



**Langat v Carol Constructions Engineers Limited & another (Environment & Land Case E044 of 2024) [2024] KEELC 7300 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7300 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E044 OF 2024  
MAO ODENY, J  
NOVEMBER 5, 2024**

**BETWEEN**

**NAOMI CHEPKORIR LANGAT ..... PLAINTIFF**

**AND**

**CAROL CONSTRUCTIONS ENGINEERS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NAKURU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect of a Notice of Motion dated 14<sup>th</sup> June, 2024 by the Plaintiff/Applicant seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That pending the hearing and determination of this suit, a temporary injunction do issue restraining the Defendants, their agents, servants, employees, or any other person acting on their behalf from interfering, selling, transferring, charging, leasing, or in any other manner disposing of or dealing with the parcel of land known as Njoro/Ngata Block 2/130.
  - d. That the costs of this application be provided for.
2. The application was supported by an affidavit of Naomi Chepkorir Langat sworn on 14<sup>th</sup> June, 2024 where she deponed that she is the administrator of the estate of the late Joel Kimetet Langat and his widow hence has beneficial interest over the suit property known as Njoro/Ngata Block 2/130
3. It was her case that Martha Moraa Mayieka in CMCC No 1857 of 2000 later purportedly transferred the property to the 1<sup>st</sup> Defendant/Respondent knowing that she had no valid title to cause such



a transfer and blamed the Land Registrar Nakuru for fraudulent issuance of title deed for the suit property to the 1<sup>st</sup> Defendant/Respondent.

4. The 1<sup>st</sup> Respondent filed a Replying affidavit dated 3<sup>rd</sup> July sworn by Jeremiah Mayieka who deponed that he is the Managing Director of the 1<sup>st</sup> Respondent and that the Plaintiff's case is time barred as per the Limitations of Actions Act. He further stated that there is no land known as Njoro Ngata/Block 2/130.
5. The Plaintiff/Applicant filed a further affidavit dated 17<sup>th</sup> July, 2024 and deponed that it is unconscionable to enforce a transaction that disregarded her rights as a co-owner of the suit property. Further that the Bank and the subsequent buyers should have exercised their due diligence to ensure that all pertinent consents regarding the suit property were obtained.

### **Plaintiff/Applicant's Submissions**

6. Counsel for the applicant filed submissions dated 18<sup>th</sup> May, 2024 and identified the issues for determination as whether the plaintiff/applicant has met the criteria for the grant of order of temporary injunction pending the hearing and determination of this suit.
7. Counsel relied on the cases of *Giella vs Cassman Brown (1973) EA 358*, *Nguruman Limited vs Jan Bonde Nielsen & 2 others CA No 77 of 2012 (2014) eKLR* and *Mrao Ltd vs First American Bank of Kenya Ltd (2003) eKLR* and submitted that the Applicant has a prima facie case as her right to property guaranteed under Article 40 of the Constitution continues to be violated by the Respondent.
8. It was counsel's submission that the 1<sup>st</sup> Respondent's argument that the application is Res-judicata, is not tenable as CMCC 1857 of 2000 was dismissed by court of its own motion for want of prosecution however the aspect of rightful proprietorship of the suit parcel has never been adjudicated. Counsel relied on the case of *Tee Gee Electrics and Plastics Company Ltd vs Kenya Industrial Estates Limited [2005] KLR 97*.
9. Mr. Abuya submitted that the Applicant will suffer irreparable harm that will not be adequately compensated by an award of damages as the 1<sup>st</sup> Respondent has intimated intentions of subdivision of the suit property, to which it intends to dispose parts of. Counsel further submitted that the respondents will suffer no loss if the orders are granted as a status quo would be maintained while the matter in dispute is adjudicated on merits.
10. Counsel relied on the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR* and urged the court to allow the application with costs.

### **1<sup>st</sup> Defendant/Respondent's Submissions**

11. Counsel for the 1<sup>st</sup> Respondent filed submissions dated 16<sup>th</sup> September, 2024 and relied on the case of *Giella vs Cassman Brown & Co Ltd (1975) EA* and submitted that the Plaintiff's case has remote chances of succeeding as it was filed out of time contrary to Section 7 of the Limitation of Actions Act.
12. Counsel relied on the case of *ELCC No 50 of 2020* and submitted that the Plaintiff's suit is statute barred as the limitation period lapsed on 4<sup>th</sup> August, 2012. Counsel further stated that the suit is Res judicata as per the provisions of Section 7 of the Civil Procedure Act, Cap 21 and the case of *John Florence Maritime Services Limited vs Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015)* [2021] KESC 39 (KLR).



