



Ngugi v Platinum Stac Estates Limited & 4 others (Environment & Land Case E004 of 2023) [2023] KEELC 17252 (KLR) (4 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E004 OF 2023**

JG KEMEI, J

MAY 4, 2023

BETWEEN

JANE WANGUI NGUGI PLAINTIFF

AND

PLATINUM STAC ESTATES LIMITED 1ST DEFENDANT

ANNE NYAMBURA KAMAU 2ND DEFENDANT

NICHOLAS NDUNGU KAMAU 3RD DEFENDANT

STACEY NJERI KAMAU 4TH DEFENDANT

THE HON. ATTORNEY GENERAL (BEING SUED ON BEHALF OF THE LAND REGISTRAR RUIRU SUB-COUNTY) 5TH DEFENDANT

RULING

1. The Plaintiff/Applicant filed the instant Notice of Motion dated January 10, 2023 seeking Orders THAT;
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. This Honorable Court be pleased to issue an order of temporary injunction against the Respondents by themselves, agents, workers, servants or anybody claiming through them from further construction, building or depositing further building materials or interfering with the Plaintiff's quiet possession on Ruiru East Block 1(githunguri)792 Also Known As Ruiru East Block 1(githunguri)t.792 pending the hearing and determination of this suit herein.



- e. The 1st, 2nd, 3rd and 4th Defendants be notified that land parcel no Ruiru East Block 1(githunguri)792 And Ruiru East Block 1(githunguri)t.792 are one and the same.
 - f. The OCS Ruiru police station or the in charge Provisional Administration do supervise and ensure compliance of the said orders.
 - g. The Respondents be condemned to costs of this application. (sic)
2. The Application is premised on the grounds on the face of it that the Applicant is the bona fide owner of Ruiru East Block 1(githunguri) 792 also known as Ruiru East Block 1(githunguri)T.792 (hereinafter the suit land). That the Applicant is a fully paid up shareholder of the suit land as denoted by suit Ballot No R/W 000096 by way of shares at Githunguri Constituency Ranching Company Limited (the Company) vide share certificate No B 2406 dated December 20, 1989. That the Respondents have encroached the suit land by erecting a permanent house thereon. The 2nd, 3rd and 4th Respondents are Directors of the 1st Respondent and are sued in that capacity. That the Application is meritorious and the orders sought will prevent the waste of the suit land.
 3. The Motion is supported by the Affidavit of even date of Jane Wangui Ngugi the Applicant reiterating the grounds in the Motion, she averred that she is the registered owner of the suit land and annexed copies of the ballot and share certificate as JWN 1a and b and copies of lease and titled deed JWN 2 a and b dated May 12, 2008 and August 23, 2019 respectively in her name. That she has fully paid the requisite land rates Kiambu County Government as evidenced by JWN 3 a and b. That she visited the suit land in the month of October and to her dismay and shock found out that the Respondents had fenced it and commenced construction thereon without any color of right. See photographs annexed as JWN4. That she proceeded to conduct an official search on the suit land and a green card – JWN 5 confirmed her ownership and relevant documents from the Company leading to her issuance of the title annexed as JWN 6 a -d.
 4. The Applicant further avowed that the she reported the incident at Ruiru police station and the same is pending investigations. She also conducted a search at the Companies’ Registry which revealed that the 2nd – 4th Respondents are Directors of the 1st Respondent according to CR 12 marked JWN 7 a and b. That a visit to the offices of Survey of Kenya also revealed that the suit land according to sheet map 2 attached as JWN8 has no letter T in the description but nevertheless refers to the same land – the suit land. The deponent contended that the Respondents’ ownership of the suit land is illegal and meant to disinherit her. That she had filed Ruiru SPM ELC 185 of 2022 but eventually withdrew it for want of pecuniary jurisdiction.
 5. The 2nd Respondent Anne Nyambura Kamau filed her lengthy Replying Affidavit sworn on February 20, 2023 as Director of the 1st Respondent and on behalf of the 1st, 3rd and 4th Respondents as per authority annexed as ANK-1.
 6. Terming the Application as frivolous and an abuse of the Court process, she averred that the 2nd, 3rd and the 4th Respondents are wrongly enjoined in the instant suit because the suit land is registered in the 1st Respondent’s name and it is capable of suing and being sued on its own. A Notice of Preliminary Objection is raised on this ground.
 7. That in April 2019, she purchased land parcel No Ruiru East Block 1/T.792 (hereinafter Block 1/ T.792) measuring approx 0.0511 Ha from Vematech Holdings Limited which acquired its title deed on July 20, 2018 – ANK-2. That before the said purchase she conducted due diligence on the title of Block 1/T.792 by way of official search marked ANK-3. That according to ANK-4 – is a copy of green card which showed that the land was initially belonged to Government of Kenya and on January 15,



