



**Bancroft Properties Limited v Airwave Properties Limited & 4 others (Environment & Land Case E297 of 2022) [2023] KEELC 18611 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18611 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E297 OF 2022  
OA ANGOTE, J  
JULY 3, 2023**

**BETWEEN**

**BANCROFT PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**AIRWAVE PROPERTIES LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**CARLSBERG INTERNATIONAL LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**DKO INVESTMENT LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**DAWN INNOVATIONS LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**Background**

1. Before this court for determination are two applications. The plaintiffs' application dated September 19, 2022 and the 1-4<sup>th</sup> defendants' application dated the October 15, 2022.
2. In the plaintiff's application dated September 19, 2022, the plaintiff seeks the following reliefs;
  - i. Spent
  - ii. That pending the hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the respondent/defendants either by themselves, their agents, servants and/or personal representatives from selling, charging, alienating, trespassing onto, and/or in any other manner whatsoever interfering with or otherwise dealing with the property known as land reference number 13560/3 measuring about 27.96 acres located at Ruaraka Industrial Area, Baba Dogo Road within the County of Nairobi.



- iii. That the Officer Commanding Police Station, Kasarani Area, Kenya Police Commander and the OCS Kasarani Police Station is hereby directed to ensure enforcement with the orders (number 2 herein).
  - iv. That pending the hearing and determination of this suit and in furtherance to the preservation of the suit property, the Chief Land Registrar(Nairobi Central Land Titles Registry) be and is hereby directed to register an inhibition order against all dealings with all that piece of land known as land reference number 13560/3 measuring about 27.96 acres located at Ruaraka Industrial Area, Baba Dogo Road within the County of Nairobi within the next 30 days inhibiting any further dealings on the said land.
  - v. That the costs of this application be provided for.
3. The application is premised on the grounds on the face of the motion and supported by the affidavit of Firoz Haiderali Jessa, a Director of the plaintiff of an even date, who deposed that *vide* a sale agreement dated the July 31, 2002, the plaintiff purchased the parcel of land known as land reference number 13560/3 measuring about 27.96 acres located at Ruaraka Industrial Area, Baba Dogo Road within the county of Nairobi (hereinafter the suit property).
  4. It was deposed that the suit property was sold to the plaintiff free from any encumbrance and the agreement was prepared by the firm of Ndugu Njoroge & Kwach Advocates, acting for the vendor at the time; that Ms Kapila Anjarwalla and Khanna Advocates acted for the plaintiff during the negotiations and execution of the sale agreement and that the plaintiff was registered as proprietor of the suit property on May 6, 2003 as evinced by the certificate of title.
  5. According to the plaintiff's director, the plaintiff acquired the suit property from its previous and first owner Central Glass Industries Limited, who acquired the property by way of a lease from the government and that according to a valuation report dated February 22, 2013, the suit property was valued at Kshs one billion six hundred and twenty one million, one hundred and sixty eight (1,621,168,000/=) and that a recent report of July, 2022 places the value of the land at Kshs two billion(Kshs 2,000,000,000).
  6. It was deposed that the 1<sup>st</sup> -4<sup>th</sup> defendants, through dubious means, prepared a certificate of title purportedly evincing their ownership of the suit property; that armed with the fake title, the 1<sup>st</sup> -4<sup>th</sup> defendants entered into the suit property on June 11, 2022 and held an open day thereon advertising a fictitious development known as Stadium View Estate and that the 2<sup>nd</sup> -4<sup>th</sup> defendants are using the 1<sup>st</sup> defendant as its sale agents in this regard.
  7. It was deposed by the plaintiff's director that the plaintiff has no intentions of selling the suit property which is in danger of being wasted and/or alienated by the defendants; that since February 9, 2022, unknown persons have been manning the property purporting to have been subcontracted by an unknown lady owner and that the plaintiff has continued to distance itself from the alleged sale of the suit property and in this regard filed a caveat in the Daily Nation newspaper of June 23, 2022.
  8. It is the plaintiff's case that the plaintiff has never entered into any agreement with the defendants nor sold any part of its property; that the plaintiff is in eminent danger of losing its property which it has charged to Diamond Trust Bank of Kenya Limited and that there have been attempts to forge board resolutions by persons claiming to be directors of the company in a bid to dispossess the plaintiff of the property, all of which were reported to the Registrar of Companies and the Directorate of Criminal Investigations.



