



REPUBLIC OF KENYA



KENYA LAW
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**Morande v Wairiuko & 5 others (Environment & Land Case
E063 of 2022) [2024] KEELC 5405 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5405 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E063 OF 2022
LC KOMINGOI, J
JULY 11, 2024**

BETWEEN

PAUL KENNETH MORANDE PLAINTIFF

AND

PETER NDIRANGU WAIRIUKO 1ST DEFENDANT

RELIANCE REALTORS KENYA LIMITED 2ND DEFENDANT

EDWIN NGANGA KARANJA 3RD DEFENDANT

ANTHONY KINUTHIA NJOROGE 4TH DEFENDANT

**COCOTECH CO-OPERATIVE HOUSING SOCIETY LIMITED 5TH
DEFENDANT**

THE LAND REGISTRAR, NGONG 6TH DEFENDANT

RULING

1. This is the Notice of Motion dated 2nd May 2022 brought under;

Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 Rules 1 and 2 and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the Law.
2. It seeks Orders;
 1. Spent.
 2. Spent.
 3. Spent.



4. That pending hearing and determination of the main suit Honourable court be pleased to issue an order of temporary injunction restraining the 3rd and 5th Defendants/Respondents either acting by themselves, their agents, or their servants from alienating, advertising for sale, offering for sale, taking possession, leasing, transferring encroaching and or otherwise disposing off those parcel of land known as KJD/Ochoro-Onyore/26359 and KJD/Ochoro-Onyore/37220 to KJD/Ochoro-Onyore/37239 respectively all alienated from KJD/Ochoro-Onyore/3233, the suit property herein.
 5. That the Honourable court do issue an order of inhibition stopping further dealings, registration and transactions over those parcels of land known as KJD/Ochoro-Onyore/26359 and KJD/Ochoro-Onyore/37220 to KJD/Ochoro-Onyore/37239 pending the hearing and determination of this suit.
 6. That OCS Ngong Police Station to ensure peace and compliance of the Court Orders pending hearing and determination of the suit.
 7. That the costs of this Application be provided for.
3. The grounds are on the face of the application and are on the face of the application and are set out in paragraphs (a) to (l).
 4. The Application is supported by the Affidavit of Paul Kenneth Morande, the Plaintiff/Applicant herein sworn on the 2nd August 2022.
 5. The Application is opposed. There's a Replying Affidavit sworn by Edwin Ng'ang'a, the 3rd Defendant/Respondent on behalf of the 2nd to 4th Defendants/Respondents herein sworn on the 27th September 2022.
 6. There's also a Replying Affidavit sworn by Job Mbao Njoroge Gakinya, the Chairman of the 5th Defendant/Respondent, on the 24th August 2022.
 7. It appears the 6th Defendant neither entered appearance nor filed any response.
 8. On the 26th October 2022, the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.
 9. The Plaintiff's/Applicant's submissions are dated 7th November 2022 while the 5th Defendant's/Respondent's are dated 9th March 2023.
 10. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are;
 - i. Whether the Plaintiff/Applicant's application meets the threshold to grant of temporary injunction.
 - ii. Who should bear costs of the application?
 11. In their submissions, counsel have substantiated their clients' respective positions state in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.



12. 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 v. First American Bank Ltd & 2 Others* (2003) KLR 125 the Court of Appeal in determining what amounts to a prima facie case stated:

“So what is a Prima facie case?. I would say that in a civil case 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.”

13. It is the Plaintiff/Applicant’s case that he acquired land parcel known as Kajiado/Ochoro-Onyore/3233 in the year 1996. He purchased the same from Timeso Ene Otikisi.

He has attached a sale agreement. He was subsequently issued with a title deed on the 11th September 1996.

14. It is his case that he left the county for the United States of America but would check on it occasionally in or about July 2022, he discovered that the suit property was being sub-divided into several portions. He visited the Ngong Land Registry and discovered that the suit property had been illegally transferred to the 1st Defendant, who in turn transferred to the 2nd to 4th Defendants.

15. The 3rd Defendant who swore the Replying Affidavit on behalf of the 2nd to 4th Defendants stated that they purchased the suit property from the 1st Defendant after conducting due diligence.

16. The 5th Defendant through the Replying Affidavit of Job Mbao Njoroge Gakinya maintained that they did due diligence before purchasing the suit property from the 4th Defendant who acquired the same in 2017.

17. It is not in dispute that the Plaintiff/Applicant acquired the suit property in 1996.

18. It is not clear how the same was transferred to the 1st Defendant.

19. It may have been through fraud or a corrupt scheme. The Architect of this scheme neglected to enter appearance and or file defence to the claim herein. The reason is obvious. The land was not his in the first place.

20. The title to the 4th Defendant and subsequently to the 5th Defendant cannot be said to be indefeasible. I find that the Plaintiff/Applicant has established a prima facie case with a probability of success at the trial.

21. It is also the Plaintiff/s/Applicant’s case that the land has been sub-divided and a portion is now with the 5th Defendant. I find that he will suffer irreparable harm if these orders are not granted. In the case of *Pius Kipchirchir Kogo v. Frank Kimeli* (2016) eKLR the court stated that;

“Irreparable Injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

22. I find that the balance of convenience tilts in favour of granting the orders sought. The Plaintiff/Applicant’s right to property under Article 40 of the *Constitution* ought to be protected.



23. In conclusion I find merit in this application and grant the orders sought namely;
- a. That an order of Temporary Injunction is hereby issued restraining the 3rd and 5th Defendants/ Respondent whether by themselves, their agents, or their servants from alienating, advertising for sale, offering for sale, taking possession, leasing, transferring, encroaching and or otherwise disposing off those parcels of land known as Kajiado/Ochoro-Onyore/26359 and Kajiado / Ochoro-Onyore/37220 to Kajiado/Ochoro-Onyore/37239 respectively all alienated from Kajiado /Ochoro-Onyore/3233 pending the hearing and determination of this suit.
 - b. That the Honorable court do issue an order of inhibition stopping further dealings, registration and transactions over those parcels of land known as Kajiado/Ochoro-Onyore/26359 and Kajiado /Ochoro-Onyore/37220 to Kajiado/Ochoro-Onyore/37239 pending the hearing and determination of this suit.
 - c. That the OCS Ngong Police Station do ensure compliance of the orders (a) and (b) above.
 - d. That costs of this application do abide the outcome of the main suit.

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

L. KOMINGOI

JUDGE

In the presence of:

Ms. Waweru for Ms. Morande for Plaintiff.

N/A for the 1st -4th, 6th Defendants/Respondents.

Ms. Mwanya for the 5th Defendant.

Court Assistant – Mutisya.

