



**Radheshyam Transport Ltd v Kebaso & 5 others (Environment & Land
Case E390 of 2022) [2023] KEELC 16224 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16224 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E390 OF 2022
EK WABWOTO, J
MARCH 9, 2023**

BETWEEN

RADHESHYAM TRANSPORT LTD PLAINTIFF

AND

PETER KEBASO 1ST DEFENDANT

BONFACE OMOLLO 2ND DEFENDANT

ZABLON JONAH ONDERI 3RD DEFENDANT

PATRICK ODWALO 4TH DEFENDANT

WILSON OWITI 5TH DEFENDANT

STANLEY NDEMO 6TH DEFENDANT

RULING

1. The Plaintiff claims to be the proprietor of the parcel known as LR No Nairobi Block Tassia 11-21189/52332/1 situated within Tassia, Nairobi. The Plaintiff filed a Notice of Motion Application dated November 18, 2022 which was accompanied by a Supporting Affidavit sworn by Joseph Odhiambo. The Plaintiff sought the following orders:
 - i. Spent.
 - ii. That an order of injunction do issue directed at the Defendants/Respondents whether by themselves or through their servants, agents or employees restraining them from entering the suit property or premises on LR No Nairobi Block Tassia 11-21189/52332/1 or remaining thereon or from selling, offering for sale or in any other way attempting to alienate or dispossess the



suit premise from the Plaintiff pending hearing and determination of the application herein.

- iii. That an order of injunction do issue directed at the Defendants/Respondents whether by themselves or through their servants, agents or employees restraining them from entering the suit property or premises on LR No Nairobi Block Tassia 11-21189/52332/1 or remaining thereon or from selling, offering for sale or in any other way attempting to alienate or dispossess the suit premise from the Plaintiff pending hearing and determination of the suit herein
- iv. That costs of this Application be provided.
- v. That such other order as the Court may deem necessary to grant.

2. The Application was premised on the grounds that:

- i. The Plaintiff is the proprietor of the parcel known as LR No Nairobi Block Tassia 11-21189/52332/1 having purchased it from the National Social Security Fund (NSSF) in 2014.
- ii. The Plaintiff has been in occupation of the subject property for over 25 years which is adjacent to LR No. 22898/3 and runs a quarry business on the premise.
- iii. That the Plaintiff has paid all the purchase price to NSSF who are in the process of issuing the title on the amalgamated property.
- iv. That the Defendants have the sole intention of grabbing the property unless restrained by an order of the Court.

3. On January 24, 2023, the matter came up for hearing of the application in which the Plaintiff submitted that the interest claimed by the Defendants is in a different parcel of land. The Defendants submitted that the Court may need to conduct a site visit to determine the actual property in dispute.

4. In a Replying Affidavit dated January 23, 2023, the Defendants claimed that they had been in peaceful occupation of LR No Nairobi Block Tassia 11-21189/52332/509 therefore the parcel number quoted in the pleadings were different from the one they occupied.

5. I have considered the application and respective submissions. In my view, the issues that arise for determination is whether the Plaintiffs have met the threshold to be granted the temporary injunctive orders sought.

6. Article 23 of the [Constitution](#) specifically identifies an order of injunction as one of the reliefs that a court can grant if it is satisfied that a person's right or fundamental freedom under the bill of rights has been denied, violated or infringed or is threatened. This Court is further guided by Section 63 of the [Civil Procedure Act](#) and Order 40(1) of the [Civil Procedure Rules](#), where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be



obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders. [Emphasis Mine]

7. The principles to determine the threshold for temporary injunction are well outlined in *Giella v Cassman Brown* (1973) EA 358 to the effect that a party seeking a temporary injunction has to establish a *prima facie* case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.
8. This position was also reiterated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others*, Ca No 77 Of 2012, where the Court stated that:

“In an interlocutory injunction application, the applicant has to satisfy the three 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) Ally any doubts as to (b) by showing that the balance of convenience is in his favour”
9. I reiterate the sentiments of the Court of Appeal in *Director of Public Prosecutions v Justus Mwendwa Kabenge & 2 others* [2016] eKLR where it was held that a temporary injunction cannot be claimed as a matter of right, neither can it be denied arbitrarily by the court.
10. In the instant case, I take note that the Plaintiff has submitted proof of payment following the NSSF’s letter of offer. Additionally, parties seem uncertain of the title details of the suit property therefore an order of injunction would be necessary to preserve the nature of the land in question.
11. In the foregoing, this Court finds that the Plaintiff/Applicant, has established a *prima facie* case and therefore the Notice of Motion application dated November 18, 2022 is merited and is hereby allowed in the following terms:
 - i. That pending hearing and determination of the main suit a temporary order of injunction is hereby issued against the Defendants/Respondents whether by themselves or through their servants, agents or employees restraining them from entering the suit property or premises on LR No Nairobi Block Tassia 11-21189/52332/1 or remaining thereon or from selling, offering for sale or in any other way attempting to alienate or dispossess the suit premises.
 - ii. Costs will abide the determination of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MARCH 2023.

E. K. WABWOTO

JUDGE



In the presence of: -

Mr. Mogeni for the Plaintiff/Applicant.

Mr. Osiemo for the 1st- 6th Defendants/Respondents.