- 2003 it was transferred to Pauline Wangui Kimunyo who in turn transferred it to Vematec Holdings Ltd. Having satisfied herself as to the validity of the title deed, the 2nd Respondent entered into a sale agreement with Vematec Holdings Ltd for purchase of Block 1/T.792 at Kshs 17.3M. See ANK-7 copy of sale agreement and evidence of payment of the Purchase price.
8. Further that she was issued with a title deed in her name on June 12, 2019 but she did not enjoy quiet possession of the land because the fence around the land would be demolished by unknown persons prompting her to contact Vematec Holdings Limited. That Vematec Holdings Ltd engaged the Ruiru Land Registrar on the status of the land tenure and informed her that a Ms Jane Wangui Ngugi was equally laying claim over the land leading to involvement of the Directorate of Criminal Investigations to investigate the incident. Later in December 2020 the 2nd Respondent transferred Block 1/T.792 to the 1st Respondent where he is the Director alongside her two children; the 3rd and 4th Respondents. The title deed to that effect was issued on December 21, 2020 as confirmed by official search dated October 26, 2022 marked ANK-13.
 9. The deponent avowed therefore that she is a bonafide purchaser for value without any defect in title, if at all. That the 1st Respondent through a related company, Ankam Auto Parts Ltd obtained a loan from KCB bank of Kshs 100M and commenced construction on the land and granting temporary injunctions will halt the construction and result in financial losses. She questioned the inconsistent acreage of the Applicant's claim over the suit land as exhibited in her share certificate (0.1011714 HA); lease certificate (0.0511 HA); clearance certificate (0.0505 HA) and title deed (0.0540 HA). That accordingly the Applicant's claim is for land parcel Ruiru East Block 1(Githunguri)/792 while her claim is for land parcel Ruiru East Block 1/T.792b which parcels are distinct. She faulted the Applicant's acquisition of the land and contended that if at all there was double registration, then her registration prevails for being first in time.
 10. That the Applicant has not met the threshold for grant of temporary injunction as held in the case of *Giella –Vs- Cassman Brown (1973) EA 358*, that the Respondents were not involved in the alleged Ruiru MCL&E case no 83 of 2020 and beseeched the Court to dismiss the Application.
 11. As already mentioned the Respondents also filed a notice of PO dated February 20, 2023 on grounds that the suit is non-starter, incompetent and fatally defective as the 2nd, 3rd and 4th Respondents being Directors of the 1st Respondent are wrongly enjoined as parties herein. That the 1st Respondent is capable of being sued on its own capacity and therefore the names of the rest of the Respondents ought to be struck out.
 12. In a rejoinder, the Applicant filed a further Affidavit sworn on February 28, 2023. She deponed that the suit land originally belonged to the Company and on advice of the company directors, she was entitled to 3 properties to wit; 1 ¼ acre shamba within Ruiru Kiu Block 2, ¼ Acre Or In Ruiru East Block 1 And 1/8 Acre In Ruiru West Block 1 all situated within Ruiru. That the company processed the members' respective titles after asking members to surrender their leases. That the suit land is located off Thika road on the 2nd row at Kimbo (Kihunguro area). That the annexed JWN 8 is a map showing Ruiru East Block 1 without a T and challenged the Respondents to produce their map showing Ruiru East Block 1 with a T. That the Respondents ought to show that Pauline Wangui was a shareholder of the company which was the registered owner of the land. That the issue of acreage is not exact as all the measurements are approximated but they all refer to the same suit land.
 13. On the Preliminary Objection challenging the joinder of the 2nd – 4th Respondents, the Applicant swore that it is admitted that they are directors of the 1st Respondent making them necessary parties to the suit.



