



**Njoroge v Muchiri (Environment and Land Appeal 9 of 2023)
[2024] KEELC 4054 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL 9 OF 2023**

YM ANGIMA, J

MAY 2, 2024

BETWEEN

FELISTUS NJOKI NJOROGE APPELLANT

AND

JOHN NDIRANGU MUCHIRI RESPONDENT

*(Being an appeal against the ruling and order of Hon. R. Yator
(SPM) dated 04.05.2023 in Ol'Kalou SPMCC No. 4 of 2023)*

JUDGMENT

A. Introduction

1. This is an appeal against the ruling and order of Hon. R. Yator (SPM) dated 04.05.2023 in Ol'Kalou SPMCC No. 4 of 2023 – John Ndirangu Muchiri -vs- Felistus Njoki Njoroge. By the said ruling, the trial court allowed the respondent's application for an interim injunction dated 24.02.2023 pending the hearing and determination of the suit.

B. Background

2. The material on record shows that vide a plaint dated 24.02.2023 the respondent sued the appellant seeking the following reliefs against her:
 - a. A permanent injunction restraining the defendant from entering, trespassing, selling, transferring, alienating, disposing, leasing, evicting and/or in any way adversely interfering with parcel of land known as Nyandarua/Sabugo/7206.
 - b. An eviction order against the defendant from parcel of land known as Nyandarua/Sabugo/7206.
 - c. An order against the defendant for mesne profits for forcible detainer.



- d. Costs of this suit.
3. The respondent pleaded that he was the registered owner of Title No. Nyandarua/Sabugo/7206 whereas the appellant was the owner of an adjacent parcel known as Title No. Nyandarua/Sabugo/7205. He pleaded that both he and the appellant were members of New Gatundu Mixed Farmers Co. Ltd (the company) which had allocated them their respective parcels of land in 2016.
 4. It was the respondent's case that sometime in mid-February, 2023 the appellant had illegally invaded his Parcel No.7206 and commenced construction of a temporary structure and a pit latrine thereon thereby interfering with his proprietary rights. It was pleaded that owing to the urgency of the matter no demand or notice of intention to sue was issued.
 5. Simultaneously with the filing of the suit, the respondent filed a notice of motion dated 24.02.2023 seeking an interim injunction restraining the appellant from, inter alia, trespassing, selling, transferring, alienating, leasing or in any manner adversely interfering with Parcel 7206 pending the hearing and determination of the suit. The application was based upon the same grounds as those pleaded in the plaint. It was the respondent's contention that the appellant's actions were illegal and that he stood to suffer irreparable loss and damage unless the injunction sought was granted.
 6. The record shows that the appellant filed a replying affidavit sworn on 20.03.2023 in opposition to the application. She stated that the respondent's title to Parcel 7206 was illegally procured and that the issue was being litigated in Nyahururu ELC No.18/2019. She stated that she was allocated her parcel by the company on the strength of her ordinary share certificate and that her parcel ought to be 2.8 acres whereas the respondent's parcel should measure about 1.97 acres only.
 7. The appellant denied having invaded the respondent's parcel and averred that the developments were within her own parcel and that it was the respondent who was out to grab part of her land. She contended that the process of sub-division and allocation of land by the company was in dispute and that she was duped into signing a consent for the sub-division and allocation of the land by the company. She, therefore, prayed for dismissal of the respondent's application with costs.

C. Trial Court's Decision

8. The material on record shows that the said application was canvassed through written submissions. The trial court delivered a ruling dated 04.05.2023 allowing the respondent's application for interim orders pending the hearing and determination of the suit. The trial court found and held that the respondent had demonstrated a prima facie case with a probability of success at the trial and that the respondent may suffer irreparable injury which may not be adequately compensated by an award of damages. As a result, the court granted an interim injunction restraining the appellant from, inter alia, entering, trespassing, selling, transferring, alienating, leasing, evicting the respondent, or in any way adversely interfering with Parcel 7206 pending the hearing and determination of the suit.

D. Grounds of Appeal

9. Being aggrieved by the said ruling the appellant filed a memorandum of appeal dated 05.05.2023 raising the following 10 grounds of appeal:
 - a. The learned trial magistrate erred in law and in fact by disregarding the appellant's documentary evidence.