9. According to the plaintiff's Director, after conducting internal investigations, the Registrar of Companies removed from the Register, the fraudulently and illegally included names of Francis Ooko Otude and Atek Otek Richard as Directors of the plaintiff; that the certificate of title issued to the plaintiff is *prima facie* evidence of the plaintiff's ownership and that the 1<sup>st</sup>-4<sup>th</sup> defendants should present the title upon which they base their claim to ownership of the property so that the 5<sup>th</sup> defendant can answer the question of who owns the property.
10. In response, the 1<sup>st</sup> -4<sup>th</sup> defendants filed grounds of opposition in which they averred that the application is incurably bad in law and is premised on a non-suit and that the application is without merit and is a fraud.
11. The 1<sup>st</sup> -4<sup>th</sup> defendants also filed a replying affidavit in which their Director, Daniel Peterson Samba, deponed that the proceedings herein are incurably defective as they have been initiated without the requisite *locus standi*; that nonetheless, the plaintiff has no rights over the suit property and that the alleged ownership documents are forgeries and a manipulation of government records.
12. According to the 1<sup>st</sup> - 4<sup>th</sup> defendants, whereas the 5<sup>th</sup> defendant has not participated in this application, it has vide its defence denied the plaintiffs alleged proprietorship of the suit property and the allegations that the defendants' title is fake and invalid and that the 2-4<sup>th</sup> defendants are the lawful proprietors of the suit property as evinced by the certificate of title dated September 10, 2021 and lease issued on October 11, 2019.
13. It was averred by the defendants that prior to the issuance of the certificate of title and lease, the 2<sup>nd</sup> -4<sup>th</sup> defendants had been issued with a letter of allotment dated September 12, 2013 by the Nairobi County Government and that an official search carried out on October 14, 2022 confirms that the 2<sup>nd</sup> -4<sup>th</sup> defendants are the registered proprietors of the suit property.
14. It was deposed by the defendants that they have been in occupation of the suit property since 2003 without any disturbance and hindrance; that they have erected a huge perimeter wall that is clearly visible and discernible to the public and that their presence on the property has been notorious and overt.
15. It was deposed that the 1<sup>st</sup> -4<sup>th</sup> defendants are strangers to the internal wrangles and boardroom fights of the plaintiff; that in the absence of a board resolution to commence these proceedings, the suit has been commenced to serve the interest of individuals hiding behind a corporation and that the language of the deponent in the supporting affidavit does not draw a distinction between the plaintiff and its alleged directors portraying the two as one legal entity.
16. The plaintiff, through its director, filed a further affidavit in which he deposed that contrary to the 1-4<sup>th</sup> defendants' assertions, the 5<sup>th</sup> defendant has not disputed the plaintiff's title to the suit property; that the Attorney General indicated that he would not be opposing the present motion and that if indeed the plaintiff's title, which is in the custody of Diamond Trust Bank, was fraudulent, the 5<sup>th</sup> defendant would have adduced original records in its custody.
17. It was deponed that the plaintiff's ownership of the suit property, according to the original title deed dates back to May 6, 2003 when it acquired the property from Central Glass Industries Limited whereas the 1-4<sup>th</sup> defendants' title is dated October 11, 2019; that the 1-4<sup>th</sup> defendants have vide their reply failed to show how they acquired the property from the plaintiff company and that the defendants have not shown any agreement for sale, transfers duly signed by the plaintiff or any discharges of charges that were registered at the registry duly executed by DTB and acquiesced by the plaintiff.



