



**Wandabwa v Nabangala & another (Environment & Land Case  
E003 of 2024) [2024] KEELC 4130 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4130 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E003 OF 2024**

**EC CHERONO, J**

**MAY 9, 2024**

**BETWEEN**

**WELLINGTON WANYONYI WANDABWA ..... PLAINTIFF**

**AND**

**MOSES WANJALA NABANGALA ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES WANGILA NABANGALA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff/Applicant, vide a Notice of Motion under Certificate of Urgency dated 2<sup>nd</sup> February, 2024 brought under Section 40 Rule 1, 2, 3 & 4 and Order 51, Rule 1 of the *Civil Procedure Rules 2010* and any other enabling Provisions and powers of the Law seeks the following orders;
  - i. (spent)
  - ii. THAT an order do issue inhibiting the Respondents from interfering, subdividing and causing registration of any dealing(s) with Land parcel Numbers Lr No. E.bukusu/w.sang'alo/6922, 6923, 6924, 6925, 6926, 6927,6928, 6929 and 6930 originally Lr No. E.bukusu/w.sang'alo/554 pending the hearing and determination of this application.
  - iii. THAT an order do issue inhibiting the Respondent from interfering, subdividing and causing registration of any dealing with Land parcel Numbers Lr No. E.bukusu/w.sang'alo/6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929 and 6930 originally Lr. No E.bukusu/w.sangalo/554 pending the hearing and determination of this suit.
  - iv. THAT the status quo be maintained until this suit is heard and determined.
  - v. THAT Costs of this application be provided for.



2. The application is supported by grounds apparent on the face of the said application and the affidavit of the plaintiff/applicant sworn the same date. The application is also supported by numerous annexures to the supporting affidavit
3. The 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants/Respondents through the firm of Wattanga & Co. Advocates filed a replying affidavit in opposition to the said application sworn by Martin Were Wandabwa, the 8<sup>th</sup> defendant/Respondent herein.
4. When the application was placed before the duty Judge for directions, the same was certified as Urgent to be heard on priority basis. The Court also granted a temporary injunction order restraining the Respondents from interfering, subdividing and causing registration of any dealing(s) with Land parcel Numbers LR NO. E.bukusu/w.sang'alo/6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929 and 6930 originally LR NO. E.bukusu/w.sang'alo/554 pending the hearing and determination of this application inter-parte. The Court further directed the parties to have the application canvassed by written submissions and gave timelines within which the submissions were to be filed and exchanged.

### **Plaintiff/applicant's Summary Of Facts**

5. The applicant in his supporting affidavit deposed that him together with his brother the 8<sup>th</sup> defendant were the registered proprietors of Land parcel No.e.bukusu/w.sang'alo/554 Measuring approx. 18.0 Hectares while the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> defendants are the surviving children and widow of the late Christopher Nabangala S/O Matayo Mukuyi.
6. The applicant deposed that him and his brother Martin Were Wandabwa (8<sup>th</sup> defendant) entered into an arrangement whereby they agreed to exchange parcels of Land. In the said arrangement, the applicant and his brother Martin Were Wandabwa (8<sup>th</sup> defendant) agreed to move and occupy Land parcel NO. Ndivisi/muchi/1574 and in return, the said Christopher Nabangala moves and occupies Land parcel No. E.bukusu/w.sang'alo/554. He stated that after the agreement, he moved to Funyula, Port Victoria where he engaged himself in Business until the year 1981 when he moved to occupy Land parcel No. Ndivisi/muchi/1574 only to find that the Christopher Nabangala had used title to the said land to secure a loan facility. He then commenced recovery procedures at the High Court at Bungoma being HCCC NO. 107/1994 to have the said Christopher Nabangala transfer title to Land parcel No. Ndivisi/muchi/1574 to him and his brother Martin Were Wanabwa (8<sup>th</sup> defendant).
7. The Applicant further deposed that the said case was heard and judgment was delivered, 27/02/2015. He stated that on further investigation, he discovered that the said Christopher Nabangala had transferred Land parcel No. E.bukusu/w.sang'alo/554 to himself fraudulently as he neither caused the said transfer nor signed the transfer forms in his favour. He stated that the said Christopher Nabangala colluded with his brother Martin Were Wandabwa and the Land Registrar to effect the said transfer.
8. The applicant also deposed that the family of the late Christopher Nabangala conducted Succession Cause in secrecy in respect of land parcel No. E.bukusu/w.sang'alo/554 and further subdivided it into several portions namely E.bukusu/w.sang'alo/6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929 and 6930 and thereafter distributed the same amongst the 1<sup>st</sup> to 7<sup>th</sup> defendants.

