



**Otieno v Ndirangu (Environment and Land Appeal E036 of 2023)
[2024] KEELC 3560 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3560 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E036 OF 2023**

**A OMBWAYO, J
APRIL 11, 2024**

BETWEEN

KEFA OMUYOMA OTIENO APPELLANT

AND

FRANCIS GATHAMBO NDIRANGU DEFENDANT

(Being an appeal arising from the judgment of the Court at Molo, delivered on 8th November, 2023 by the Hon, A Mukenga (PM) Molo CMELC No.23 of 2020)

RULING

1. Kefa Omuyoma Otieno (hereinafter referred to as the applicant) has appealed against the decision of Honorable A. Mukenga delivered on 8th November 2023 in Molo CMC ELC No.23 of 2020. The appeal is accompanied with a notice of Motion dated 7th February 2024 praying that pending the hearing and determination of the appeal this court should issue orders of temporary injunction restraining the respondent from dealing, entering, remaining, constructing, selling, alienating, trespassing, interfering, charging and/or any other way dealing with all the parcel of land known as L.R40836/43 in Kangawa Area measuring approximately 1.25 acres. He further prays for costs of the application.
2. The application is based on grounds that the lower court has decided that the suit was time barred as the limitation period on contracts for land matters is the same as general contracts which according to the learned magistrate is 6 years and not 12 years. The applicant has appealed and that any attempt to evict him to land or the ultimate eviction will be prejudicial and will cause substantial loss.
3. The respondent on his part states that the dispute revolves on land and that the applicant did not prove the existence of the land by producing title. Moreover, that the applicant has never been in possession. The applicant has not established that substantial loss would occur if injunction is not granted. I have considered the rival position of parties and do find that order 42 rule 6(6) is relevant.



Order 42 rule (6) (6) provides that: -

- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
4. In the case of Patricia Njeri & 3 others Vrs National Museum of Kenya (2004) eKLR the court gave the following principles as governing grant of temporary injunction pending appeal.
 5. In this case, I do find that the applicant has demonstrated that he purchased 1.25 acres of land vide the agreement on record. The respondent declined to give him possession. The issue as to whether limitation period for contracts touching on land is 6 years or 7 years is an arguable ground of appeal and therefore the appeal is not frivolous. I do find that the applicant has demonstrated that there exists an appeal that is not frivolous. Moreover, that if injunction is not granted the applicant will suffer substantial loss if he succeeds on appeal and yet the land has been disposed.
 6. I do grant the prayers sought thus there be an orders of temporary injunction restraining the respondent from dealing, entering, remaining, constructing, selling, alienating, trespassing, interfering, charging and/or any other way dealing with all the parcel of land known as L.R.40836/43 in Kangawa Area measuring approximately 1.25 acres pending appeal. Costs in the cause.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF APRIL 2024.

A O OMBWAYO

JUDGE