18. It was finally deposed by the plaintiff's director that the document alleging to be a title produced by the 1-4<sup>th</sup> defendants is fraudulent; that there are two certificates of title whose authenticity can only be determined at trial; that nonetheless, the court is required to satisfy itself that the plaintiff has a prima facie case and that the plaintiff has indeed proved that there are triable issues and it has a right worthy of the court invoking its injunctive powers.
19. The 5<sup>th</sup> defendant did not participate in this motion.
20. In the application dated October 15, 2022, the 1<sup>st</sup>-4<sup>th</sup> defendants have sought for the following reliefs;
  - a. That the writ of motion dated September 19, 2022 together with the supporting affidavit sworn by Firoz Haiderali Jessa and the entire suit anchored on the plaint dated September 19, 2022 be struck out with costs.
  - b. That the costs attendant hereto be paid prior to/before the plaintiff can take out any further proceedings based on the same or related cause of action.
  - c. That such further or other orders as are appropriate for the effective administration of justice be issued.
  - d. That the costs of this application be met by the defendant.
21. It was averred by the defendants that the pleadings by the plaintiff offend the mandatory provisions of section 19 of the Civil Procedure Act, order 4 rule 1(2), (4) and order 9 rule 2 (c) of the Civil Procedure Rules and that there is no averment in the verifying affidavit, witness statement or supporting affidavit that the deponent thereof has been authorized by the board of directors of the plaintiff company to act as its agents to swear affidavits and to institute the proceedings.
22. According to the 1<sup>st</sup> – 4<sup>th</sup> defendants, despite alleging to have charged the suit property, the alleged chargee has not been enjoined in these proceedings whereas the orders sought by the plaintiff would disentitle the chargee and are prejudicial to its rights under section 56 of the Land Registration Act and that whereas the defendants have adduced original ownership documents, the plaintiff relies on photocopied and fictitious documents contrary to sections 35, 65, 66, 67 and 68 of the Evidence Act.
23. In response to the application, the plaintiff, through its director, deposed that the application is misconceived and lacks merit as a defect in the form of a verifying affidavit cannot lead to the striking out of a suit; that contrary to the defendants' allegations, he swore at paragraph 2 of the verifying affidavit that he verifies the averments in the plaint to be correct and that a resolution by the board of directors may be filed at any time before the suit is fixed for hearing.
24. It was deposed that the courts have further held in answer to order 4 rule 4 that there is no requirement that the authority given to the deponent of the verifying affidavit ought to be filed; that him together with counsel for the plaintiff, Ms Kapila Anjarwalla, executed various charges and secured various sums of money to the plaintiff and that according to the records pertaining to the plaintiff's company as verified by the Registrar of Companies, he is one of the Directors of Bancroft Properties Limited.
25. The plaintiff did not file submissions. The 1<sup>st</sup>-4<sup>th</sup> defendants filed submissions to both applications which I have considered. I have also considered the filed authorities.

### **Analysis and Determination**

26. Vide the application of September 19, 2022, the plaintiff seeks inter-alia, injunctive orders restraining the defendants from any interference with the suit property pending determination of the suit. in



- response, the 1<sup>st</sup> -4<sup>th</sup> defendants assert that not only is the application unmerited, the same is fatally defective on account of failure by the plaintiff to show authority by the company to institute the suit.
27. It is apparent from the foregoing that the 1<sup>st</sup> -4<sup>th</sup> defendants question whether the deponent has the requisite locus to swear the affidavit or indeed institute the suit. *locus standi* means the right to appear before and be heard in a court of law. The court in the case of *Alfred Njau and others v City Council of Nairobi* (1982) KAR 229, defined *locus standi* thus;
- “The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”
28. It is trite that lack of requisite capacity to bring a suit goes to the root of the suit, and without *locus standi*, a suit cannot stand. This was expressed by the court in the case of *Priscilla Jesang Koech v Rebecca Koech & 3 others* [2018] eKLR as follows:
- “Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued. In the case of *BV Law society of Kenya v Commissioner of Lands & Others*, Nakuru High Court, civil case No 464 of 2000. It was held that:
- If a party has no *locus standi*, then the said party cannot bring a suit to court. The issue of *locus standi* goes to the root of any suit and the said issue of locus standi is a point of law which is capable of disposing of a matter preliminarily.”
29. The plaintiff describes itself in the plaint as a limited liability company. It is therefore in law a corporate entity with perpetual succession, capable of instituting and defending suits in its own name. As a corporate entity, the plaintiff can only act through a recognized agent, who, according to order 9 rule 2 of the *Civil Procedure Rules*, should be a duly authorized officer.
30. The *Civil Procedure Rules* sets out the nature of the verifying affidavit accompanying a plaint filed by a corporation. It provides under order 4 rule 1(4) as follows:
- “Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”
31. The court has considered the verifying affidavit. It is deponed by Mr Firoz Haiderali Jessa, who states that he is the plaintiffs’ director. He avers that he has knowledge of the facts appertaining to the matter and is competent to swear the affidavit and that he understands the contents of the plaint and confirms the factual content as correct.
32. Indeed, as stated by the defendant, there is no deposition that the deponent has been authorized by the plaintiff’s board of directors to swear the affidavit, neither has any such authority been filed. Can this be a basis for dismissing the suit?
33. The Court of Appeal in *Spire Bank Limited v Land Registrar & 2 others* [2019] eKLR, discussed the rationale behind order 4 rule 1(4) of the *Civil Procedure Rules* and the consequences of its non-compliance. The court stated thus;
- “It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings



on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."

