



**East Africa Pentecostal Church Through the Trustees Registered v Bernard (Environment & Land Case 1 of 2023) [2023] KEELC 20497 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20497 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 1 OF 2023**

**CK NZILI, J**

**OCTOBER 4, 2023**

**BETWEEN**

**EAST AFRICA PENTECOSTAL CHURCH THOROUGH THE TRUSTEES  
REGISTERED ..... PLAINTIFF**

**AND**

**KIRIMI HEZEKIEL BERNARD ..... DEFENDANT**

**RULING**

1. The court is called upon to issue inhibition and temporary injunction orders, barring and restraining any dealings over LR No. Igoji/Kianjogu/904 or the defendant evicting or interfering with the plaintiff's use and peaceful possession of 0.40 acres out of LR No. Igoji/Kianjogu/904, pending hearing and determination of this suit.
2. The application is based on the reasons on the face of the application and the supporting affidavit sworn by Douglas Mbae Mwamba on July 11, 2023. The applicant avers that it bought a portion of the land in the defendant's name, per the attached search, agreements, and photographs of developments marked as DMM "1" – "5," respectively.
3. The plaintiff avers that it has been waiting for the land to be subdivided and transferred by the defendant, who, unfortunately, has alienated the subject land to frustrate the sale. Further, the plaintiff avers that the defendant has threatened to evict and use other people to destroy its developments and evict them from the land. The court, therefore, was urged to preserve the status of the land.
4. Whereas the defendant was served with the application and the originating summons dated July 11, 2023, and an affidavit of service filed on July 24, 2023, no reply has been filed to challenge both the application and the main suit.



5. A party seeking a temporary injunction has to establish a prima facie case with a probability of success indicating that he would suffer irreparable loss and damage if the orders sought were not granted and, lastly, that the balance of convenience tilts in favor of granting the orders sought.
6. In *Mrao Ltd v First American Bank of Kenya Limited & 2 others* (2003) eKLR, it was held that a *prima facie* case is established where, based on the material placed before the court, a right has been infringed to call for a rebuttal from the opposite side. In *Pius Kipchichir Kogo v Frank Kimeli Tenai* (2018) eKLR, the court defined irreparable injury as one that cannot be compensated for in damages and where no other remedy was open to the party to protect him from the consequences of the apprehended injury.
7. To succeed, a party must fully disclose all relevant facts to the just determination of the application and must also show that he has a legal or equitable right that requires protection from the court. See *Kenleb Construction Ltd v new Gatitute Service Station Ltd & another* (1990) KLR 557
8. On balance of convenience, the court in *JM v SMK & 4 others* (2022) eKLR cited with approval Chebii Kipkoech vs. Barnabas Tuitoek Bargarioria & another (2019) eKLR, to mean that if an injunction was not granted and the suit was ultimately decided in favor of the plaintiff, the inconvenience caused to him would be more significant than that caused to the defendant if an injunction was granted and the suit ultimately dismissed.
9. In *Paul Gitonga Wanjau v Gathuthi Tea Factory Co Ltd & 2 others* (2016) eKLR, the court observed that where any doubt exists as to the applicant's right or if the right is not disputed but its violation was denied, the court in determining whether an interlocutory injunction should be granted would take into consideration the balance of convenience to the parties and the nature of the injury which the respondent, on the other hand, would suffer if the injunctions were granted and he should ultimately turn out to be correct and that what injury the applicant, on the other hand, might sustain if the injustice was refused, and he should ultimately turn out to be right.
10. Applying the preceding case law, the plaintiff has disclosed the sale agreement, which was entered into with the defendant on 1.1.2000 and later on 2.6.2011 regarding 0.40 acres of LR No. Igoji/Kianjogu/904, where after the plaintiff took vacant possession and has developed the same for over 12 years. The applicant/plaintiff appears to have a beneficial interest or right over the suit land, which this court should protect. Photographs attached also indicate that there are various developments on the suit land which belong to the plaintiff. The fear of adverse effects from the defendant is apparent and not farfetched or speculative. The official search certificate indicates the land is under the name of the defendant.
11. Inhibition has been termed as a prohibitory injunction that the court is allowed to issue to preserve any transactions on the suit land until the occurrence of an event. If the defendant were to deal otherwise with the property without safeguarding the disclosed interests or rights of the plaintiff, the damage to the plaintiff would be more than what the defendant is likely to suffer if the injunction was granted. The inconvenience of the eviction from the land and destruction of the plaintiff's developments on the land would also be more to the plaintiff than the defendant.
12. The upshot is that I allow the notice of motion dated July 11, 2023 to last for one year. Parties to list the matter for the main hearing on a priority basis.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 4<sup>TH</sup> DAY OF OCTOBER 2023

In presence of



C.A Kananu

Anampiu for applicant

Douglas Mbae Mwamba (plaintiff) Trustee

**HON. CK NZILI**

**ELC JUDGE**

