



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Kihumba & 5 others (Environment & Land Case
21 of 2023) [2023] KEELC 21278 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21278 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 21 OF 2023
A OMBWAYO, J
NOVEMBER 3, 2023**

BETWEEN

NDUNGU KARIUKI PLAINTIFF

AND

PETER KARIUKI KIHUMBA 1ST RESPONDENT

JOSEPH NDUNGU KARIUKI 2ND RESPONDENT

KIHUMBA HODLINGS COMPANY LIMITED 3RD RESPONDENT

**MARITIN WAICHUNGI T/A WAICHUNGI & CO ADVOCATES 4TH
RESPONDENT**

THE LAND REGISTRAR NAKURU 5TH RESPONDENT

JANE PETER 6TH RESPONDENT

RULING

1. The plaintiff came to this court with the application dated 31st August 2023 seeking orders that that pending the hearing and determination of this suit, this honorable court be pleased to issue an order of temporary injunction barring the 5th defendant from effecting any further transfers, sale, and subdivision. Leasing and charges any dealings over the properties in dispute herein being Mau Summit/Molo Block 15/311, Bahati/Engorusha Block 4/403, LR 12250/62 and LR 12250/67.
2. That pending the hearing and determination of this suit, this honorable court be pleased to issue an order of temporary injunction barring the 1st and 2nd defendants from entering upon, claiming beneficial interest/ownership, collecting rent, taking possession and in any other way from interfering with the subject parcels of land being Mau Summit/Molo Block 15/311, Bahati/Engorusha Block 4/403, LR 12250/62 and LR 12250/67.



3. That pending the hearing and determination of this suit, this honorable court be pleased to issue an order directing the 4th defendant to avail, and/or deposit into the courts custody the original title deeds for the disputed parcels of land being Mau Summit/Molo Block 15/311 , Bahati/Engorusha Block 4/403} LR 12250/62 and LR 12250/67 which title deeds and certificates of lease are in his custody and/or an order do issue barring the 4th defendant from releasing the original title deeds for the disputed parcels of land to the 1st & 2nd defendants herein.
4. That pending the hearing and determination of this suit, this honorable court be pleased to issue an order directing the 6th defendant to avail, and/or deposit into the courts custody the certificate of lease for the disputed parcel of land being LR 12250/62 which is in his custody and/or an order do issue barring the 6th defendant from releasing the original title deeds for the disputed parcels of land to the 1st & 2nd defendants herein.
5. The application is based on grounds that that the plaintiff was the registered owner of the subject parcels of land being Mau Summit/Molo Block 15/311 , Bahati/Engorusha Block 4/403, LR 12250/62 and LR 12250/67 all situated within Nakuru County.
6. That the plaintiff held in his custody the original title deeds for the disputed parcels of land until sometimes in the year 2017 when in the company of the 1st defendant and after being convinced by the 1st defendant he deposited the said original title deeds into the custody of the 4th respondent herein for safe keeping. That the 4th respondent handed over the original certificate of lease for LR 12250/62 to the 5th respondent a surveyor. That the said parcels of land are developed and all are under the management, control and possession of the plaintiff. That in February 2023 when the plaintiff went to pay for land rates, he was shocked to learn from the county government records that the title deeds of the subject parcels of land were registered in the 3rd defendant's name.
7. That the plaintiff did not consent, authorize and neither was he aware of the said changes, but the same were fraudulently done by the 1st defendant in collusion with the other defendants,
8. The plaintiff avers that he reported the matter to central police station where investigations commenced and it was discovered that as per the records at the business registration services, the 3rd respondent was registered in 28/9/2016, and the plaintiff the 1st and 2nd defendant were shareholders/directors.
9. The plaintiff has never be involved, has never executed any company registration documents, has never consented to being made a director of a company and neither has he ever been informed by the 1st 2nd and 4th defendant of this position in the company. The said company registration was done was done by the 4th defendant} without the consent, participation and involvement of the plaintiff.
10. The 1st 2nd and 4th defendant's forged the plaintiffs' signature in execution of the company registration forms and in execution of the consent and transfer forms of the subject parcels of land. The 1st, 2nd and 4th defendants fraudulently allocated the plaintiff 10 shares in the said company despite the plaintiff being the persons whose properties are the only assets of the company. That all the transfers of the parcels of land from the plaintiff to the 3rd defendant were effected on 11th April 2017.
11. That the plaintiff's efforts to the get an explanation from the defendants of how the company was formed, how he was made a director/shareholder and how his title deeds were transferred to the company*s name have been rendered nun and void.
12. That on 12th July 2023, a letter was done to the registrar of lands Nakuru through the PS lands and seeking to have a restriction registered on the subject parcels of land but the same is yet to be effected to date. That through the letter dated 21st July 2023, the land registrar furnished the plaintiff through the



