



Langat v Trimborn Agricultural Engineering Limited & 3 others (Environment & Land Case 25 of 2022) [2023] KEELC 18459 (KLR) (3 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18459 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 25 OF 2022**

LA OMOLLO, J

JULY 3, 2023

BETWEEN

ISAAC KIPNGETICH ARAP LANGAT PLAINTIFF

AND

TRIMBORN AGRICULTURAL ENGINEERING LIMITED 1ST DEFENDANT

MARANGA GROUP LIMITED 2ND DEFENDANT

COUNTY LAND REGISTRAR, NAKURU 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

Introduction

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 10th May, 2022 which is brought under Sections 1, 1A, 2A, 3 and 3A of the *Civil Procedure Act*, Order 40 Rule 1 and 2, Order 51 Rule 1 of the *Civil Procedure Rules*.
2. The Application is seeking the following prayers:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit this honourable court be pleased to issue orders of injunction to restrain the 1st and 2nd Defendants/Respondents by themselves, their agents, servants, assigns, tenants and/or any person claiming under them from entering, remaining, encroaching, constructing, wasting, disposing of, alienating, trespassing into, denying the plaintiff use and occupation and/or dealing in any manner whatsoever with the



suit parcels of land Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 measuring approximately 0.2157 hectares respectively.

- d. That this honourable court be pleased to issue an order that the Plaintiff accesses and uses the parcels of land Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 measuring approximately 0.2157 Hectares and 0.2196 Hectares respectively pending the hearing and determination of the application and suit herein.
 - e. That this honourable court be pleased to direct the Inspector General and/or Officer Commanding Station, Kaptembwa Police Station to provide security and enforce the orders herein.
 - f. That costs of this application be provided for.
3. The Application is based on the grounds on its face and supported by the affidavit of the Plaintiff/Applicant sworn on 10th May 2022 by one Isaac Kipngetich Arap Langat.

Factual Background

4. This suit was commenced by way of a Plaint dated 10th May 2022 and filed on the same day where the Plaintiff seeks the following orders:
- a. A declaration that the Plaintiff is the sole registered and bona fide owner of all the parcels of land known as Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 measuring approximately 0.2157 Hectares and 0.2196 hectares respectively.
 - b. An order of permanent injunction restraining the 1st and 2nd Defendants by themselves, their agents, servants, assigns, tenants and/or any person claiming under them, from entering, remaining, encroaching, constructing, wasting, disposing, alienating, trespassing into, denying the Plaintiff use and occupation and/or dealing in any manner whatsoever with the suit parcels of land Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 measuring approximately 0.2157 Hectares and 0.2196 hectares respectively.
 - c. An order of eviction to issue against the 2nd Defendant to vacate the parcels land No. Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 immediately but not later than 30 days.
 - d. An order directing the 3rd Defendant to cancel the certificates of lease issued to the 1st Defendant in respect of all the parcels of land known as Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 measuring approximately 0.2157 Hectares and 0.2196 hectares respectively.
 - e. Cost and interest of the suit.
 - f. Any other relief this honourable court may deem fit to grant.
5. The 1st Defendant/Respondent filed its Statement of Defence and Counterclaim dated 6th June 2022 wherein he seeks the following prayers:
- a. A declaration do issue that the 1st Defendant (now Plaintiff) is the sole legally registered owner of the properties known as LR Nakuru Municipality Block 4/296 and LR Nakuru Municipality Block 4/297.
 - b. A permanent injunction do issue restraining the Plaintiff (now 1st Defendant), whether by himself, or through his servants or agents from entering upon, interfering with, transferring



or dealing in any manner whatsoever with the properties known as LR Nakuru Municipality Block 4/296 and LR Nakuru Municipality Block 4/297.

