



**Denka Limited v Rawraw (Environment & Land Case E002 of 2023)
[2023] KEELC 20606 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20606 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E002 OF 2023
LC KOMINGOI, J
OCTOBER 5, 2023**

BETWEEN

DENKA LIMITED PLAINTIFF

AND

KISSIO RAWRAW DEFENDANT

RULING

1. This is the Notice of Motion dated 16th January 2023 brought under:

(Under Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#) and Section 3A of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya).
2. It seeks Orders;
 1. Spent.
 2. Spent.
 3. That an order of temporary injunction be issued restraining the Defendant/Respondent, his agents, servants, employees or anyone claiming title over Kajiado/Dalalekutuk/5283 (hereinafter referred to as the “Suit Property”) from entering, trespassing, constructing on or otherwise in any manner whatsoever in interfering with the Plaintiff/Applicant’s quiet use, and possession of the Suit Property thereof pending the hearing and determination of this Application.
 4. That an order of temporary injunction be issued restraining the Defendant/Respondent, his agents, servants, employees or anyone claiming title over the Suit Property from entering, trespassing, constructing on or otherwise in any manner whatsoever in interfering with the Plaintiff/Applicant’s quiet use, and possession of the Suit Property thereof pending the hearing and determination of the Suit.



5. Costs of the application be borne by the Defendant/Respondent.
3. The grounds are on the face of the application set out in paragraphs (a) to (e).
4. The Application is supported by the affidavit of John Waweru Kangethe, a director of the Plaintiff/Applicant sworn on the 10th January 2023 and a supporting affidavit sworn on the 31st January 2023.
5. The Application is opposed. There is a Replying Affidavit sworn by Kisio Raurau the defendant/respondent sworn on the 23rd January 2023.
6. On the 2nd March 2023, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
7. The plaintiff/submissions are dated 29th March 2023. They raise the following issues;
 - i. Has the Plaintiff/Applicant met the criteria for granting of a temporary injunction pending the hearing and determination of this suit?
 - ii. Is the Plaintiff/Applicant entitled to prayers sought?
8. Counsel submitted that the Plaintiff/Applicant has annexed a title deed to the suit property. Further that the defendant has trespassed on the same. It is also submitted that the suit property is charged to Consolidated Bank of Kenya hence the Plaintiff/Applicant will suffer irreparable harm if these orders are not granted.

He has put forward the cases of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR;
Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another [2019]eKLR.
9. It is also submitted that the balance of convenience tilts in favour of the Plaintiff/Applicant who is the registered owner of the suit property.

He has put forward the case of *Airland Tours and Travel Ltd v National Industrial Credit Bank*, Milimani HCCC No.1234 of 2003;
Jeremiah Thuku Nganga & another v John Waitihaka Aidan (Suing on behalf of the estate of Aida Wangui Waitihaka [2020]eKLR.

He prays that the Application be allowed.
10. The Defendant/Respondents submissions dated 27th June 2023. It is submitted that the root of the Plaintiff's title was an illegality that was challenged and heard by the Land Registrar and a decision made.

He has put forward the case of *Dina Management Limited Vs. County Government of Mombasa & 5 Others* Supreme Court of Kenya Petition No.8/2021.
11. Counsel also submitted that the Plaintiff/Applicant has failed to establish a *prima facie* case. Further that it has failed to show what irreparable harm it is likely to suffer if these orders are not granted.
12. It is also submitted that the balance of convenience tilts in favour of the Defendant/Respondent since the Land Registrar has determined the boundary dispute in his favour. He prays that the Application be dismissed with costs.
13. I have considered the Notice of Motion, the affidavit in support and the annexures. I have also considered the response thereto, the written submissions and the authorities cited. The issues for determination are;



- i. Whether the Plaintiff/Applicant's application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this Application?
14. The principles for granting a temporary injunction were set out in the precedent setting case of *Giella v Cass man Brown* [1973] EA 358.
The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003)eKLR defined what amounts to a *prima facie* case.
15. The Plaintiff/Applicant's case is that the defendant has been attempting to erect a fence on part of the suit property.
Further that this encroachment on the suit property may lead to its eventual alienation without the Plaintiff/Applicant's approval.
16. The Defendant/Respondent in his Replying Affidavit denies that he has trespassed on the suit property.
17. I am satisfied that the Plaintiff/Applicant is the registered owner of the suit property. There are photographs annexed which confirm some form of tampering of the suit property by erecting a fence. Thus prompted the Plaintiff's/Applicant's director to make a report at Kajjado Police Station.
18. I find that the Plaintiff/Applicant has establish a prima facie case with a probability of success at the trial.
19. I also find that it is likely to suffer irreparable harm if the Defendant/Respondent continues with the encroachment.
20. The balance of convenience tilts in favour of the Plaintiff/Applicant as it is the registered owner of the suit property. I rely on the case of *Paul Gitonga Wanjau v Gathuti Tea factory Limited & others* [2016]eKLR.
21. In conclusion I find merit in this application and the same is allowed in the following terms;
 - a. That a temporary injunction is hereby issued restraining the Defendant/Respondent his agents, servants, employees from entering, trespassing, constructing or in any other manner interfering with the Plaintiff/Applicants quiet use and possession of LR. No. Kajjado/Dalalekutuk/5283 pending the hearing and determination of this suit.
 - b. That costs of this Application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJJADO THIS 5TH DAY OF OCTOBER, 2023.

L. KOMINGOI

JUDGE.

In The Presence Of:

Ms. Kiunga for Mr. Theuri for the Plaintiff/Applicant present.

Mr. Ibrahim Mwangi for the Defendant/Respondent present.

Court Assistant – Mutisya.