- b. The learned trial magistrate erred in law and in fact in finding that the respondent had established a prima facie case when in fact the appellant had adduced evidence to show that the respondent was misleading the court.
 - c. The learned magistrate erred in law and in fact in finding that the present suit parcel of land known as Nyandarua/Sabugo/7206 is not subject to litigation in Nyahururu ELC 18 of 2019. The suit parcel of land known as Nyandarua/Sabugo/7206 was in fact illegally procured as it was unprocedurally subdivided from Sabugo Settlement Scheme Block 116 which is part of the suit land in Nyahururu ELC 18 of 2019.
 - d. The learned honourable magistrate erred in law and fact in ruling for the respondent which finding was contradictory and against the weight of the evidence tendered by the appellant.
 - e. The learned trial magistrate erred in law and fact in failing to consider the appellant's submissions and legal authorities relied upon in support thereof.
 - f. The learned trial magistrate erred in law and fact in disregarding the evidence of the appellant on record hence resulting to a wrong decision.
 - g. The learned magistrate erred in law and in fact in holding that the respondent has shown that he will suffer irreparable harm that cannot be compensated by way of damages. In fact, the respondent has not shown how he will suffer irreparable harm in any manner whatsoever, the appellant is the one who has already suffered as her house and latrine is subject for demolition considering that her part of the land that was hived off by the respondent. In fact, she is being ordered not to access her house anymore.
 - h. The learned magistrate erred in law and in fact by not even considering on the balance of convenience in granting the injunction. The trial court did not take into consideration that the orders it gave restricts the appellant from accessing her house and pit latrine. That is an act of evicting the appellant from her piece of land before even the suit is heard on its merits upto its conclusion.
 - i. The learned magistrate erred in law and in fact in misguiding himself by filling in facts on behalf of the respondent while failing to consider the appellant's evidence. This amounts to the court giving evidence on the respondent's behalf.
 - j. The learned magistrate applied the wrong principles in law in making his findings.
10. As a result, the Appellant sought the following reliefs in the appeal:
- a. That the appeal be allowed.
 - b. That the ruling and order of Hon. R. Yator dated 04.05.2023 be set aside.
 - c. That the appellant be awarded costs of the appeal.

E. Directions on Submissions

11. When the appeal was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the appellant filed written submissions dated 21.02.2024 whereas the respondent's submissions were not on record by the time of preparation of the judgment.



F. Issues for Determination

12. Although the Appellant raised 10 grounds in her memorandum of appeal the court is of the opinion that the same may be summarized into the following key issues:
 - a. Whether the trial court erred in law and fact in granting the interim injunction.
 - b. Whether the appellant is entitled to the reliefs sought in the appeal.
 - c. Who shall bear costs of the appeal.

G. Applicable legal principles

1. The court is aware that in granting the interim injunction the trial court was exercising judicial discretion. It has been held that an appellate court should not lightly interfere with the exercise of such discretion except where certain violations are demonstrated on the part of the trial court. In the case of *Mrao Limited -vs- First American Bank* [2003] KLR 125 it was held, inter alia, that:

“The court of appeal may only interfere with the exercise of a court’s judicial discretion where it is satisfied that:

- i. The judge misdirected himself in law; or
- ii. That he misapprehended the facts; or
- iii. That he took into account considerations of which he should not have taken account; or
- iv. That he failed to take account of considerations of which he should have taken account; or
- v. That his decision, albeit a discretionary one, was plainly wrong.”

H. Analysis and Determination

- a. Whether the trial court erred in law and fact in granting the interim injunction
14. The court has considered the material and submissions on record. The appellant contended that the trial court erred in failing to find that Parcel 7206 was the subject of litigation before the Environment and Land Court at Nyahururu; that the trial court had failed to consider her evidence, submissions and authorities; and that the trial court erred in holding that the respondent had satisfied the principles for the grant of an interim injunction.
 15. It is evident from the material on record that both the appellant and the respondent were members of the company. It is also evident that both were allocated their respective parcels of land by the company in 2016 or thereabouts. It would appear that the appellant was dissatisfied with the manner in which the company had sub-divided and distributed land to its members because she got less than what she had previously occupied. The appellant considered herself to be more entitled to company land than the respondent because she held “ordinary” shares whereas the respondent held what she termed “extra shares”. That explains why she considered the respondent to be a stranger and land grabber. That may also explain why she did not want to abide by the decision of the company in the sub-division and allocation of land to its members. In fact, the appellant contended that the respondent’s title to Parcel 7206 was illegal and the subject of litigation before the Environment and Land Court at Nyahururu.