- c. An order do issue to the 3rd Defendant (now 2nd Defendant) directing the Land Registrar, Nakuru to immediately rectify the Registers for the properties known as LR Nakuru Municipality Block 4/296 and LR Nakuru Municipality Block 4/297 by deleting the name of the Plaintiff (now 1st Defendant) to have the name of the 1st Defendant (now Plaintiff) as the legitimate registered owner.
 - d. A permanent injunction do issue restraining the 3rd Defendant (now 2nd Defendant), whether by itself or through the servants or agents of said office from illegally interfering with, altering or dealing in any manner with the registers for the properties known as LR Nakuru Municipality Block 4/296 and LR Nakuru Municipality Block 4/297 without express authority from the 1st Defendant (now Plaintiff).
 - e. The Plaintiff (now 1st Defendant) and the 3rd Defendant (now 2nd Defendant) be condemned to meet the costs of this suit plus interest thereon.
 - f. Any further orders that the Honourable Court may deem just and fit to grant.
6. The 2nd Defendant/Respondent filed its Statement of Defence on 5th July 2022 wherein it denies the averments in the Plaintiff.
 7. The Application under consideration first came up for hearing on 11th May 2022 when the court directed that the application be served upon the other parties.
 8. The Application came up for mention severally before the court issued directions on 15th November 2022 that it shall be canvassed by way of written submissions.
 9. On 16th February 2023 the court confirmed that parties had filed submissions and the matter was reserved for ruling.

Plaintiff/applicant's Contention

10. The Plaintiff/Applicant contends that he is the registered owner of land parcel No's LR Nakuru Municipality Block 4/296 and LR Nakuru Municipality Block 4/297 measuring approximately 0.2157 Hectares and 0.2196 Hectares respectively.
11. The Plaintiff/Applicant also contends that he bought the suit properties on 19th March 2022 and the changes in ownership were effected by the Kenya Industrial Estates Limited who was in charge of the suit properties.
12. The Plaintiff/Applicant further contends that he was issued with the letters of allotment on 24th February 1994.
13. It is his contention that he started following up on the issuance of the title documents by paying all the requisite fees at the District Land Registrar in Nakuru and was supplied with the lease documents for the purposes of issuance of the lease for the suit properties.
14. It is also his contention that on 3rd July 2020, upon confirmation from Kenya Industrial Estates that he was the lawful owner, he was issued with certificates of lease for the suit properties.
15. It is further his contention that thereafter he conducted a search to confirm his registration as the owner of the suit properties.



16. He contends that he was in the process of taking occupation of the suit properties when the 1st and 2nd Defendants/Respondents who are in occupation of land parcel No. Nakuru Municipality Block 2/298 barred him from entering and utilizing them.
17. He also contends that in the year 2021, he sent his agents to the suit properties in order to place beacons on the boundaries but they were denied access by the 1st and 2nd Defendants/Respondents.
18. He further contends that around 6th May 2022 while visiting the suit properties, he found that the 1st and 2nd Defendants/Respondents had placed containers on the land with the aim of doing business on it.
19. It is his contention that upon investigating, he was informed that the 1st and 2nd Defendants/Respondents intended to lease out the containers to third parties as shops.
20. It is also his contention that the actions of the 1st and 2nd Defendants are occasioning him irreparable loss and damage as they are trespassers who have no legal interest in the suit properties.
21. He ends his deposition by stating that is in the interest of justice that the orders sought herein are granted.

