



**Sekuda v Ng'ang'a & 4 others (Environment & Land Case
E072 of 2022) [2024] KEELC 1732 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1732 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E072 OF 2022
LC KOMINGOI, J
APRIL 11, 2024**

BETWEEN

KOIKAI OLE KAAMPA SEKUDA APPLICANT

AND

MARY WAMBUI NG'ANG'A 1ST RESPONDENT

JOYCE WAMBUI NG'ANG'A 2ND RESPONDENT

NICHOLAS NDUNGU NG'ANG'A 3RD RESPONDENT

LAND REGISTRAR KAJIADO NORTH 4TH RESPONDENT

HON. ATTORNEY GENERAL OF KENYA 5TH RESPONDENT

RULING

1. This is the Notice of Motion dated 20th September 2022 brought under; (Section 1A and 3a of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, Order 40 rules 1 and 2, Order 51 rule 1 of the Civil Procedure Rules 2010 and relevant provisions of the Registered [Land Act](#), Article 159 of [the Constitution](#) of Kenya 2010 and all other enabling provisions of the Law.)
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. That upon interparte hearing, the Honourable court be pleased to grant interlocutory injunction restraining the 1st, 2nd and 3rd Respondents by themselves, their agents and/or employees or whomsoever is acting on their behalf from trespassing, encroaching, constructing, transferring, selling, conveying, charging, leasing, or interfering in any manner



with the parcel of land Kajiado/ntashart/266 pending hearing and determination of the main suit.

4. That in alternative the Honourable Court be pleased to issue an inhibition order to be registered against parcel of land Kajiado/ntashart/266 prohibiting any dealing in any manner, pending hearing and determination of the main suit.
 5. Spent.
 6. That upon interparte hearing that Honourable court be pleased to issue an order directing the 4th Respondent to cancel any unlawful and illegal transactions which has been effected by the 1st, 2nd and 3rd Respondents, in respect to the subject property Kajiado/ntashart/266 and the property to revert back to the Applicant pending hearing and determination of the main suit.
 7. That the Officer Commanding Ngong Police Station which is within the jurisdiction of the subject property do ensure compliance and enforcement of the injunctive orders issued by the Honourable court.
3. The grounds are on the face of the application and set out in paragraphs a to f.
 4. The Application is supported by the affidavit of Koikai Ole Kaampa Sakuda, the Plaintiff/Applicant herein sworn on the 20th September 2022 and a further affidavit sworn on the 13th April 2023.
 5. The Application is opposed.
There's a replying affidavit sworn by Nicholas Ndung'u Ng'ang'a the 3rd Defendant/Respondent, herein sworn on the 10th November 2022.
 6. On the 6th November 2023, the court with the consent of parties, directed that the Notice of Motion be canvassed by written submissions.

Analysis and Determination.

7. I have considered the Notice of Motion, the affidavit in support and the response thereto.
I have considered the rival submissions and the authorities cited. The issues for determination are;
 - i. Whether the Plaintiff/Applicant's application has met the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application.?
8. In their submissions, counsel have substantiated their clients respective positions stated in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.
9. The principles were laid down in the precedent setting case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. In the case of *Mrao Ltd & 2 Others* (2003) KLR 125 the Court of Appeal in determining what amounts to a prima facie case slated;

“so what is a prima face case?”

I would say that in a civil application it is a case in which on the material presented to court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, so as to call for an explanation or rebuttal from the latter.”



10. It is the applicant's case that he acquired the subject property from Ntashart Group Ranch and that he has been in occupation of the same since the 1980s.

11. It is further his case that on 29th July 2022 he carried out a search at the Land Registry in Ngong and noted that a title had been issued to Evans Nganga Kangethe on 17th May 1982.

That when he discovered the fraud he filed this suit.

12. The 1st, 2nd and 3rd Defendants/Respondents on the other hand, state that the Plaintiff/Applicant has never been in occupation of the suit land but that the developments therein are the Defendants/Respondents houses and a toilet.

13. It is also their case that fraud cannot be raised without a demonstration of how it was done and when it was done. They pray that the Application be dismissed with costs.

14. From the foregoing I find that the Plaintiff/Applicant has failed to show that it has a prima face case with a probability of success at the trial. The Plaintiff/Applicant admitted that the suit land was registered in the name of Evans Ng'ang'a Kangethe way back in 1982.

In the case of *Njenga v Njenga* (1991) KLR 401 Bosire J (as he then was) held that;

“an injunction being a discretion any remedy is granted on the basis of evidence and sound legal principles.”

I am not persuaded by the facts presented by the Plaintiff/Applicant that he deserves the orders sought.

15. In the case of *Kenleb Construction Ltd v Gatitu Services Station Ltd & Another* (1990) KLR 55 Bosire J (as he then was) held that;

“To succeed in an application for injunction an applicant, must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right, legal or equitable, which requires protection by injunction.”

The Plaintiff/Applicant has not demonstrated that he is in occupation of the suit land. I am not satisfied that he deserves this kind of protection.

16. I also find that the Plaintiff/Applicant has failed to demonstrate that he will suffer irreparable loss if these orders are not granted.

I am guided by the case of *Ooko v Barclays Bank of Kenya Ltd* (2002) KLR 394 at page 398 where Ringera J (as he then was) held;

“The second condition is that an interlocutory injunction will not normally be granted unless the applicant can show he will suffer an irreparable injury which cannot be compensated by an award of damages. The onus is obviously on the Applicant to do that. She was content to submit that once a prima facie case has been made, it was not necessary to consider any other matters and that the defendant has not shown it could compensate her adequately in damages. To my mind the Plaintiff's submission is misconceived....”

17. I find that the balance of convenience tilts in favour of the 1st, 2nd and 3rd Defendants who are beneficiaries of the estate of Evans Nganga Kangethe.

18. In conclusion, I find that the Plaintiff/Applicant's application has failed to meet the threshold for grant of temporary injunction. The same lacks merit and it is dismissed. The costs do abide the outcome of the main suit.



It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF APRIL 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Okumu for Mr. Nyangito for Plaintiff.

Ms. Mongare for the 1st – 3rd Defendants.

N/A for the 4th, 5th Defendants.

Court Assistant – Mutisya.

