



**Chepkus v Jepchirchir (Environment & Land Case E005 of 2024)
[2024] KEELC 13515 (KLR) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E005 OF 2024
EO OBAGA, J
DECEMBER 2, 2024**

BETWEEN

EDWIN KIPTOO CHEPKUS PLAINTIFF

AND

NANCY JEPCHIRCHIR DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 19.2.2024 in which the plaintiff/Applicant seeks the following orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit, there be an injunction restraining the Defendant whether by herself, her agents, servants and/or assigns from charging, selling, subdividing, disposing off, alienating, transferring, gaining forceful entry or in any way dealing on or carrying out any activity on Uasin Gishu/Sugutek Settlement scheme/39.
 4. Costs of this application be provided for.
2. The Applicant is the administrator of the estate of his late mother Stella Chebiwott Chebukusi (Deceased) who was allotted LR. No Uasin Gishu/Sugutek/39 measuring 1.8 hectares (suit property). The suit property was originally plot No. 191 before it was assigned plot No. 39.
3. The Applicant went to the offices of the Land Adjudication and Settlement in 2023 with a view to commencing the process of obtaining title but he found out that the suit property had been registered in the name of the Defendant/Respondent. He proceeded to the Lands office where he found out that the Respondent had obtained title to the suit property.



4. Official searches conducted on various dates at the land Registry showed that the Respondent obtained title on 29.7.2009 and another search showed that she obtained title on 17.4.2023. The Applicant contends that the Respondent neither purchased the suit property from the Deceased nor himself and that the Deceased was in possession of the suit property until her demise after which the Applicant took over.
5. The Applicant contends that if an injunction is not granted, the Respondent who has title can deal with the suit property to his detriment.
6. The Respondent opposed the Applicant's application through a replying affidavit sworn on 6.3.2024. She contends that she is the registered owner of the suit property having been allotted the same by the Settlement Fund Trustee. On the issue of there being two titles in her favour, she states that after she obtained the first title in 2009, documents at the Land Registry got lost and she was advised to start the process a fresh hence the second title.
7. The Applicant took issue with the alterations on the Applicant's documents from the Settlement Fund Trustee and doubted the final area list annexed to the Applicant's application. The Respondent stated that the Applicant has not demonstrated that any of his rights has been infringed to require grant of an injunction and that he will not suffer any damage which will not be compensated in damages.
8. The Applicant submitted that he had met the threshold set out in the famous case of *Giella –vs- Cassman Brown* (1973) EA 358 to the effect that an applicant has to demonstrate that he had a prima facie case with probability of success; that an injunction will not be given if damages are an adequate remedy and that if the court is in doubt, it will decide the application on a balance of convenience.
9. The Applicant relied on the case of *Mrao Ltd – Vs- First American Bank of Kenya Ltd* (2003) eKLR where the Court of Appeal stated as follows:-

“A prima facie case is more than an arguable case. It is not sufficient to raise issues. the evidence must show an infringement of a right and the probability of the Applicants case upon trial. It is a case which on the material presented to the court, a tribunal property directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation from the latter.”

10. On irreparable injury, the Applicant relied on the case of *Pius Kipchirichir Kogo –Vs- Francis Kimeli Tenai* (2018) eKLR where it was held as follows:-

“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 remedy open to him by which he will protect himself from the consequences of the apprehended injury...”

11. On the balance of convenience, the Applicant relied on the case of *Paul Kipchirichir Kogo –Vs- Frank Tenai* (2018) eKLR where it was held as follows:-

“The meaning of balance of convenience will favour of the plaintiff in that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience case to the plaintiff would be greater than that which we would be cause to the Defendant if an injunction is granted but suit is ultimately dismissed. Although it is called balance of convenience caused to them be greater than that which may be caused to the defendant's



inconvenience be equal, it is the plaintiff who will 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 which likely to arise from granting.”

12. The Respondent submitted that the Applicant had not met the threshold for grant of an injunction and prayer that the Applicant’s application be dismissed with costs. The Respondent relied on the cases that the Applicants relied on.
13. I have carefully considered the Applicant’s application, the opposition to the same by the Respondent as well as the submissions by the parties herein. The only issue for determination is whether the Applicant has met the threshold of grant of an injunction. In the *Mrao case (Supra)* a prima facie case was defined as one where on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to all for an explanation from the latter.
14. In the instant case, I have looked at the material placed before me by the Applicant and I have no doubt that the Applicant has established a prima facie case with probability of success.
15. On the issue of irreparable damage, I notice that though it is the Applicant who is in possession, the title is held by the Respondent. If the respondent were to decide to sell or charge the suit property, the Applicant is likely to suffer loss which will not adequately be compensated in damages.
16. Other than being in possession of title to the suit property, there are no materials placed before the court for the court to make a prima facie decision whether the court should not grant the injunction sought. The Applicant is the one in possession. The balance of convenience therefore tilts in his favour. I therefore find that the Applicant has demonstrated that he is entitled to an injunction. I therefore allow the Notice of motion dated 19.2.2024 in terms of prayers 3 and 4.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2ND DAY OF DECEMBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of:-

M/s Langat for Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

2ND DECEMBER, 2024