The 1st Defendant/respondent's Response

22. The 1st Defendant/Respondent filed its Replying Affidavit sworn on 24th May 2022 by its general manager one David Kerr.
23. He deposes that the 1st Defendant/Respondent purchased the suit properties in the year 1995 from Kenya Industrial Estates.
24. He also deposes that the 1st Defendant/Respondent has been in occupation of the suit properties for a period of over twenty years save for one issue that was determined in Nakuru ELC No. 206 of 2014 (Trimborn Agricultural Engineering Limited v Lawrence Mwangi & 2 Others) where the court affirmed the 1st Defendant's ownership of the suit properties.
25. He further deposes that it was the Plaintiff/Applicant who signed the official allotment letter for the suit properties to the 1st Defendant/Respondent as the Divisional Manager Rift Valley Division for Kenya Industrial Estates.
26. He deposes that this was evident in Nakuru ELC No. 206 of 2014 (Trimborn Agricultural Engineering Limited v Lawrence Mwangi & 2 Others) through the estate of Dr Laban Kiptui who brought an application dated 18th November, 2014 with the allotment letter annexed.
27. He also deposes that the 1st Defendant/Respondent has never sold the suit properties to the Plaintiff/Applicant and so it is mysterious how the Plaintiff/Applicant acquired the suit properties.
28. He further deposes that the 1st Defendant/Respondent entered into a land sale agreement with the 2nd Defendant/Respondent for sale of the suit properties which sale was derailed by Nakuru ELC No. 206 of 2014 (Trimborn Agricultural Engineering Limited v Lawrence Mwangi & 2 Others) which suit has now been determined.
29. He deposes that the 1st Defendant/Respondent is not a trespasser as the Plaintiff/Applicant has always been aware of its occupation.
30. He also deposes that the 1st Defendant/Respondent has been paying all the rates and rents with respect to the suit properties.



31. He further deposes that the Plaintiff/Applicant had previously filed Nakuru ELC No. E53 of 2021 (Isaac Kipngetich Arap Langat v Peter Kimori & Trimborn Agricultural Eng. Limited) which sought similar orders as those sought herein.
32. He deposes that the court granted the Plaintiff/Applicant interim orders on 14th July 2021 and later the 1st Defendant/Respondent was joined in the said suit as the 2nd Defendant.
33. He also deposes that instead of the Plaintiff/Applicant amending his pleadings to include the 1st Defendant/Respondent herein, he opted to withdraw the said suit.
34. He further deposes that the present suit is therefore merely frivolous, vexatious and an abuse of the court process.
35. He deposes that the Plaintiff/Applicant's failure to disclose the proceedings in ELC No. E53 of 2021 (Isaac Kipngetich Arap Langat v Peter Kimori & Trimborn Agricultural Eng. Limited) in these proceedings indicates that he has come to court with unclean hands.
36. He also deposes that the photographs annexed to the Plaintiff/Applicant's application shows that they were taken from outside the suit properties and so he is an outsider looking in with no right over the properties.
37. He further deposes that the Plaintiff/Applicant's suit is meant to mislead the court and is a calculated move to adversely affect the rights of the registered owner of the suit properties who is the 1st Defendant/Respondent.
38. He deposes that the Plaintiff/Applicant's application does not meet the criteria set out in the case of *Giella v Cassman Brown* [1973] EA 358 as he has failed to demonstrate a *prima facie* case with a probability of success.
39. He further deposes that the Plaintiff/Applicant has also failed to show that he stands to suffer irreparable loss if the injunction is not granted.
40. He deposes that the Plaintiff/Applicant's claim that he stands to suffer irreparable loss is not supported by evidence.
41. He also deposes that the balance of convenience tilts in favour of the 1st Defendant/Respondent who is in actual possession of the suit property.
42. He ends his deposition by stating that the 1st Defendant/Respondent stands to be prejudiced if the orders sought in the present application are granted.

The 2nd Defendant/respondent's Response

43. The 2nd Respondent filed a Replying Affidavit sworn by one Edwin Siocha Kimori its director on 28th June 2022 on 5th July 2022.
44. He deposes that the 2nd Defendant/Respondent purchased the suit properties from the 1st Defendant/Respondent on 16th June 2010 and has been in continuous occupation.
45. He also deposes that subsequently, the Plaintiff/Applicant went and started claiming ownership of the suit properties.
46. He further deposes that the Plaintiff/Applicant must have got the title to the suit properties fraudulently because the 2nd Defendant/Respondent had already purchased the suit properties from the 1st Defendant/Respondent as at the time the Plaintiff/Applicant got his title.



