



Garden of Hope Centre & another v Dorcas Ministries International & 5 others (Environment & Land Case E051 of 2023) [2023] KEELC 21355 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21355 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E051 OF 2023
LC KOMINGOI, J
NOVEMBER 9, 2023**

BETWEEN

GARDEN OF HOPE CENTRE 1ST APPLICANT

PAULINE WANJA WAWERU 2ND APPLICANT

AND

DORCAS MINISTRIES INTERNATIONAL 1ST RESPONDENT

REV DR GILBERT ROBERT EGERTON 2ND RESPONDENT

DR KEN HONGO 3RD RESPONDENT

REV ATEMBA ENOCK 4TH RESPONDENT

STANLEY LOOREMETA MOSIANY 5TH RESPONDENT

CHIEF LAND REGISTRAR, NGONG REGISTRY 6TH RESPONDENT

RULING

1. This is the Notice of Motion application dated 13th June 2023, brought under ;
(Under order 40 & 50 of the *Civil Procedure Rules*, 2012, section 3A of the *Civil Procedure Act*, article 40 of *the Constitution* of Kenya and all other enabling Sections)
2. It seeks orders;
 1. Spent
 2. That temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Respondents by themselves, their servants, or any person claiming title through them, from trespassing on, constructing on, transferring, disposing



off, alienating, wasting, or in any manner interfering with the parcels of land known as Ngong Township/Block 2/274 and Ngong Township/Block 2/275 pending the hearing and determination of this suit.

3. Declaration that the 1st Applicant is the beneficial owner of parcels of land known as Ngong Township/Block 2/274 and Ngong Township/Block 2/275.
 4. That temporary injunction do issue restraining the 1st, 2nd, 3rd and 4th Respondents and either by themselves or their agents from meddling and/or interfering with the affairs of the 1st Applicant until the hearing and determination of this suit.
 5. That prohibition orders do issue prohibiting the 2nd, 3rd and 4th Respondents either by themselves or their agents from interfering with the administrative duties and any other duty performed by the 2nd Applicant to ensure smooth running of the 1st Applicant.
 6. That temporary injunction do issue, restraining the 3rd and 4th Respondents either by themselves or through their agents from in any way meddling and/or interfering with the affairs of the 1st Applicant since they have no locus standi to handle any business regarding the 1st Applicant and barring them from accessing any premises within the 1st Applicant.
 7. That a prohibition order do issue prohibiting the 2nd Respondent from conducting any business of the 1st Applicant until the hearing and determination of this matter.
 8. That an order do issue directing the 6th Respondent to register caution against the Land registration Ngong Township/Block 2/274 and Ngong Township/Block 2/275.
 9. Costs of this application be provided for.
 10. Any other remedy that this court deems fit.
3. This application supported by the affidavit of 2nd plaintiff/applicant dated 13th June 2023 is premised on the grounds that the 2nd Applicant has always been engaged in charitable exercises for needy kids. In 2006 she met the 2nd Respondent who was running the 1st Respondent which was equally supporting needy children. She averred that she met the 2nd Respondent through one Samuel Kimori. He is the current Chairman of the 1st Applicant. Due to the 2nd Applicant and 1st Respondent's shared vision to help the needy, they agreed to register the 1st Applicant to further their vision. The 1st Applicant was then registered in 2006 by them together with the said Samuel Kimori and Margaret Egerton. They agreed to purchase a parcel of land and parcels Ngong Township/Block 2/274 to 277 belonging to the 5th Respondents were identified for purchase. Each parcel was going for Kshs. 750,000. A sale agreement was executed and the entire purchase price paid through donations from well-wishers. Through donations a permanent structure was also put up on the land and a borehole dug. Upon payment of the full purchase price, the 5th Defendant released the original Certificates of Lease for parcel Ngong Township/Block 2/274 and 275 but refused to release other completion documents including a LCB consent, Identification documents and Capital gain tax payment slip despite incessant follow up. In 2016, the 5th Respondent asked for confirmation that the purchase of the parcels of land was made by the 2nd Respondent on behalf of the 1st Applicant and this confirmation was done and



