



**Nga'ng'a v Ng'ang'a (Environment & Land Case E341 of 2022)  
[2023] KEELC 15778 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15778 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E341 OF 2022  
LN MBUGUA, J  
FEBRUARY 9, 2023**

**BETWEEN**

**MISHECK MESHEKE NGA'NG'A ..... PLAINTIFF**

**AND**

**EVERSON NDUATI NG'ANG'A ..... DEFENDANT**

**RULING**

1. Before me is a Notice of Motion application dated October 6, 2022 brought forth by the Plaintiff who is seeking a temporary interim injunction restraining and prohibiting the Defendant herein by himself or any other person claiming under him from alienating, entering, occupying, subdividing or dealing with the property known as plot No Nairobi Block 173 (Sosiani) 170, (suit plot) which is a subplot of Land Reference Number 11379/3 (Title Number 1R 19935) pending the hearing an determination of the case.
2. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on October 6, 2022. He deposes that he is the bonafide owner of the suit plot having acquired a leasehold interest in the said land Nairobi Block 173 (Sosiani) /170 which was curved from Land Reference Number 11379/3 (Title Number IR 19935), the larger parcel was owned and registered to Kiambu Dandora Farmers' Company.
3. He deposes that after purchase of the suit plot, he visited the land only to find that the Defendant had entered thereon, illegally occupied it and had commenced illegal developments thereon. He further deposes that Kiambu Farmers Company reiterated via a letter dated September 30, 2022 that the Defendant is unknown to themselves entirely and that they recognize the Plaintiff as the owner of the suit plot.



4. The Plaintiff also filed a further affidavit sworn on December 20, 2022. He avers that he took pictures of the suit property on August 25, 2022 and on December 7, 2022 which show that the suit land has an incomplete structure.
5. In response to the application, the Defendant filed a replying affidavit sworn on November 30, 2022. He deposes that he is not aware of the location, existence or ownership of a property known as Plot No. Nairobi Block 173 (Sosian) /170 which is purported to be a subdivision of Land Reference No. 11379/3 (Title Number IR 19935) and if it exists, it is not the same as his property known as Land Reference Number 15400/126.
6. He further deposes that he purchased Land Reference Number 15400/126 from Lucy Njambi Kamwathi for a sum of ksh 2, 800,000/= in February 2012 and on March 20, 2013, it was transferred to his name. He was subsequently issued with a certificate of title and he occupies the plot. He further contends that on August 14, 2007, he charged his title to KCB Bank for a sum of ksh.2million and surrendered the original title to the bank.
7. The defendant also states that it is the Plaintiff through his agents, servants, employees and hired goons who has been attempting to invade and trespass onto his property which has fully built up structures with tenants.
8. I have considered all the issues raised herein including the rival submissions. The conditions for the granting of an interlocutory injunction were set out in *Giella v Cassman Brown & Co, Ltd.* [1973] EA 358 at p 360 and cited by the Court of Appeal in *East African Development Bank v Hyundai Motors Kenya Limited* [2006] eKLR as follows; “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....”
9. The Plaintiff has availed documents to buttress his claim of ownership to the suit property. They include a shareholder certificate from Kiambu Dandora Farmers Co, a clearance certificate from the said company and letters dated September 22, 2022 and September 30, 2022 from the company stating that he was allocated plot No. Nairobi Block 173 (Sosiani) 170.
10. On the other hand, the Defendant produced title documents to prove ownership of Land Reference Number 15400/126.
11. At this infancy stage of the suit, the court cannot deal with contested issues of ownership. In the case of *Cyanamid Co v Ethicon Ltd* (1975) 1 ALL ER 504; (1975) AC 396 HL cited in *Tritex Industries Limited & 3 others vs National Housing Corporation & another* (2014) eKLR, it was held that;
 

“It is no part of the court’s function at this state of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial”.
12. What is crystal clear from the pleadings of the applicant (see paragraph 8 of the plaint) is that the plaintiff found the defendant on the suit land by the time he (applicant) was acquiring the suit land. That is why in one of the final prayers in the plaint (prayer b), the applicant seeks an order of eviction of the respondent.



13. In the case of *Daniel Atibu Jasimba v Ainea Sandanyi Magana* [2013] eKLR, the court stated that;
- “Since the Plaintiff’s suit is for eviction of the defendant from the said residence, such an injunction will amount to granting a major relief in the suit without the benefit of a hearing”.
14. Similarly, I find that the issuance of the injunctive orders at this stage would amount to granting a major relief at the interlocutory stage. After all, the defendant is the one who has been in occupation of the suit land (be it Nairobi Block 173 (Sosiani) 170 or L.R 15400/126, hence he stands to suffer greater injustice if the injunction is allowed at this stage.
15. In the end, I find that the application dated October 6, 2022 is not merited. The same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Lubullelah for plaintiff

Nderitu for Defendant

Court assistant: Eddel