- investigating officer, copies of the green cards for parcels Mau Summit/Molo Block 15/311, Bahati/Engorusha Block 4/403. The land registrar did not however furnish the plaintiff with the searches and land board minutes as requested in the letter dated 12th July 2023
13. That through the letter dated 27th July 2023 & 2nd August 2023, the plaintiff through the investigating officer made a request to KRA to have the details of the subject company.
 14. That through the letter dated 1/8/2023, the details of the company as per the KRA records revealed the names of the 1st defendant and his personal detail. The other two parcels of land are leasehold whose records are with the National land commission.
 15. The plaintiff is apprehensive that should the title deed continue to held by the 4th respondent, there is a likely hood of interference with the subject titles, and the same ought to be deposited into courts custody. Lastly, that there is a likely hood of further the interference with subject parcel unless a restriction is registered. The application is supported by the affidavit of the plaintiff that reiterates the grounds.
 16. The 1st defendant filed a replying affidavit whose gist is that the application is founded on mala fides, falsehoods, defamatory and derogatory statements and the lies peddled therein are appalling. He states that his interaction with the Plaintiff and the 1st defendant started on the 5th April 2026 when they visited his offices and they introduced themselves as brothers. They sought for professional advice on preparation of a will for the plaintiff who stated that he intended to bequeath properties to his children from the 1st house as his second wife whom he had married after acquiring the properties with the first wife was mistreating him and she had transferred all properties bought after sale of one of his plots at Mau Summit into her name.
 17. He explained the requirement of preparation of a written will and the 1st defendant and they promised to get back to him on a future date.
 18. On the 26TH July 2016, the Plaintiff, the 1st defendant accompanied by two gentlemen who were introduced to him as Simon Thuo Muchiri and Kago Nderitu returned to his offices and this time the Plaintiff was ready to have the will prepared for him. He took instructions from the Plaintiff and proceeded to prepare a will dated 26th July 2016 which was duly executed by the plaintiff, his brother the 1st defendant and their accompanying witnesses Simon Thuo Muchiri and Kago Nderitu. He retained a copy of the original will and dispatched one copy to the Plaintiff.
 19. On the 9th September 2017, the Plaintiff accompanied by his brother the 1st defendant returned to his offices and this time they were seeking advice on the process of incorporation of a private limited Company. The intention was to transfer the properties bequeathed in the will to the Plaintiff's children from the 1st house to the Company on what he was made to understand was that the Plaintiff was not satisfied that the properties were properly secured to his children through the will as they were still registered in his name and the 2nd wife would still claim for a share after his demise.
 20. He took the two through the process of registration of a Company. The Plaintiff proposed that the 1st defendant and his grandson who was visiting from the U.S.A were to be incorporated as majority shareholders of the Company to safeguard the interest of his children from the 1st house who were residents of the U.S.A. The Plaintiff also proposed that he be nominated as a shareholder with 10 shares as he was to continue to collect rent from the properties during his lifetime. The Plaintiff, the 1st and 2nd defendants registered a Company in the name Kihumba Holding Company Limited on the 28th September 2016.



