



Kiguru (Suing as Personal Representative of the Estate of Rhoda Muthoni Kibe - Deceased) v Embakasi Ranching Co. Ltd & 3 others (Environment & Land Case E122 of 2022) [2023] KEELC 870 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 870 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E122 OF 2022**

**J OMANGE, J
FEBRUARY 9, 2023**

BETWEEN

**ROBERT KIBE KIGURU PLAINTIFF
SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RHODA
MUTHONI KIBE - DECEASED**

AND

**EMBAKASI RANCHING CO. LTD 1ST DEFENDANT
AINSWORTH MATHEKA 2ND DEFENDANT
MADRINE WANDIA IRANDU 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT**

RULING

1. The application dated March 28, 2022 is brought in respect of the properties MA7=Nairobi / BlockJ/105/5133 and MA7=Nairobi /Block 105/5134 known as P4276 and V10904 (hereinafter referred to as the suit properties.
2. The application seeks various injunctive reliefs in respect of the suit properties.
3. The application is based on the grounds inter alia that the plaintiff/ applicants wife purchased the suit properties vide agreement of sale dated November 25, 1992. Upon completing the payments she was allocated parcels MA7=Nairobi /BlockJ/105/5133 and MA79=Nairobi/Block/105/5134. On the basis of this allocation, the plaintiff and his wife fenced the plots allocated to them.



4. It is the applicants case that in 2019, they were shocked to discover that the suit properties had been allocated to the 2nd and 3rd defendants as P4276 and V10904. The plaintiffs' counsel submitted that that a prima facie case had been established that warrants grant of an injunction.
5. The 3rd defendant on her part has equally produced ownership documents to prove that she paid all the fees ad was duly allocated the land in question. The 2nd respondent did not file any documents. However, it is the plaintiffs case that she was also allocated one of the suit properties.
6. I have considered the submissions of both counsel and the pleadings that were filed herein.
7. The principles for grant of injunction are well settled by the celebrated case of *Giella vs Cassman Brown & Company Limited [1973] EA 358*, where the court stated thus:

' First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.'

8. These principles were further refined in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* in which the Court of Appeal stated. 'The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion'.
9. In this case the plaintiff has produced a sale agreement and receipts evincing payment. The 3rd respondent has equally produced the receipts. There are a number of issues that can only be resolved upon hearing the parties and testing the evidence on cross examination. However, what is clear and is not challenged by the 1st defendant is that both parties made payments.
10. The issue of ownership can only be determined after the hearing. However, it is essential that the court take steps to ensure that there is no further wastage of the property or confrontation involving the parties while awaiting determination of the issue of ownership.
11. The upshot of the foregoing is that the plaintiff's application is partially allowed in the following terms:-
 - a. That an interlocutory injunction is hereby granted to restrain the defendants, their representatives, employees, servants, agents or anybody claiming through them or any manner whatsoever from disposing, constructing, developing the land parcels MA7=Nairobi / BlockJ/105/5133 and MA7=Nairobi /BlockJ/105/5134known as P4276 AND V10904.
 - b. The costs of the application shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9TH DAY OF FEBRUARY 2023.

JUDY OMANGE

JUDGE

In the presence of:

Mr. Chebiego for the Plaintiffs



Mr. Karwanda for the 3rd Defendant

Steve - Court Assistant