34. This court will be guided by the foregoing. The mere fact that the deponent did not explicitly state that he had been authorized by the board of directors to swear the affidavit and failed to file any authority cannot in itself be a ground of invalidating a suit, especially where there is no contention or evidence that he is not a Director of the Company, or that he has not been authorized to plead for the company.

35. In any event, the matter has yet to proceed for hearing and this is an issue that can be regularized. The court is in this respect persuaded by the decision in Leo Investments Ltd v Trident Insurance Company Ltd (2014) eKLR where Odunga, J (as he then was) agreed with the decision in the case of Republic v Registrar General and 13 others Misc application No 67 of 2005 [2005] eKLR where the court stated as follows:

"...such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit."

36. This objection therefore fails.

37. Order 40 of the Civil Procedure Rules lays out the law on the grant of temporary injunction and interlocutory orders.

38. Being an application for injunctive orders, the same shall be weighed against the requisite essentials set out in the celebrated case of Giella v Cassman Brown (1973) EA 358 thus:

"The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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."

39. The plaintiff in this case is expected to meet those three principles and surmount them sequentially. This position was stated by the Court of Appeal in Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR where the court 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) Ally 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. (See *Kenya Commercial Finance Co Ltd v Afraba Education Society* [2001] Vol 1 EA 86) 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."

40. The court will be guided by the foregoing principles, as well as the general principle that no definitive findings on law or facts should be made at this interlocutory stage.

41. What constitutes a *prima facie* case was succinctly discussed by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR as follows:

"...So what is a *prima facie* case? I would say that in civil cases 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."

42. More recently, the Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (supra) while agreeing with the definition of a *prima facie* case in the *Mrao Case* (supra) went ahead to further expound as follows;

"We adopt that definition save to add the following conditions by way of explaining it. 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. We reiterate 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. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a *prima facie* case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. 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."

43. It is the plaintiff's case that it has at all material times been the duly registered proprietor of the suit property having purchased the same vide a sale agreement dated July 31, 2002 from Central Glass Industries Limited who was the original owner having been granted the property by way of a 99-year lease by the Government of Kenya.



44. It is the plaintiff's case that it was registered as the proprietor of the suit property on May 6, 2003 and that the 1<sup>st</sup> -4<sup>th</sup> defendants prepared a fraudulent certificate of title which indicates that the 2<sup>nd</sup> -4<sup>th</sup> defendants are the owners of the suit property and that armed with their fraudulent titles, the 1<sup>st</sup> -4<sup>th</sup> defendants entered onto the suit property on June 11, 2022 and held an open day purporting to advertise the same for sale through the 1<sup>st</sup> defendant as their agent.
45. The plaintiff adduced into evidence the sale agreement of July 13, 2002, the certificate of title, copy of the valuation report dated February 22, 2013 and another valuation report dated July, 2022, CR-12 issued by the Registrar of companies with respect to the 1<sup>st</sup> -4<sup>th</sup> defendants, and a copy of the certificate of title in the names of the 2<sup>nd</sup> -4<sup>th</sup> defendants.
46. The plaintiff also adduced in evidence a copy of caveat published in the Daily Nation, an advertisement banner taken on June 11, 2022, a copy of official search issued by the 5<sup>th</sup> defendant confirming the plaintiff's title ownership, a complaint letter dated June 9, 2022 and letters from the Registrar of Companies dated September 6, 2021 and December 22, 2021.
47. In contrast, the 2<sup>nd</sup>-4<sup>th</sup> defendants lay claim to the suit property by virtue of the certificate of title dated September 10, 2021 and a lease dated October 11, 2019. It is the defendants' case that prior to the foregoing, they were issued with a letter of allotment dated September 12, 2013 by the County Government of Nairobi and that an official search dated October 14, 2022 confirms their proprietorship of the suit property.
48. According to the defendants, they have been in occupation and use of the suit property since 2003 without any hindrance and have erected a huge perimeter wall thereon. the 1<sup>st</sup> -4<sup>th</sup> defendants adduced into evidence a certificate of title dated September 10, 2021, lease dated October 11, 2019, letter of allotment dated September 12, 2013, and the official search dated October 14, 2022.
49. Taking into account the foregoing narration, it is evident that the question of ownership of the suit property is disputed. Pursuant to section 26 of the [Land Registration Act](#), a certificate of title is *prima facie* evidence of ownership of the suit property. However, the same can be impugned in the circumstances set out under section 26(a) and (b) of the [Land Registration Act](#), that is, where the title has been procured fraudulently or by misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
50. In the present case, both parties hold certificates of titles with respect to the suit property. Each allege that the other party's title is fraudulent. Fraud refers to deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. It constitutes both a civil wrong and a criminal offence, and the burden on a party alleging fraud is more than on a balance of probabilities as is required in civil cases.
51. In the Court of Appeal case of [Nancy Kahoya Amadiva v Expert Credit Limited & another](#) [2015]eKLR, it was held;