47. It is his deposition that the Plaintiff/Applicant cannot claim that they are trespassers and yet they purchased the suit properties in the year 2010 and have been in peaceful occupation since then.
48. He also deposes that the 2nd Defendant/Respondent stands to suffer irreparable loss given the investments that have been made on the suit properties.
49. He further deposes that unless the documents produced by the Plaintiff/Applicant are scrutinized, there is no way of assuming that the suit properties belong to him given that the 1st Defendant/Respondent is the registered owner.
50. He deposes that granting the Plaintiff/Applicant the orders sought will prejudice the 2nd Defendant/Respondent as he has not established a sufficient case against them.
51. He also deposes that they are in the process of constructing permanent structures on the land and further denial of access to the same will infringe on their right to property.
52. He states that the 2nd Defendant/Respondent has been denied the right to peaceful occupation of the suit properties since the Plaintiff/Applicant tried to take occupation.
53. He also states that the Plaintiff/Applicant has not established any claim against the 2nd Defendant/Respondent to warrant the grant of the orders sought in the application.
54. He ends his deposition by seeking that the Plaintiff/Applicant's application be dismissed with costs.

Plaintiff/applicant's Response to the 1st and 2nd Defendants/respondents Replying Affidavits

55. The Plaintiff/Applicant filed a Further affidavit sworn on 5th July 2022 on 6th July 2022.
56. He deposes that 1st Defendant/Respondent claims to have bought the suit properties from Kenya industrial Estate in the year 1995 but there is no evidence whatsoever to that effect.
57. He also deposes that the 1st Defendant/Respondent is pegging its ownership of the suit properties on the alleged purchase whereas there is no written sale agreement between Kenya Industrial Estates and the 1st Defendant/Respondent.
58. He further deposes that indeed there was an Order that was entered in Nakuru ELC No. 206 of 2014 in favour of the 1st Defendant which was by consent and that the case was therefore not heard on merit.
59. He deposes that the said orders are not binding on him because he wasn't a party to the suit.
60. He also deposes that in the case of Nakuru ELC No. 206 of 2014, the Principal Land Registrar Nakuru Land Registry swore an Affidavit as to why the Court Order dated 18th September, 2019 could not be registered despite it being booked which was because the 1st defendant/Respondent was not the registered owner of the suit properties.
61. He further deposes that it is not true that he signed the letter of allotment in favour of the 1st Defendant/Respondent in the year 1995 as he had already retired from Kenya Industrial Estates.
62. He deposes that the letters of allotment did not have a place for him to sign and the 1st Defendant/Respondent is merely making allegations against him.
63. He also deposes that he was not fully conversant with the Pleadings of Mary Jacinta Kiptui or the entire claim and therefore cannot authenticate her claim and the documents she relied on.
64. He further deposes that he followed the due process in getting the titles to the suit properties unlike the 1st Defendant/Respondent.



65. He deposes that in as much as the 2nd Defendant/Respondent purchased the suit properties from the 1st Defendant/Respondent it did so without conducting due diligence and can therefore not be classified as an innocent purchaser for value.
66. He also deposes that the 2nd Defendant/Respondent just like the 1st Defendant/Respondent is a trespasser and not entitled to be in use, occupation and possession of the Suit properties.
67. He further deposes that in any case, the transaction between the 1st and 2nd Defendants/Respondents is null and void ab initio on the ground that the 1st Defendant/Respondent is not the registered owner of the suit properties and their titles to the same were fraudulently obtained and ought to be cancelled.
68. He deposes that the mere payment of all rates and land rates due over the years does not validate fraudulently obtained titles or allotment letters whatsoever. It is not proof of ownership of the suit properties.
69. He also deposes that it is true that there was another suit which was Nakuru ELC No. E53 of 2021 that he filed but later withdrew due to the death of the Defendant therein and it was not heard on merit.
70. He further deposes that the withdrawal of the said suit did not bar him from filing a fresh suit.
71. He deposes that all the parties with interest in the suit properties have been included in this suit hence there is full disclosure of all material facts before this Honourable Court.
72. He also deposes that the mere fact that the photographs were taken in whichever position does not indicate that he did not have a right over the suit properties. He adds that the 1st and 2nd Defendants/ Respondents are illegally in occupation of the suit properties and he has come before this Honourable Court seeking Injunctive Orders against them.
73. He further deposes that just because the 1st and 2nd Defendants/ Respondents are in occupation, which occupation is founded on fraudulent title documents, does not justify their continued occupation of the suit properties.
74. He deposes that he has supplied the court with all the relevant documents to prove his legitimate ownership of the suit properties and as such he has met the threshold of issuance of an Order for temporary injunction against the Defendants/Respondents herein.
75. He also deposes that the suit properties do not have any buildings on it save for single-lined containers which led to be filing of the present suit and application.
76. He further deposes that since he is the registered owner of the suit properties, he should be in occupation instead of the 1st Defendant/Respondent.
77. He deposes that save for the allegation that the 1st Defendant/Respondent bought the suit properties in 1995 and that it has letters of allotment and the subsequent title documents and Certificate of Lease, the 1st Defendant /Respondent has not clearly demonstrated how it got possession of the said documents.
78. He also deposes that the 1st Defendant/Respondent did not follow the due process as no sale agreement for the suit properties was produced.
79. He further deposes that the 1st Defendant/Respondent's letters of allotment at page 53 of its Replying Affidavit shows that the letters of allotment were issued on 16th April, 1991 but the plot number is not indicated thereon.