14. On March 1, 2023 directions were taken and parties agreed to canvass the Application by way of written submissions.
15. The 5th Respondent did not participate in the instant motion despite service.
16. The Applicant through the firm of Kanyi Kiruchi & Co Advocates filed submissions dated February 28, 2023. She drew three issues for determination; whether the suit land and Block 1/792 refer to the same land; whether her application is merited and who bears costs.
17. The first issue was answered in the affirmative and the Applicant reiterated her averments in the Further Affidavit explaining the letter T in the description of the suit land. Secondly, that she had established a prima facie case as enumerated in the *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 123* and demonstrated the root of her title from the Company unlike the Respondents' title. Lastly that costs follow event and thus the Application be allowed with costs.
18. The firm of Mbiriri Ngugi & Co Advocates filed submission dated February 27, 2023 and List of Authorities of even date on behalf of the 1st, 2nd, 3rd and 4th Respondents. Similarly, three issues were drawn for determination namely; whether the 2nd, 3rd and 4th Respondents' names should be struck out from the instant proceedings; whether the Applicant has satisfied requisite conditions for grant of temporary injunction and who bears costs.
19. Firstly, it was submitted that the 1st Respondent is duly registered as a company with legal capacity to be sued in its own capacity and therefore the names of the 2nd, 3rd and 4th Respondents ought to be struck out.
20. Secondly that the Applicant has failed to establish a prima facie case to warrant the orders sought and in particular the parcel of land she is claiming. That there is no evidence tabled to link the two title numbers to one parcel of land. That the varying size of the land has not been sufficiently explained and it is inconceivable how after the Applicant allegedly surrendered her certificate of lease to the Ministry of Lands, the Company again transferred the same land to the Applicant in August 2019. That the Applicant's name does not appear in the green card as the suit land owner since the first registration in the name of Government of Kenya in 2003. Moreover, that the Applicant will not suffer any irreparable injury that cannot be compensated by way of damages instead it is the Respondents who stand to suffer loss in the unlikely event that the Application is allowed.
21. Lastly it was submitted that the Application is unmerited and ought to be dismissed with costs in their favor.
22. The issues falling for determination are; whether the Preliminary Objection dated February 20, 2023 is merited; whether the Applicant has satisfied the conditions for grant of orders for temporary injunction and who bears costs.
23. The parameters of consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of *Mukisa Biscuit Manufacturing Co Ltd vs West End Distributors Ltd [1969] EA 696*. At page 700 Law JA stated:

' A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the Court or a plea of limitation,



or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.'

24. At page 701 Sir Charles Newbold, P added:

' A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of Judicial discretion.'

25. For a Preliminary Objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. A valid Preliminary Objection should, if successful, dispose of the suit.

26. The subject of the Preliminary Objection in the main is misjoinder of parties – the 2nd, 3rd and 4th Respondents as directors of the 1st Respondent. It is conceded that indeed the 1st Respondent is a duly registered legal entity capable of being suing and being sued in its own name.

27. The legal provision governing joinder/misjoinder of parties is anchored in Order 1 rules 9 and 10 [Civil Procedure Rules](#) that;

' 9. Misjoinder and non-joinder [Order 1, rule 9.]

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. Substitution and addition of parties [Order 1, rule 10.]

(1) Where a suit has been instituted in the name of the wrong persons as Plaintiff, or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as Plaintiff upon such terms as the Court thinks fit.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(3) No person shall be added as a Plaintiff suing without a next friend or as the next friend of a Plaintiff under any disability without his consent in writing thereto.

(4) Where a Defendant is added or substituted, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and



amended copies of the summons and of the plaint shall be served on the new Defendant and, if the Court thinks fit, on the original Defendants.'