- an affidavit sworn by the 1st applicant's Directors. In 2018 Garden of Hope Centre was registered as a training institution and a Bank account was opened which would be used to deposit resources to run the school. However, from 2019 the 2nd respondent stopped making any donations to the 1st applicant.
4. On 13th March 2023, the 2nd applicant learnt of a scheduled function which was to be held on 15th March 2023 organised by the 2nd respondent on behalf of the 1st respondent. The 2nd applicant tried to stop the said function vide CMCC No. E056 Ngong Law Courts, but the application was dismissed for want of jurisdiction. The 2nd Applicant averred that during the function, the 2nd Respondent stated that he had made a milestone by registering the parcels of land but did not indicate in whose favour. Due to this they undertook a search to ascertain the status of the parcels of land but were asked to attach copies of the certificates of lease. They then reported the matter to Directorate of Criminal Investigations at Ngong.
 5. The applicant claims that the 5th respondent colluded with the 2nd and 3rd respondents to transfer the properties fraudulently knowing very well that they belonged to the 1st applicant. the 2nd applicant averred that she was apprehensive that that the 1st, 2nd, 3rd and 4th respondents would evict the 1st Applicant which hosts children on that property. She also claimed that the 2nd, 3rd and 4th Respondents had been interfering with the administration of the 1st Applicant alluding to having the 2nd Respondent's mandate. She thus asked for the application to be allowed because the 1st Applicant would suffer irreparable loss and damage if the transfer in favour of the 1st Respondent is not cancelled.
 6. The 2nd Respondent in his Replying Affidavit dated 9th August 2023 deponed that he was the Chairman of the 1st Respondent and that in 2007 he purchased two parcels of land Ngong Township/ Block 2/274 and 275 from the 5th Respondent for a valuable consideration of Kshs. 750,000 per parcel and original titles surrendered to him for registration and transfer. However, the said titles got lost and were reported as lost. A Gazette notice was issued to effect their replacement for consequent transfer. The parcels were transferred to the 1st Respondent as the 2nd Respondent's nominee.
 7. While affirming that he was a Director of the 1st Applicant, he contested contents of the letter and affidavit dated 29th April 2016 on grounds that they were fictitious, and called the sale agreement dated 15th November 2006 a sham because the signature on the said agreement was not his. He also indicated that the sale agreement made reference to Samaritan care Centre Gichagi pointing out that the 1st Respondent was registered on 17th November 2006.
 8. He went on to indicate that the 1st Applicant was a project under the 1st Respondent and that is why it was receiving assistance and donations through the 1st Respondent. Adding that the 1st Respondent being the owner of the 1st Applicant were responsible for its day to day running and if the application is granted, then the welfare of the children at the centre would be jeopardised because its operations would come to a standstill. He thus sought for the application's dismissal with costs.
 9. The 4th respondent in his replying affidavit indicated that he has been a Manager for the 1st Respondent from January 18, 2022 and part of his duties were to develop monthly budgets for the 1st respondent's projects which include the 1st applicant. He stated that the 1st applicant was constructed on the 1st respondent's land and all its activities were financed by the 1st respondent. And that on several occasions he had on sent money to the 2nd Applicant to cater for the 1st Applicant's expenses such as salaries, food, staff salaries and other running costs and bills. He also sought dismissal of the application stating that should it be allowed, the children residing at the 1st Applicant would suffer irreparable loss because the orders sought would cripple its activities.



10. The 3rd respondent in his replying affidavit dated August 9, 2023 stated that he was the Secretary General of the 1st Respondent and it was the bonafide registered owner of the suit property and he did not in way collude with anyone to have the property registered in the 1st Respondent's name.
11. He contested the suit/application on the grounds that Article 60 of the 1st Applicant's Memorandum of Articles or Association provided that any differences between the organisation and any of its members should be referred to arbitration. He also contested the suit stating that the 2nd Applicant did not have authority from other directors to sue on behalf of the 1st Applicant. He deponed that the 1st Respondent had no intentions of evicting the children being hosted by the 1st Applicant which was its project. He affirmed that the function referenced to by the 2nd Applicant organised by the 1st Respondent as the 1st Applicant's owner did indeed take place and part of the agenda was to celebrate strides made by the 1st Applicant.
12. He also sought for the dismissal of the application together with the suit.
13. This application was canvassed by way of oral submissions where parties outlined their cases as herein above summarised.

Analysis and Determination

14. I have considered the notice of motion, the affidavits in support, the responses thereto, the rival submissions and authorities cited. The issues for determination are:
 - i. Whether the application meets the threshold for grant of temporary injunction.
 - ii. Whether a caution should be registered against the suit property.
 - iii. Who should bear costs of this application?
15. The principles for grant of interlocutory injunctions were comprehensively set out in the case of *Giella v Cassman Brown Co Ltd* [1973] EA 358 and reinforced by the Court of Appeal case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* (2014) eKLR. In these cases, it was set out that a party seeking an interlocutory injunction needs to establish that they have a prima facie case with a probability of success and that they would suffer irreparable damage that cannot be compensated by an award of damages. Lastly, if the court is in doubt on the above two requirements, it will decide the application based on the balance of convenience. This was reiterated in the Court of Appeal case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* (2014)eKLR where the Court of Appeal held that;

“... 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 states



are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially...”

16. Order 40 rule 1 of the [Civil Procedure Rules](#), 2010 also provides as follow on the issue of temporary:

1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

...

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders. (Emphasis own)

17. To ascertain whether the applicant had satisfied the ground on prima facie case, this court relies on the Court of Appeal case of [Mrao Ltd. v. First American Bank of Kenya Ltd & 2 others](#) [2003] KLR 125 where it pronounced that,

“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...” (Emphasis own)

18. Based on the preceding facts of the case, it is evident that the ownership and title of the property in question are subjects of dispute. The plaintiffs/applicants has sought an interlocutory injunction to prevent the defendants/respondents from interfering with the management of the 1st plaintiff/applicant. However, the 2nd, 3rd, and 4th defendants/respondents have opposed this application, arguing that if they, particularly the 1st defendant/respondent, are prohibited from engaging with the 1st Applicant, which is a project of the 1st defendant/respondent and critical for the seamless execution of its activities, it would lead to irreparable harm for the children under their care.

19. I find plaintiffs/applicants has not demonstrated a basis for the grant of a temporary interlocutory injunction.

20. I find that the plaintiffs/applicants have failed to demonstrate that they will likely to suffer irreparable harm that cannot be compensated by an award of damages. I rely on the case of [Ooko vs. Barclays Bank of Kenya Limited](#) (2002)KLR 394

21. In the case of [Kenleb Cons Limited vs. Gatitu Services Ltd & Another](#) (1990) KLR 557 Bosire J (as he then was) held that;

“To succeed in an application for injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right legal or equitable, which requires protection by injunction.”

I am not satisfied that the plaintiffs/applicants deserve this kind of protection.



22. I find that the balance of convenience tilts in not granting orders that would interfere with the smooth running of the 1st plaintiff/applicant.
23. In conclusion, I find no merit on this application and the same is dismissed. The costs do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF NOVEMBER 2023.

**L. KOMINGOI
JUDGE.**