80. He deposes that the letter of allotment is incomplete and is not in relation to the suit properties. Furthermore, the 1st Defendant/Respondent has not proved that it met the terms of the letter of allotment, hence it has no legal effect.
81. He also deposes that the letter of allotment appears to have been issued prior to the alleged purchase of the suit properties by the 1st Defendant/Respondent in 1995.
82. He deposes that it is not sufficient for the 1st and 2nd Defendants/Respondents to claim that they are in occupation of the suit properties and to be allowed continued occupation to his detriment.
83. He ends his deposition by stating that it is time he utilized his rights of ownership of the suit property as provided by the Constitution of Kenya pending the hearing and determination of this suit.

Issues for Determination

84. The Plaintiff/Applicant filed his submissions on 8th December, 2022, the 1st Defendant/Respondent filed his submissions on 25th January 2023 and the 2nd Defendant filed his submissions on 16th February 2023.
85. The Plaintiff/Applicant in his submissions identifies the following issues for determination:
 - a. Whether the principles of granting temporary injunction have been proved by the Plaintiff/Applicant and should be granted as prayed in prayers 2 & 3 of the Notice of Motion.
 - b. Whether the Plaintiff should be granted an order to access and use the suit properties pending the hearing and determination of the application and suit herein.
 - c. Whether an order should issue directing the Inspector General and/or officer Commanding station, Kaptembwa Police Station to provide security and enforce the orders herein.
 - d. Whether the costs of the application should be borne by the Respondent.
86. On the first issue, the Plaintiff/Applicant relies on the cases of *Giella v Cassman Brown*, *Nguruman Ltd v Jan Bonde Nielson* [2014] eKLR and submits that he has demonstrated that he is the sole registered owner of the suit property and has therefore established a *prima facie* case.
87. The Plaintiff/Applicant also reiterates the contents of his further affidavit and relies on the cases of *Joseph Igogo Gathirwa v Peter Nduati Mbau & 2 Others* [2021], *Munyu Mainav Hiram Gathiba Maina*, Civil Appeal No. 239 of 2009 in support of his arguments.
88. On whether he will suffer irreparable injury if the orders sought are not granted, he submits that as the legally registered owner of the suit properties, he has never been able to utilize them as the 1st and 2nd Defendants/Respondents have prevented him from doing so.
89. The Plaintiff/Applicant relies on the cases of *Joseph Siro Mosiomo v Housing Finance Company of Kenya* HCC No. 265 of 2007 [2008] eKLR, *American Cynamid Co. v Ethicon Ltd* [1975] 2WLR 316 and submits that the 1st and 2nd Defendants/Respondents have not proved that they have been in actual use, occupation and possession of the suit properties.
90. The Plaintiff/Applicant submits that the balance of convenience tilts in his favour as he is the registered owner of the suit property and relies on the case of *American Cynamid Co. v Ethicon Ltd* [1975] 2WLR 316 in support of its arguments.