### **1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> And 8<sup>th</sup> Defendants/respondents Summary Of Facts**

9. The 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants/Respondents opposed the application by filing a Replying affidavit sworn by Martin Were Wandabwa, the 8<sup>th</sup> defendant/Respondent herein on 26/02/2024. In the said Replying affidavit, the 8<sup>th</sup> Respondent deposed that in 1969, he was registered with his brother Wellingtone Wanyonyi Wandabwa proprietors of Land parcel No. E.bukusu/w.sang'alo/554 and in



1979, they voluntarily and without coercion sold the land to one Christopher Nabangala S/O Matayo Mukuyi as shown in a green card and copy of consent annexed and marked MWW 1(a) & (b). He stated that the said Christopher Nabangala subsequently sold the same land to one Japhetha Wanjala Mukuyi in the year 1979 who his demise, his family procedurally carried out Succession cause vide Succession Cause NO. 148 of 2016 and in the year 2018, transmission was registered in favour of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> defendants as beneficiaries and the original land parcel No. E.bukusu/w.sang'alo/554 was closed for partitioning whereby the following new resultant subdivisions were created; E.bukusu/w.sang'alo/6922, 6923, 6924, 6925, 6926, 6927, 6928, 6929 & 6930 respectively.

10. The 8<sup>th</sup> Respondents deposed that they did not commit any fraud and that from the Judgment annexed to the supporting affidavit, the plaintiff/Applicant had sued Christopher Nabangala whom they sold the suit land in 1979 (see HCCC NO. 107 of 1994).

### **Analysis And Legal Decision**

11. I have considered the Notice of Motion application dated 2<sup>nd</sup> February, 2024, the supporting affidavit, the Replying affidavit and the annexures thereto as well as the relevant law. The applicant is seeking injunction orders under order 40 Rule 1, 2, 3 and 4 of the Civil Procedure Rules. It is now settled that a party seeking an injunction order must establish the tripple conditions to wit; a prima facie case with a likelihood of success; suffer irreparable loss which cannot be compensated by damages and thirdly, where the court is in doubt, it may decide the case on a balance of convenience.
12. From the supporting affidavit, the plaintiff/applicant stated that they entered into an agreement for the exchange of two parcels of land between him and his brother Marti Were Wandabwa (8<sup>th</sup> defendant herein) of one part and one Christopher Nabangala of the other. The two alleged parcels are Lr No. E.bukusu/w.sangalo/554 registered in the names of plaintiff/applicant and Martin Were Wandabwa (8<sup>th</sup> defendant) and Ndivisi/muchi/1574 Registered in the name of Christopher Nabangala (deceased). No copies of the alleged agreement for exchange of the two parcels of land was annexed by the plaintiff/applicant to his supporting affidavit. The 8<sup>th</sup> Defendant/Respondent in his Replying affidavit sworn on 26/2/2024 denied the plaintiff/applicant's assertion and stated that in 1969, him and the plaintiff/applicant who is also his brother were registered as proprietors of Land parcel No. E.bukusu/w.sang'alo/554 voluntarily and without any coercion sold the said parcel of land to one Christopher Nabangala S/O Matayo Mukuyi. He annexed a copy of an application for consent from the land control Board and a green card as MWW 1(a) &(b). The said application for consent from the land control Board indicates the names of Wellingtone Wanyonyi Nabangala, the applicant herein and his brother Martin Were Wandabwa, the 8<sup>th</sup> defendant as proprietors who duly signed the application for consent to transfer. From these materials, I find the affidavit evidence by the 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents credible. There being no expert opinion that the signatures in the application for consent to transfer from the land control Board are forgeries, I find that no prima facie case has been established by the applicant. While on it, it is trite law that there cannot be lawful disposal of any interest in land in the absence of a valid sale agreement between the parties.
13. Regarding the second issue, the plaintiff/applicant at paragraph 18 of his supporting affidavit has stated that he stands to suffer irreparable loss unless the orders for injunction are granted as the land shall be wasted away at the behest of absolute strangers. However, he did not elucidate. The applicant did not elaborate how he would suffer loss unless the injunction orders sought are granted. This condition also fails.



14. Since the applicant has not satisfied the court on the first two conditions, the application shall be decided on a balance of convenience. In the case of *Amir Suleiman v Amboseli Resort Limited* (2004) eKLR, the Judge offered elaboration on what is meant by ‘balance of convenience’ and stated as follows; “The court is responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

Again, in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR, the court defined the concept of balance of convenience as;

“The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the convenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience, it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them be greater than that which may be caused to the defendants’ inconvenience be equal, it is the plaintiff who suffer.

In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting.”

15. Considering that the plaintiff/applicant has failed to establish the first two conditions for the grant of the injunctive orders, I find that even the balance of convenience does not also tilt in his favour.
16. The upshot of my finding is that the Notice of Motion application dated 2<sup>nd</sup> February, 2024 is devoid of merit and the same is hereby dismissed with costs
17. It is so ordered.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

Mr Sabwami H/B Wattangah for the 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> & 8<sup>th</sup> Defendants.

Mr Wamalwa R. H/B for Amani Wekesa for the plaintiff.

Bett C/A