21. On the 15th February 2017 the Plaintiff, the 1st and 2nd defendants appeared before him with a request that he prepares transfer forms for transfer of LR No Bahati/Engorusha Block 4/403 and LR No Mau Summit/Molo Block 15/311 (Ndungu) from the plaintiff to the 3rd defendant and which he graciously did.
22. On the 16th May 2017, he received the original title deed for LR No Bahati/Engorusha Block 4/403 and LR No Mau Summit/Molo Block 15/311 (Ndungu) from the directors of the 3rd defendant registered in the name of the 3rd defendant for safe custody and he acknowledged receipt of the title deeds.
23. On the 10th April 2018 he received the original certification of lease for Title No LR 12250167 registered to the 3rd defendant from the directors for safe custody.
24. He did not hear from the clients and continued keeping the 3 title documents safely until the 22nd June 2023 (6 years later) when I received a letter dated 21/6/2023 from the firm of Nancy Njoroge & COs Advocates written on behalf of the plaintiff demanding that he do release the title deeds and the will.
25. He sought instructions on the demand for release of the title documents from the other directors of the 3rd defendant the 1st and 2nd defendants herein and where they objected to the release.
26. He nevertheless forwarded a copy of the will to the Plaintiff through his aforesaid advocates as requested.
27. It is not true that the title deeds deposited with him for safe custody were registered to the plaintiff before deposit as alleged and the title deeds were deposited in the year 2017 and 2018 bearing the name of the 3rd defendant.
28. He denied receiving the original title deed for Parcel No LR 12250162 from the Plaintiff and releasing it to the 5th defendant who is unknown to him as alleged and the allegation is false as he has never met the 5th defendant in his lifetime.
29. He has safely held the 3 title documents for over 6 years now with no Court orders restraining him from doing the acts complained of in the application. Neither the plaintiff nor the 1st and 2nd defendants have been to his office to enquire on the status of the title deeds or to ask for the titles to be released to them prior to the letter of 22nd June 2023 and he has no intentions of fraudulently dealing with the title deeds which he has no interest on save for his engagement as a custodian.
30. The Plaintiff has not proved any fraud on his part and he maintain that he was wrongly enjoined in this suit and he prays for the application to be dismissed with costs.
31. The 4th defendant in his replying affidavit states that he offered the plaintiff and the other defendants' professional advice and preparation of a will to protect the property of the plaintiff.
32. He later prepared a will for the plaintiff. Later, the plaintiff instructed him to incorporate a company and transfer the property to the company. The plaintiff 1st and 2nd defendants registered a company in the name of the 3rd defendant and transferred LR No Bahati/Engorusha Block4/403 and LN Mau Summit/Molo/ Block 15/311 (Ndugu) from plaintiff to the 3rd defendant. He received the title deeds for safe custody.
33. LR 12250/67 was also registered in the names of the 3rd defendant. The certificate of lease was given to the 4th defendant for safe keep. All this happened between 2016 and 2018. On 22nd June 2023 he received a letter from the plaintiff to receive the title deeds and the will. He sought instruction from the other directors but they objected.



34. I have considered the applications, affidavits and submissions on record and do find that the allegations by the plaintiff are very serious and require an investigation because they are hinged on fraud and forgery. The property in dispute was acquired by the plaintiff and allegedly transferred by the plaintiff to the 3rd defendants by the plaintiff and therefore should be protected by this court against any further transaction. The law that governs applications for injunction is premised under Order 40 Rule 1 of the [Civil Procedure Rules 2010](#) which provides as follows:-

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
 - b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, 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.

35. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of [Nguruman Limited v Jan Bonde Nielsen & 2 others](#) CA No 77 of 2012 (2014) eKLR where the Court of Appeal held that;

“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”.

36. Consequently, the Plaintiff ought to, first, establish a *prima facie* case. The plaintiff/Applicant submitted that they have established a prima facie case and relied on the judicial decision of [Mrao Ltd v First American Bank of Kenya Ltd](#) (2003) eKLR in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

“... 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.”



37. I do find that the plaintiff has established a *prima facie* case with a like hood of success because the parcels of land originally belonged to him before they were transferred to the company. Moreover, if a temporary injunction is not granted and he succeed on the suit he is likely to suffer irreparable loss because he property and be transferred to third party of sold. On the balance of convenience, I do find that it tilts granting a temporary injunction and preserving the status quo.
38. The upshot of the above I do grant an order of temporary injunction barring the 5th defendant from effecting any further transfers, sale, and subdivision. Leasing and charges any dealings over the properties in dispute herein being Mau Summit/Molo Block 15/311, Bahati/Engorusha Block 4/403, LR 12250/62 and LR 12250/67 pending the hearing and determination of this suit,
39. Furthermore, I do grant an order that pending the hearing and determination of this suit there be a temporary injunction barring the 1st and 2nd defendants from entering upon, claiming beneficial interest/ownership, collecting rent, taking possession and in any other way from interfering with the subject parcels of land being Mau Summit/Molo Block 15/311, Bahati/Engorusha Block 4/403, LR 12250/62 and LR 12250/67. I do decline to grant prayer 7 and 8 but do order that the 4th defendant being an officer of the court to keep the documents in his possession in safe custody. Costs in the cause.

RULING DATED, SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 3 DAY OF NOVEMBER, 2023.

A O OMBWAYO

JUDGE