91. The Plaintiff/Applicant submits that it is only fair and just that he be allowed to take occupation of the suit properties pending the hearing and determination of the present suit and seeks that his application be allowed as prayed.
92. The 1st Defendant/Respondent in its submissions identify the following issues for determination:
 - a. Whether the orders of injunction sought are prohibitory or mandatory in nature.
 - b. Whether the 1st Defendant/Respondent has been in occupation of the suit properties.
 - c. Whether the Plaintiff/Applicant has established and met the threshold for granting an injunction.
 - d. Whether the costs of the application should be borne by the Respondent.
93. On the first issue the 1st Defendant/Respondent relies on the cases of *Kenya Breweries Ltd & Another v Washington O. Okeya* [2002] eKLR, *Nation Media Group & 2 Others v John Harun Mwau* [2014] eKLR and submits that for a court to grant a mandatory injunction, the applicant must demonstrate the existence of special and exceptional circumstances that warrant the granting of orders of mandatory injunction.
94. The 1st Defendant/Respondent also submits that the court can maintain the status quo in terms that it remains in actual possession of the suit property and all the parties to desist from alienating, selling, transferring and in any way transacting over the suit properties pending the hearing and determination of the suit.
95. On the second issue, the 1st Defendant/Respondent submits that it has been in occupation of the suit property since it bought it in the year 1995 and that the Plaintiff/Applicant's prayer for an order that the Inspector General and/or Officer Commanding Station, Kaptembwa Police Station to provide security for the Plaintiff/Applicant to move and occupy the suit properties cannot issue at this stage of the proceedings as it would amount to an eviction.
96. On the third issue, the 1st Defendant/Respondent relies on the cases of *Giella v Cassman Brown* [1973] EA 358, *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR and submits that even though the Plaintiff/Applicant alleges that he is the owner of the suit properties, the 1st Defendant/Respondent has established that it had purchased the suit properties in the year 1995 and has been in occupation to date.
97. The 1st Defendant/Respondent also submits that the Plaintiff/Applicant has not demonstrated any irreparable harm he is likely to suffer if the orders sought are not granted and relies on the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR in support of its arguments.
98. The 1st Defendant/Respondent also relies on the case of *Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 2 others* [2016] eKLR and submits that the balance of convenience tilts in its favour as it has always been in occupation of the suit property unlike the Plaintiff/Applicant who has never been in possession. The 1st Defendant/Respondent also relies on the case of *Kenleb Cons Ltd v New Gatitu Service Station Ltd another* [1990] eKLR in support of its arguments.
99. On the fourth issue, the 1st Defendant/Respondent submits that the Plaintiff/Applicant's application is frivolous, vexatious and an abuse of the court process and seeks that it be dismissed with costs.
100. Th 2nd Defendant/Respondent in its submissions identifies only one issue for determination which is whether the Plaintiff/Applicant meets the threshold for grant of an interlocutory injunction.



101. The 2nd Defendant/Respondent relies on the case of *Giella v Cassman Brown* [1973] EA 358 and submits that the Plaintiff/Applicant did not meet the conditions set out in the allotment letter within thirty days as required and only complied twenty-five years later and therefore he has not demonstrated a *prima facie* case.
102. The 2nd Defendant/Respondent also submits that the Plaintiff/Applicant has never been in occupation of the suit property and therefore he has not demonstrated that he will suffer irreparable harm if the orders sought are not granted.
103. The 2nd Defendant/Respondent relies on the case of *Paul Gitonga Wanjau v Gatbuthis Tea Factory Company Limited & 2 Others* [2016] eKLR and submits that the balance of convenience tilts in its favour since it is an innocent purchaser for value and will be inconvenienced if the orders are issued in favour of the Plaintiff/Applicant.