16. The court is aware that Nyahururu ELC No.18 of 2019 – Joshua Ngugi Kaguthi & 3 Others -vs- New Gatundu Mixed Farmers Co.Ltd was filed at Nyahururu by 4 plaintiffs who claimed to be members of the company. They challenged the survey, sub-division and allocation of land by the company on account of alleged fraud and illegality. The court is aware that upon a full hearing of the suit the court found that the allegations of fraud and illegality were not proved and consequently the suit against the company was dismissed with costs. The said suit was assigned Nyandarua ELC No. 51 of 2023 upon transfer to Nyandarua Law Courts and the judgment was delivered on 25.04.2024.
17. The court is thus unable to accept the appellant’s description of the respondent’s title deed as illegal or fraudulent. The respondent’s title cannot simply be ignored or trashed unless the appellant is able to demonstrate the grounds for impeachment of a title document as stipulated under Section 26 of the [Land Registration Act](#), 2012. The court is thus of the opinion that the trial court was entitled to rely upon the respondent’s title deed and to give it due weight. The court finds no lawful justification or excuse for the appellant’s encroachment and trespass upon the land which was allocated to the respondent by the company. The mere fact that she was dissatisfied with the manner of allocation or the acreage allocated to her could not be a lawful justification. It was upon her to take up her grievances with the company and not to interfere with the respondent’s possession.
18. The material on record shows that the appellant had only recently constructed a new timber structure on the land claimed by the respondent by the time of filing the application for interim orders. The photographs annexed to the respondent’s application dated 24.02.2023 showed that the appellant’s pit latrine was still under construction. The court is of the view that the trial court was entitled to restrain a recent trespasser through an interim injunction from continuing with her unlawful actions. The court finds no error of principle in the finding of the trial court that the respondent had demonstrated a prima facie case with a probability of success at the trial and that he stood to suffer irreparable injury for violation of his proprietary rights.
19. There is no indication on record to show that the trial court misdirected itself, or that it misapprehended the facts. There is also no evidence to show that it took into account irrelevant factors or that it failed to take into account the relevant factors in granting the interim injunction. The court finds absolutely no reason to interfere with the exercise of the trial court’s discretion. The ruling of the trial court shows that it had in mind the principles for the grant of an injunction as set out in the case of *Giella -vs- Cassman Brown & Co. Ltd* [1973]EA 358. The court finds the appellant’s complaint that the trial court did not consider the balance of convenience to be wholly misplaced and a misapprehension of the law. As was held in the case of *Giella -vs- Cassman Brown & Co. Ltd* (supra) a court is obligated to consider the third principle only if the court is in doubt on the second principle on irreparable injury.
 - b. Whether the appellant is entitled to the reliefs sought in the appeal
20. The court has already found and held that the trial court did not err in law and fact in holding that the respondent had satisfied the principles for the grant of an interim injunction and in granting the same. The court has also found that the appellant has not demonstrated any of the grounds which would justify interference with the judicial discretion of the trial court. In the premises, the appellant is not entitled to the reliefs sought in the appeal.
 - c. Who shall bear costs of the appeal
21. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the [Civil Procedure Act](#)



(Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd [1967] EA 287. The court finds no justification to depart from the general principle. As a result, the respondent shall be awarded costs of the appeal.

I. Conclusion and Disposal Orders

22. The upshot of the foregoing is that the court finds no merit in the appellant’s appeal. As a consequence, the court makes the following orders for disposal thereof:
- a. The appeal be and is hereby dismissed.
 - b. For the avoidance of doubt, the interim stay granted on 06.06.2023 is hereby vacated.
 - c. The respondent is hereby awarded costs of the appeal.
 - d. The original record shall be transmitted to the trial court for trial and disposal of the suit.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 2ND DAY OF MAY, 2024.

In the presence of:

Ms. Otieno holding brief for Mr. Odhiambo for the Appellant

N/A for the Respondent

C/A - Carol

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Y. M. ANGIMA

JUDGE