“We have previously held that in cases where fraud and/or misrepresentation is alleged, it is not enough to simply infer fraud from the facts. In *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR Tunoi JA (as he then was) stated as follows;

“it is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is



also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” (emphasis ours)

52. Taking into account the stringent parameters for proof of fraud, the same can only be determined by way of full hearing and not at an interlocutory stage such as this. The court will therefore not wade into this issue.
53. Suffice to state that the certificate of title presented by the plaintiff indicates the property was originally leased by the Government to Central Glass Industries Limited from January 1, 1985 and was transferred to it on May 6, 2003. On the other hand, the certificate of title in the 2<sup>nd</sup> -4<sup>th</sup> defendants’ name was issued on September 10, 2021 pursuant to a lease granted to it by the Government from September 1, 2013.
54. It need not be restated that there cannot be two titles over the same property. Faced with such a situation, the obtaining jurisprudence has been that where there are two competing titles, the first in time will prevail, unless it is shown, *prima facie*, that the same was unlawfully acquired. This position was emphasized in the case of *Wreck Motors Enterprises v The Commissioner of Lands and others* civil appeal civil appeal No. 71 of 1997, where the court held that:
- “Where there are two competing titles the one registered earlier is the one that takes priority.”
55. This position was further reiterated in the case of *Gitwany Investment Ltd & 3 others v Commissioner of Lands*, HCCC No 1114 of 2002, where the court held that:-
- “The first in time prevails so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail.”
56. It is the finding of this court that the plaintiff’s title being first in time, that same must prevail at this stage. It is important to note that by holding that the plaintiff’s title deed should prevail does not mean that this court has conclusively decided that the plaintiff is the genuine and legitimate proprietor of the suit property.
57. All the court is saying is that evidence must be called to confirm how the second title deed came into being, as, *prima facie*, the suit property was not available for alienation. That being so, the court finds that the plaintiff has demonstrated that there exists a right which has apparently been infringed as to call for an explanation.
58. The plaintiff states that the 1<sup>st</sup>-4<sup>th</sup> defendants are attempting to dispose off the suit property. The deponent in this regard adduced a copy of the banner advertising the property for sub-division and sale, and has shown that pursuant to the defendants’ attempts to sale the land, the plaintiff published a caveat emptor in the local dailies. The alienation of the suit property will render the suit an academic exercise. The court finds that the plaintiff will suffer irreparable injury if the suit property is sold to third parties.
59. On the issue of balance of convenience, the court finds that the scales tilts in favour of preserving the suit property. Indeed, considering that the defendants have claimed that they are the ones who put up the perimeter wall around the suit premises, the appropriate order is to maintain the prevailing status quo pending the hearing and determination of the suit.
60. For those reasons, the court makes the following determination:



- a. The defendants' application dated October 5, 2022 be and is hereby dismissed with costs.
- b. The prevailing status quo to be maintained, meaning that none of the parties should deal with property known as land reference number 13560/3 measuring about 27.96 acres in any manner whatsoever pending the hearing and determination of the suit.
- c. The Officer Commanding Police Station, Kasarani Area Kenya Police Commander and the OCS Kasarani Police Station is hereby directed to ensure enforcement of the above order.
- d. Pending the hearing and determination of this suit and in furtherance to the preservation of the suit property, the Chief Land Registrar (Nairobi Central Land Titles Registry) be and is hereby directed to register an inhibition order against all dealings with all that piece of land known as land reference number 13560/3 measuring about 27.96 acres located at Ruaraka Industrial Area, Baba Dogo Road.
- e. The costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 3RD DAY OF JULY, 2023.**

**O. A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. Clifford Odhiambo for Plaintiff

No appearance for Defendants

Court Assistant- Tracy

