



**Mwirebua v Mutonga (Environment and Land Appeal
E023 of 2024) [2024] KEELC 5294 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5294 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E023 OF 2024**

CK NZILI, J

JULY 10, 2024

BETWEEN

SAMSON MURIUNGI MWIREBUA APPELLANT

AND

SILAS KIMATHI MUTONGA RESPONDENT

RULING

1. The application before the court is dated 24.5.2024, where the applicant is seeking temporary orders of injunction and inhibition to restrain the respondent, his agents or servants from evicting, disposing or interfering in any way with the applicant's occupation and quiet possession of LR No. Nkuene/L-Mikumbune/1821 (the suit land), pending hearing and determination of the appeal.
2. The grounds on the face of the application are that the respondent sold the applicant the entire suit land through a sale agreement dated 30.5.2014 and revised on 29.11. 2014, for Kshs.799,000/=. The applicants avers that the respondent applied for the land control board's consent, handed over the original title, and put the applicant into possession and use of the suit land, save for a small portion that was under use by a third party.
3. The applicant avers that he has made developments thereon, such as completing a permanent shop, connecting water, electricity, planting nappier grass and fencing the suit land, only for the respondent to renege on the sale agreement. It is averred that the applicant sued him in Nkubu PM. ELC Case Number. 69 of 2019 on constructive trust. However, the suit was dismissed on 29.2.2024, forming the basis of this appeal.
4. Again, the applicant avers that the orders sought will preserve the substratum of the appeal. Further, he avers that the respondent, on 16.5.2024, in the company of others, entered the suit land and permanently blocked the entrance with wooden planks, chased the tenants and fixed his padlocks on all the rented premises.



5. As a result, the applicant avers that he stands to suffer irreparable loss and damage if evicted and the suit land is disposed to third parties with his developments; his appeal has a high chance of success; he is ready and willing to comply with the order on security and the no prejudice will be occasioned on the respondent.
6. The application is supported by an affidavit sworn on 21.3.2024 by Samson Muriungi. He reiterated the grounds in the motion and annexed copies of the sale agreements, the land control board consent application form, a copy of the title, the judgment, a memorandum of appeal and photographs of wooden planks and padlocks as SMM 01 - 07, respectively.
7. In opposition, the respondent filed a replying affidavit sworn by Silas Kimathi on 11.6.2024. He avers that the application is full of falsehoods; he did not enter into a sale agreement for the suit land; the alleged agreements are alien to him and he did not hand over the original title to the applicant.
8. The respondent further avers that he borrowed Kshs.187,500/= from one Evangeline Nkatha (a shylock) and surrendered his title to the suit land as security. He adds that how the title ended up with the applicant is a mystery. Further, the respondent avers that he did pay back the money lent, only to learn that his title had been surrendered to the applicant. As a result, the applicant forcefully took over the suit land with his developments thereon. Upon the dismissal of the lower court suit, the respondent avers that he took back the premises for it was being vandalized since the applicant had left it to waste away and there were no tenants.
9. Subsequently, the respondent avers that he removed the planks, refurbished the premises and placed tenants therein as seen in the photographs annexed as SKM1. Again, the respondent states that the applicant did not disclose the existence of HCC Petition No.2 of 2018, where he sought for specific performance of the alleged sale agreement of 29.11.2014, which the court dismissed with costs. He annexed the said petition, replying to affidavits and judgment as SKM 2, a, b & c, terming the instant application as res judicata and an abuse of the court process. He also avers that the applicant has not met the principles for a grant of the orders sought and the application should be dismissed.
10. In a supplementary affidavit sworn on 13.6.2024, the applicant denies that the suit is re judicata since he was seeking to have Section 8 (1) of the Land Control Act declared unconstitutional and the land control board compelled to grant consent for the transfer of the suit land and not on constructive trust or proprietary estoppel. Further, the applicant alleges that the sale agreements and the application for land board consent confirm the sale since their authenticity was not challenged. He denies knowing Evangeline Nkatha. The applicant also denies that the respondent carried out any renovations on the suit land. He adds that the respondent put him in occupation since 2014.
11. In a further affidavit of 25.6.2024, the respondent avers that clause 4 of the alleged agreements contradicts the handing over of the original title and termed the same as forgery.
12. When the matter came up for hearing on 17.6.2024, parties were granted leave to file written submission and also ordered that the respondent grant access to the tenants on the suit land, pending this ruling. The applicant vide submission dated 11.6.2024 submits that he had met the principles for the grant of temporary injunction as set in *Giella v Cassman Brown and Company Limited* (1973) EA 358, *Nguruman Limited v Jan Bond Nielsen & 2 others* (2014) eKLR, *Mrao Limited v First American Bank of Kenya Limited & 2 others* (2003) eKLR. He further urges the court to balance the rights of the parties by maintaining the status quo.
13. Order 42 Rule 6 of the *Civil Procedure Rules* grants the court powers to issue temporary orders of injunction and inhibition where there are sufficient reasons. The principles to consider were discussed in *Madhupaper International Ltd versus Kerr* (1985) KLR 840. The aim is to preserve the subject



matter to avoid the appeal being rendered nugatory. The appeal should not be frivolous. The grant of the orders should not inflict more significant hardship than it would avoid to the applicant, more so, if an award of damages would be an appropriate remedy. The court has looked at the impugned judgment and the grounds for appeal. The issues raised on appeal are arguable and not frivolous. All the parties claim the substratum of the appeal. The title deed is in the name of the respondent. He has not expressed what more significant harm he is likely to suffer than the applicant if the orders sought are granted. The applicant appears to have protectable rights likely to be infringed if the suit lands on changes hands. The inconvenience would be more to the applicant if the injunction is refused and ultimately, the appeal is allowed. The upshot is that I allow the prayers sought for a period of one year on condition that the applicant deposits the original title deed in court within 7 days; otherwise, the orders shall lapse.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 10TH DAY OF JULY, 2024**

In presence of

C.A Kananu/Mukami

Gitari for appellant

HON. C K NZILI

JUDGE