Analysis and Determination

104. After considering the application, replying affidavits, further affidavit and submissions, the following issues arise for determination:
- a. Whether the Plaintiff/Applicant has met the criteria for the grant of an order of temporary injunction pending the hearing and determination of the suit.
 - b. Whether the Plaintiff/Applicant is entitled to an order allowing him to access land parcel No's Nakuru Municipality Block 4/296 and 297 pending the hearing and determination of this suit.
 - c. Who should bear costs of this application.

A. Whether the Plaintiff/Applicant has met the criteria for the grant of an order of temporary injunction pending the hearing and determination of the suit.

105. The guiding principles for the grant of orders of temporary injunction are set out in the case of *Giella v Cassman Brown* (1973) EA 358 and reiterated by the court of appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where it was held as follows:

“in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to a, establishes his case only at a *prima facie* level, b, demonstrates 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 rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

106. The Plaintiff/Applicant has to first demonstrate that he has a *prima facie* case. The court in the case of *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR stated as follows on what constitutes a *prima facie* case:

“... 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 legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”



107. In the present case, the Plaintiff/Applicant claims to be the registered owner of land parcels number Nakuru Municipality Block 4/296 and 297.
108. The Plaintiff/Applicant has annexed to his application, Certificates of Lease in respect of the suit properties that were issued in his name on 3rd July 2020.
109. The 1st Defendant/Respondent, on the other hand, argues that it is the registered owner of the suit properties. It has attached to its Replying Affidavit the Certificates of Lease for land parcel No's. Nakuru Municipality Block 4/296 and 297 issued to it on 24th October 1995.
110. The 1st Defendant/Respondent alleges that it has since sold the suit properties to the 2nd Defendant/Respondent even though it is yet to transfer the suit properties to it.
111. The Plaintiff/Applicant admits that he has never been in possession of the suit properties as the 1st and 2nd Defendants/Respondents are in possession.
112. Based on the foregoing, it is my view that the Plaintiff/Applicant has not established a *prima facie* case for the court to grant the order of injunction sought.
113. Lord Diplock in the case of American Cyanamid v Ethicon Limited [1975] AC 396 held as follows:

“If there is no *prima facie* case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities, that is the end of any claim to interlocutory relief.”
114. The Plaintiff/Applicant has consequently not made a case for grant of the orders of injunction sought.

B. Whether the Plaintiff/Applicant is entitled to an order allowing him to access land parcel No's Nakuru Municipality Block 4/296 and 297 pending the hearing and determination of this suit.

115. The Plaintiff/Applicant is seeking for an order to access the suit properties pending the hearing and determination of the present suit.
116. The 1st Defendant/Respondent is opposing the grant of the said orders as he has been in possession of the suit property since the year 1995 to date.
117. As was pointed out before, both the Plaintiff/Applicant and the 1st Defendant/Respondent have title documents to the suit property.
118. It is not disputed that it is the 1st and 2nd Defendants/Respondents who are in possession of the suit properties. It is also not disputed that the Plaintiff/Applicant has never been in possession.
119. It is my view that since the issue of ownership of the suit properties is yet to be determined, the grant of orders allowing the plaintiff access to the suit properties would be a recipe for chaos. The question of ownership is one that can only be resolved after hearing all the parties herein.

C. Who shall bear costs of this Application?

120. The general rule is that costs shall follow the event in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise.



Disposition

121. In the result, I find that the Plaintiff/Applicant's application dated 10th May, 2022 lacks merit and is hereby dismissed with costs to the Defendant.
122. In the interest of justice and in order to preserve the suit properties I hereby issue orders as follows:
- a. The status quo obtaining as at the date of this ruling shall be maintained pending the hearing and determination of this suit.
 - b. Should the status quo not be certain, parties shall move the court to have the status quo defined.
123. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 3RD DAY OF JULY, 2023.

L. A. OMOLLO

JUDGE

In the presence of: -

Miss Kipruto for the Plaintiff/Applicant.

Mr. Ogolla for Mukira for the 1st Defendant/Respondent.

No appearance for the 2nd Defendant/Respondent.

No appearance for 3rd and 4th Defendant/Respondent.

Court Assistant: Ms. Monica Wanjohi.

