



Parsere & another (Suing as administrators of the Estate of Peter Parsere Saire - Deceased) v Toyanga & another; Weru & another (Interested Parties) (Environment & Land Case E025 of 2024) [2024] KEELC 13592 (KLR) (4 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E025 OF 2024
LC KOMINGOI, J
DECEMBER 4, 2024**

BETWEEN

**PENINAH SEKENET PARSERE 1ST PLAINTIFF
DIANA SOKOINE MELITA 2ND PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF PETER PARSERE SAIRE -
DECEASED**

AND

**YIANGASO OLE TOYANGA 1ST DEFENDANT
WILFRED KILENYA TOYANGA 2ND DEFENDANT**

AND

**MIRRIAM WANGU WERU INTERESTED PARTY
NDUNGU KIARIE INTERESTED PARTY**

RULING

1. This is the Notice of Motion dated 4th March 2024, brought under; (Pursuant to Section 1A, 1B & 3A of the *Civil Procedure Act* and Order 40 Rule 2 (1) and (3) of the Civil Procedure Rules, 2010, Section 26, 29, 40 and 45 *Law of Succession Act*, Cap 160, Section 26, 79 & 80 of the *Land Act*, 2012, Article 45 & 65 *Constitution of Kenya, 2010* and all other enabling provisions of the law)
2. It seeks orders;
 - i. That this Honourable Court does make a declaration that Land Parcel known as Kajiado/ Ochoro Onyore/37386, 37387, 37388, 37389, 37390, 37391, 37392 & 37393 and the resultant



subdivisions are a subject of succession forming part of the estate property of the late Peter Parsere Toyianga.

- ii. That the Honourable Court be pleased to make a declaration that the fraudulent transfer of the succession property being Kajiado/Ochoro Onyore/37386, 37387, 37388, 37389, 37390, 37391, 37392 & 37393 of which 37393 in the name of the Defendant/Respondent is unlawful and that this Court does make an order barring any further sale, subdivision, transfer, leasing, charge, trespass, construction or such other activities over the suit land and their respective title documents.
 - iii. Spent.
 - iv. Spent.
 - v. That this Honourable Court does make a n order directing the surrender of the original titles over land registration number Kajiado/Ochoro Onyore/37386, 37387, 37388, 37389, 37390, 37391, 37392 & 37393 to the Plaintiff/Applicants forthwith to enable the estate administrators carryout succession and transmission.
 - vi. A permanent injunction to restrain the Defendant from entering into, fencing, building, selling, transferring and or in any way interfering with the deceased's estate or beneficiaries' lawful use of all that parcel of land known as Kajiado/Ochoro Onyore/37386, 37387, 37388, 37389, 37390, 37391, 37392 & 37393.
 - vii. Spent.
 - viii. That costs of this suit be borne by the Respondent.
3. The grounds are on the face of the Application and are set out in paragraphs a to r.
 4. The Application is supported by the affidavit of Peninah Sekenet Parsere the 1st Plaintiff/Applicant, sworn on the 4th March 2024.
 5. The Application is opposed. There is a Replying Affidavit sworn by Yiangoso Ole Toyanga, the 1st Defendant/Respondent sworn on the 9th July 2024.
 6. The Notice of Motion was canvassed by written submissions.

Analysis and Determination.

7. I have considered the Notice of Motion, the response thereto, the rival submissions and the authorities cited.

The issues for determination are;

- i. Whether the Plaintiffs/Applicants application meets the threshold for grant of orders of temporary injunction;
- ii. Are the Plaintiffs/Applicants entitled to orders of Mandatory Injunction?
- iii. Who should bear costs of this application?



8. The Court of Appeal in *Ngurumann Limited Vs. Jan Bonde Nielsen & 2 Others* (2014) eKLR set out the principles which courts must consider when considering whether to grant interim injunction; it stated thus;

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted...”

9. It is not in doubt that the 1st Plaintiff/Applicant is the widow and Administrator of the estate of Peter Parsere (Deceased). It is her case that the Defendants/Respondents have inter meddled with the estate of the Deceased.
10. The 1st Defendant/Respondent in his Replying Affidavit depones that he bought some parcels from the deceased while they exchanged others. I however find that he has not attached any documents to support this position. This is because some transfers have been effected after the death of the deceased. This raises a lot of questions which ought to be interrogated at the trial stage.
11. I find that the 1st Plaintiff/Applicant has established a prima facie case with a probability of success at the trial.
12. In the case of *Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai* (2018) eKLR the court stated thus;

“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.”



The 1st Defendant/Respondent has admitted in his Replying Affidavit that he has disposed some parcels to third parties. I find that the 1st Plaintiff/Applicant has demonstrated that she will suffer irreparable harm if these orders are not granted as the suit properties are now in the hands of their parties.

13. I have considered the circumstances of this case and I find that the suit properties ought to be preserved pending the hearing and determination of the suit herein.
14. The upshot of the matter is that the 1st Plaintiff/Applicant has demonstrated that she deserves the protection of this court.
15. I have gone through the prayers in the Notice of Motion and I find that some seek final orders which can only be granted after the suit is heard.
16. For purposes of preserving the suit properties I hereby grant the following orders;
 - a. That an order is hereby issued restraining the Defendants and the Interested Parties from selling, sub-dividing, transferring, leasing, charging, trespassing on, constructing or such other activities on the suit properties; Kajjado/Ochoro Onyore/ 37386, 37387, 37388, 37389, 37390,37391,37392 & 37393 pending the hearing and determination of this suit.
 - b. That an order of inhibition is hereby issued barring any dealings on the suit properties mentioned in paragraph (a) above pending the hearing and determination of the suit herein.
 - c. That an order is hereby issued directing the Defendants and Interested Parties to deposit in court the original Titles in respect of Kajjado/Olchoro Onyore 37386, 37388, 37389, 37390, 37391, 37392 and 37393 within fourteen (14) days from the date of this Ruling.
 - d. That costs of this application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4TH DAY OF DECEMBER 2024.

L. KOMINGOI
JUDGE.

In The Presence Of:

Ms. V. Mongare for the Plaintiffs/Applicants.

Mrs. Kasera for the Defendants/Respondents

Ms. Karanja for the Interested Party

Court Assistant – Mutisya.