13. Mr. Mburu also submitted that the Plaintiff's suit as instituted is not viable for failure to include Kenya Commercial Bank as a party and further that there is no such property as Njoro Ngata/Block 2/130 hence the application is incompetent.
14. Counsel submitted that the Applicant has not shown that she will suffer irreparable injury as she has never been the registered owner of the suit land and has never had possession of the suit property since February 2015 when she was evicted on the strength of a court order. Further that the original owner, her alleged husband died in 2020 according to the Grant attached to her affidavit without ever having challenged the sale of his property by Kenya Commercial Bank Ltd. Counsel relied on the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others Nairobi CACA No 77 of 2012.*
15. On the issue of balance of convenience, counsel submitted that the same is in favor of the 1<sup>st</sup> Respondent who has had effective possession of the land from the date it got legal possession save for the brief interruption by the Plaintiff in the year 2015 and no court has declared that it is not the legitimate owner. Counsel submitted that the 1<sup>st</sup> Respondent in exercise of its proprietary rights has subdivided and sold most of the parcels of the suit land leaving only a few and urged the court to dismiss the application with costs.

### **Analysis and Determination**

16. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for grant of a temporary injunction pending the hearing of the suit. The principles for grant of a temporary injunctions are well set out in the case of *Giella vs. Cassman Brown & Co. Ltd (1973) EA 358.*
17. A party seeking such orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not adequately be compensated by an award of damages, if the order is not granted and if the court is in doubt it will decide the application on a balance of convenience. If an applicant meets this threshold, then the court will grant the order to preserve the substratum of the case pending the hearing and determination of the suit.
18. From the record it is noted that this is a matter that has a long history of dispute and litigation. The parties admit that there were two cases in respect of the suit land Njoro/ Ngata Block 2/130 being Nakuru CMCC No. 1857 of 2000, (Naomi Chepkorir Langat Vs. Kenya Commercial Bank and Martha Moraa Mayieka and ELCC No 63 of 2012 (Carol Constructions Engineers Ltd Vs Naomi Chepkorir.
19. The latter case was dismissed because it was brought vide an originating summons which was not a proper avenue for filing the suit. The lower court case against Kenya Commercial Bank was dismissed with costs.
20. From the Applicant's affidavit she is complaining about her deceased husband charged the suit property to Kenya Commercial Bank (KCB) for a facility without her knowledge and that he defaulted on the repayment of the facility thus the bank (KCB) exercised its statutory power of sale to recover its money.
21. The applicant deponed that on 4<sup>th</sup> August, 2000, KCB advertised the sale of the suit parcel of land through an auction without complying with the prerequisite procedures governing such sales and without taking into account her interests over the property. She further stated that she filed Nakuru Chief Magistrate Court Civil Suit No 1857 of 2000 whereby she challenged the sale by auction of the suit land by Kenya Commercial Bank. This means that the applicant challenges the charging and sale of the suit property which essentially is a matter that should be handled by the High court as it involves charges.



22. The Applicant brought another angle of fraudulent transaction by the respondent in collusion with the Land Registrar. KCB is not a party to this suit having been sued by the applicant vide CMCC No. 1857 of 2000, which was dismissed. The court will not deal with the issue whether the suit is res judicata or time barred as it has been moved vide the current application to issue temporary orders of injunction.
23. The issue whether the applicant has established a prima facie case with a probability of success is shrouded with many issues, which I have mentioned above. This is the first hurdle that an applicant must establish before we move to the other limbs.
24. The applicant has not established that she will suffer irreparable loss not capable of being compensated by way of damages. The Applicant was evicted in 2015 as per the evidence on record and she has been fighting after the demise of the husband accusing him of charging the property without her consent. The property was sold under a statutory power of sale whereby the same had been charged and a valuation of the property must have been done. This means that the value of the property is quantifiable and can be compensated by way of damages.
25. In the case of Paul Gitonga Wanjau –vs- Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR, the court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

26. The court should always choose the lower risk rather than the higher risk of injustice. Having analyzed the facts and the submissions by Counsel, I will go with the lower risk and order that the applicant has not met the threshold for grant of injunction. The application is therefore dismissed with costs in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 5<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. A. ODENY**

**JUDGE**