28. For a Preliminary Objection to succeed it must raise pure points of law. The import of the instant Preliminary Obejction invites this Hon Court to analyze facts and further exercise its discretionary powers to strike out parties in light of Order 1 rule 10 (2) above. See the case of *United Insurance Co Ltd Vs Scholastica A Odera, Kisumu HCCA No 6 of 2005*, where the Court held that:-

' A Preliminary Objection must be based on a point of law which is clear and beyond doubt and Preliminary Objection which is premised on facts which are disputed cannot be used to determine the whole matter as facts must be precise and clear to enable the Court to say the facts are not contested or disputed.'

29. Consequently, in so far as the Court has to examine facts to ascertain who the right parties ought to be or not to be, the examination ousts the Preliminary Objection from being a pure point of law and the same is dismissed.

30. On the second issue, the guiding law is contained under Order 40 rule 1 of the Civil Procedure Rules that;

1. Cases in which temporary injunction may be granted [Order 40, rule 1.]
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.'

31. It is now well settled law that the granting of injunctive reliefs is a discretionary exercise predicated upon three sequential limbs to wit: that the claimant has established a prima facie case with a probability of success; once established, the claimant ought to prove that an award of damages would be insufficient to alleviate any damage caused and finally, when in doubt, the Court would decide the application on a balance of convenience. See the celebrated cases of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 and [*Nguruman Ltd v Jan Bonde Nielsen & 2 Others* \[2014\] eKLR](#).

32. The starting point is to establish whether the Applicant has demonstrated a prima facie case to grant the orders sought. The Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123, defined a prima facie case as:

' A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which 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 call for an explanation or rebuttal from the latter.'



33. In Nguruman case supra the Court of Appeal went on to further state that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the Applicant's case is more likely than not to ultimately succeed.
34. At the heart of the Applicant's case is that the Respondents have unlawfully invaded the suit land and commenced construction to the detriment of her right to own property and enjoy quiet possession. She argues that the descriptions of Ruiru East Block 1 (githunguri)/792 And Ruiru East Block 1/ T.792 both refer to one and the same parcel of land, which she owns vide a title deed issued on August 23, 2019. She outlined the process of her acquisition of the suit land traced to Githunguri Ranching Company Ltd.
35. On the other hand, the 1st – 4th Respondents are emphatic that the land they are constructing on known as Ruiru East Block 1/T.792 is legally theirs vide a title deed issued in favor of the 1st Respondent's name on December 21, 2020. Their title traces its origin to Pauline Wangui Kimunyo as per ANK-9 copy of green card.
36. In my view, whether these descriptions refer to the same parcel for land is a matter that calls for evidence and best left for hearing. Having said that and considering the issuance of the impugned title deeds on the face of two competing titles as argued by the Applicant, the Court at this stage is not required to determine this issue in finality.
37. Considering the foregoing findings by this Court and to preserve the subject matter of the suit and further guided by the provisions of Sections 1A and 1B *Civil Procedure Act* and Order 40 rule 1 Civil Procedure Rules, this is a ripe case for this Court to exercise its powers and grant status quo orders for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the land known as Ruiru East Block 1 (githunguri)/792 And/or Ruiru East Block 1/t.792.
38. In the end I make the following disposal orders;
 - a. The Respondents' Preliminary Objection dated February 20, 2023 is dismissed.
 - b. That the Application is granted in terms of prayer 4 of the Application dated January 10, 2023 and an order of temporary injunction be and is hereby issued against the Respondents by themselves, agents, workers, servants or anybody claiming through them from further construction, building or depositing further building materials or interfering with the Plaintiff's quiet possession on RUIRU East Block 1(githunguri)792 Also Known As Ruiru East Block 1(githunguri)T.792 pending the hearing and determination of the suit herein.
 - c. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 4TH DAY OF MAY, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Kanyi for Plaintiff



Ngugi Kariuki for 1st, 2nd, 3rd and 4th Defendants

5th Defendant – Absent

