



**Mahamed v Ali (Environment & Land Case E269 of 2022)
[2023] KEELC 20548 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E269 OF 2022
OA ANGOTE, J
OCTOBER 5, 2023**

BETWEEN

AMINA MAHAMED PLAINTIFF

AND

HUSSEIN SHEIKH ADEN ALI DEFENDANT

RULING

1. Before the Court for determination is the Plaintiff's (hereinafter 'Applicant') Notice of Motion dated August 17, 2022 and brought under Sections 1B, 3, 3A of the *Civil Procedure Act*, Order 40 Rule 1, 2, 4 and Order 51 Rule 1 and 2 of the *Civil Procedure Rules*. The Applicant is seeking orders that:
 - a. Pending the hearing and determination of the application and the substantive suit, the Court be pleased to grant interim orders for all money collected accruing from all the rental properties being house number 41 and house number 32 both at Amana Estate, South C, Nairobi and flat number 8 F9 and 8 F10 of IBRAG01 Plaza(hereinafter 'the suit properties') be deposited in court or in an account held in a reputable bank by the firm of Advocates for the Applicant who shall provide their professional undertaking to retain and preserve all the funds deposited therein, giving a statement of account from time to time to illustrate the status of the account.
 - b. Pending the hearing and determination of this suit there be a temporary order of injunction restraining the Respondent either by himself, his agents, representatives, servants and/or any other person authorized by him from selling, dealing interfering, alienating or disposing of all the suit properties.
 - c. That all the Respondent's accounts with regards to the collection of rent from the suit properties be frozen forthwith pending the hearing and determination of the application and suit.



2. The application is based on several grounds and supported by an affidavit sworn by the Applicant who deponed that she is the wife of the Respondent with whom she has eight children; that she resides in the United Kingdom where she works for a Relief Organization; that in 2009 she paid 30,000 Sterling Pounds for a truck to be sent from London to Kenya and that the cost of transferring the same was 50,000 USD.
3. The Applicant deponed that the Respondent later sold the truck and promised to purchase a house in her name. However, it was deponed, once he had purchased it, he did not register it in her name and that the Respondent purchased more properties from the proceeds of the initial property and registered them under his name.
4. In asking that the application be allowed, the Applicant stated that she will suffer irreparable damage and loss if the Respondent is not stopped from selling, dealing, interfering, alienating or disposing the suit properties.
5. The Respondent filed an affidavit dated January 16, 2023 and deponed that he has two wives; that he has four children with his first wife and nine children with the Applicant and that over the years, he held various job positions and engaged in several businesses especially in the real estate sector.
6. It was the deposition of the Respondent that he was forced to leave employment due to his age and cancer diagnosis and that in the course of his employment he was able to raise capital to invest in the properties he has in Kenya. He denied ever receiving any money from the Applicant.
7. In conclusion he stated that the Applicant's application should be disallowed as allowing it would leave him unable to provide for his medical and family needs.
8. The Applicant filed a further affidavit dated April 19, 2023 stating that she had evidence to show that the Respondent never worked.
9. The Applicant submitted that she has established a prima facie case with chances of success and that she has proven how she acquired the funds the Respondent used to acquire the suit properties.
10. Further relying on the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the Applicant submitted that she stood to suffer irreparable damage that could not be adequately compensated with damages if the injunction is not issued as she will lose her investments.
11. The Applicant submitted that the inconvenience that would be occasioned by not granting the injunction would be higher than what would be occasioned to the Respondent if the injunction is issued.
12. The Applicant submitted that the above stated the order for remittal of rent to court or in a joint account should be granted because she had demonstrated how she financed the suit properties. The Applicant submitted that she has met the threshold of the grant of an order for the accounts to be frozen.
13. The Respondent submitted that the Applicant's claim that she was the sole bread winner of the family was unsubstantiated as nothing in the letter she submitted proved that she was an employee of the Relief Organization.
14. Additionally, it was submitted, the Applicant neither proved that she had purchased a truck and the same was disposed off by him nor that the suit properties were under any threat of damage or disposal.
15. The Respondent submitted that he had proven that he was in gainful employment for many years which helped him invest in the suit properties. In consideration of the fact that he has a large family



and is undergoing cancer treatment, he submitted, denying him rental income from the suit properties would cause him immeasurable loss and damage.

16. Based on the foregoing, the following three issues arise for determination:
 - i. Whether an injunction should be granted;
 - ii. Whether the rental income from the suit properties should be held in an account managed by the Applicant's Advocate.
17. The conditions for the grant of a temporary injunction were set out as follows in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358:

“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.”
18. In the case of *Mrao Ltd. vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 the Court defined a prima facie case as follows:

“In civil cases, a prima facie case 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”
19. The Applicant has argued that she has demonstrated a prima facie case with chances of success as she has proven her contribution towards the purchase of the suit properties. This contribution has been denied by the Respondent who has stated that he received no money from the Applicant but instead put up the suit properties using his savings following many years in gainful employment.
20. Having considered the evidence on record, I am not convinced that the Applicant has demonstrated a prima facie case with chances of success.
21. I am also not convinced that the contribution she seeks to rely on has been proven on a balance of probabilities as firstly, although she stated that she works for a Relief Organization, the letter she presented in support of that assertion states that she was a beneficiary of the services offered by the organization; not an employee of the organization.
22. Secondly, in her affidavit, she stated that she sent the Respondent a total of 50,000 sterling pounds to buy a truck. However, in an affidavit sworn by one Ali Mohamed Muhudin who stated that he facilitated the transfer of the money between the Applicant and Respondent, he states that the Applicant gave him 5,000 sterling pounds and she intended to send 8,500 sterling pounds.
23. Thirdly, there is no evidence showing that any money sent by the Applicant was received by the Respondent. Additionally, there is no evidence showing that the Respondent purchased the suit property using the Applicant's money.
24. In view of the foregoing, and considering that the suit property is registered in the name of the Respondent, I find that the Applicant has not shown, prima facies, that she made any monetary



contribution towards the purchase of the suit properties. She has therefore not demonstrated, prima facie, that she has a right to the suit properties that is threatened with infringement. The prayer for injunction therefore fails.

25. The Applicant has prayed that the rental income should be held in an account managed by her advocate pending the hearing and determination of the suit. She has argued that she is entitled to an order enforcing the same having financed the purchase of the suit properties.
26. However, in the foregoing paragraphs, the court has determined that the Applicant has not established a prima facie case with chances of success. That being the case, the Applicant is not entitled to have the rental income from the suit properties held by her advocate as her contribution to the same has not been proven.
27. In the same breath, I am not satisfied that the Applicant has met the conditions for the grant of an order of freezing of accounts held by the Respondent because based on the foregoing paragraphs, she has not demonstrated that she has an arguable case.
28. In view of the foregoing, I find that the Applicant is not entitled to an order freezing the Respondent's accounts.
29. For those reasons, the application dated 17th August 2022 is without merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF OCTOBER, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

Ms. Karumba for Respondent

No appearance for Applicant

