm of Mathenge & Mathenge Advocates to keep the original mother title in his custody.
 3. That the applicants together with the firm of Mathenge & Mathenge Advocates are very much aware that the defendants cannot make any move towards obtaining documents in favour of the applicants since the original mother title has to be produced in all steps for confirmation which their advocates have refused to release to the Respondents.
 4. That in 2021, the respondents received a letter dated 21/04/2021 copy attached herewith in which the next step was to produce the original title for approval but that was not done since the mother original title is in the custody of Mathenge & Mathenge Advocates, the law firm acting for the applicants herein.
 5. That flowing from the above, it is a clear manifest that the applicants and their advocates are indeed breathing hot and cold air at the same time.
 6. That the respondents believe that the suit and application is a fraud upon the Honourable Court and the respondents and has been brought for an illegal purpose of misleading the Court, after a collusion, conspiracy between the applicants and their advocates.
 7. That the applicants believe that the plaintiffs/applicants herein have filed the suit and the application at hand with nothing but ulterior motives hence the suit and the application are a total sham scandalous, frivolous, vexatious and a total abuse of Court's process.
 8. That the applicants having instructed their advocates Mathenge & Mathenge Advocates to take custody of the original title from the respondents and the same applicants having instructed the same advocate to file a suit against the respondents, it is very clear that the modus operandi of the applicants are to cause confusion so that in the process, they avoid paying their balances and money to process their individual titles which is a clear manifest of fraud.



9. That the respondents are the registered owners of Nairobi Block 126/339 and cannot make any meaningful steps towards any approval, without producing the original title.
 10. That the impression created by the applicants that the respondent intends to sale Nairobi Block 126/339 is farfetched, an imagination and afterthought which is not supported by any evidence but hot air and majorly created to give credence and cover up the intended fraud by the applicants/plaintiffs and their advocates on records.
 11. That following the foregoing, the application dated 9/01/2024 should be dismissed with costs to the defendants/respondents.
4. When the Application came up before this Court for determination on 27/02/2024, the Court gave directions on filing of written submissions and a Ruling date was reserved. By the time of writing this Ruling, none of the parties had duly submitted.
 5. The Court has considered the Applicants' Application, the 1st Respondent/Plaintiff's ground of opposition thereto as well as the rival submissions by the respective parties. I in turn have had time to analyze the emerging issues therein. The instant Application relates to the grant of temporary injunctive relief pending the hearing and determination of this suit.
 6. The principles the court applies when asked to consider an application for grant of interlocutory injunctions are as articulated in the often quoted case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. From the information I have, I have to ask myself whether the plaintiffs/applicants have established a *prima facie* case with a probability of success. In the Court of Appeal case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, a *prima facie* case was defined by the court as follows: -

“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.”
 7. Further, in the *Mrao Case* above, the Court of Appeal further opined 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 the Applicant's case upon trial...”
 8. In this case, it is the Plaintiffs/Applicants' case that the Respondents have jointly and / or severally frustrated, hampered the transfer of plots to the Applicants names despite concluding agreements for sale of the said plots and full settlement of the purchase price. the Respondents' refusal to complete the sale transaction is tainted with malice. The Applicants are reliably informed that the Respondents intend to resale the plots hence the delay to complete the sale transaction and the planned sale of the purchased plots comprised in the Property is illegal and ought to be stopped. That the 3rd Respondent released the Certificate of Title to the Applicants' advocate but failed and/ or refused to provide other completion documents including a copy of the proprietors' identification cards, a copy of the proprietors' KRA PIN certificate and a copy of the requisite clearance certificates. That notwithstanding the several requests made to the Respondents to complete registration of the subdivision and processing of title, the Respondents have neglected or refused to facilitate completion of the sale transactions thus breaching the sale agreements.



9. On their part, the 1st Defendant acknowledges that the plaintiffs, like other purchasers, acquired plots through their agent, the 3rd Defendant, who issued certificates of ownership. She states that efforts were made to obtain individual titles for all purchasers, including the plaintiffs, but progress has been hindered by the plaintiffs' advocates who retain the original title. Despite agreements to surrender the original title for processing, the advocate has allegedly refused to do so, impeding further steps in the conveyancing process. Meetings were held to resolve this issue, with the last one occurring in early 2023, where the plaintiffs were informed of processing fees for individual titles. However, as the original title remains with the plaintiffs' advocates, the Defendants are unable to proceed. The 1st Defendant requests the Court to compel the Plaintiffs' advocates to surrender the original title so that the Defendants can complete the process of obtaining individual titles for the Plaintiffs. She further seeks summons for Mr. Mathenge, the advocate, to produce the original title before the hearing.
10. It has been conceded that the Plaintiffs indeed purchased the suit property from the Defendants. The Applicants intimated that they are reliably informed that the Respondents intend to resale the plots hence the delay to complete the sale transaction and the planned sale of the purchased plots comprised in the property is illegal and ought to be stopped. No evidence has been produced to support this allegation. The Court notes that the 1st Defendant has deponed that the original title is in the Plaintiffs' Advocates' custody and that there is need for them to surrender the original title so that the Defendants can complete the process of obtaining individual titles for the Plaintiffs. Based on the material on record, there is nothing to suggest that the suit property is under any kind of immediate threat as would waste it hence defeating the course of justice. It is therefore apparent to the Court that the Plaintiffs/Applicants have not established a prima facie case as would warrant granting of the orders sought.
11. On the second condition whether the applicant is likely to suffer irreparable loss and damage if the orders sought are not granted, the Black's Law Dictionary (9th Ed) defines irreparable loss as an injury which cannot be remedied by an award of monetary damages.
12. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR; Civil Appeal No 77 of 2012 (Nairobi), the Court of Appeal held as follows with regard to Irreparable loss and damage:

“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.

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.”
13. It is not in dispute that the Plaintiffs advocate is in possession of the original title to the suit property. There has been no demonstration that the suit property is in any kind of immediate threat of being wasted, the Court holds the view that there is equally no evidence that the plaintiffs/applicants are likely to suffer irreparable injury if the orders sought are not granted.
14. Finally, on considering the balance of convenience, I am of the view that the Plaintiffs having failed to satisfy the preceding requirements, the balance of convenience in this case will ultimately tilt in favor of not giving the orders sought by the plaintiffs/applicants. In the above cited case of Nguruman Limited



(supra), the Court of Appeal explained further that all the three conditions established in Giella’s case are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.

15. Consequently, with the above in mind, this Honourable Court finds and holds that the Application dated 9/01/2024 is devoid of merit under the circumstances. The same is hereby dismissed with costs to the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY APRIL 2024.

.....

MOGENI J

JUDGE

In the virtual presence of:

Mr. Sausi for the Defendants

Mr Njagi holding brief for Mr. Mathenge for Applicant/Plaintiff

Ms. C. Sagina : Court Assistant

.....

MOGENI J

JUDGE

