



**Thuo v Rambiti Farm Saw Mill Limited (Environment & Land Case
E010 of 2022) [2022] KEELC 3509 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3509 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E010 OF 2022**

M SILA, J

JULY 6, 2022

(APPLICATION FOR INJUNCTION; PRINCIPLES TO BE CONSIDERED; PLAINTIFF CLAIMING THAT SHE HAD AN AGREEMENT TO PROCURE TITLE TO LAND IN THE NAME OF THE DEFENDANT AND WOULD BE COMPENSATED IN FORM OF COMMISSION ON THE SELLING PRICE OR SHARES IN THE COMPANY; VARIOUS MEMORANDA OF UNDERSTANDINGS TO THIS EFFECT HAVING BEEN MADE BETWEEN THE PARTIES; PLAINTIFF FEARFUL THAT THE DEFENDANT MAY RENEGE ON THE AGREEMENT THUS SEEKING AN ORDER OF INJUNCTION TO STOP THE DEFENDANT FROM DEALING WITH THE LAND; RIGHT OF THE PLAINTIFF SEEMINGLY BEING ONE TO A COMMISSION ON A SALE; THE SAME CANNOT MATERIALIZE IF AN INJUNCTION IS ISSUED; INJUNCTION CANNOT ISSUE BASED ON SPECULATION THAT THE DEFENDANT WILL NOT PAY THE PLAINTIFF HER COMMISSION; APPLICATION DISMISSED)

BETWEEN

LOISE WAMBUI THUO PLAINTIFF

AND

RAMBITI FARM SAW MILL LIMITED DEFENDANT

RULING

1. The application before me was filed on 7 February 2022 contemporaneously with the plaint. It seeks an order of injunction to restrain the 1st defendant/respondent from selling, transferring, subdividing, registering any charge, or interfering with the disputed property identified by the plaintiff as CR 77010 (the land is actually LR No 31206 Tana River, and not CR 77010 which is the title number, and the certificate of title shows that it measures 9,971 hectares). The case of the applicant is that she has a purchaser's interest in the suit land since the year 2014. She avers that on 10 April 2014 she entered into an MOU agreement for the disposal of the land. She claims to have honoured her end of the agreement but the respondent refused to transfer the land to her despite receiving money. She avers that on 21 July



2018 the respondent through a company resolution agreed to allow her to sell the land and keep 20% of the selling price to cover the initial amounts paid by her plus profits. She avers that on 20 August 2018, so as to preserve and secure her interest, the respondent resolved to grant 200 shares to her while she sourced for a buyer. She claims that they did not issue her these shares but instead granted shares to one Mansukhlal Vithaldas Hindocha from whom they had also taken money. She states that on 20 December 2018 the defendant did another agreement with her and agreed to relinquish the sale value of 2000 acres which was worth Kshs 250,000,000/=. She avers that another MOU was done on 11 June 2020 where she was offered 30% of the sale value. On the strength of this MOU, she did a cheque to the Ministry of Lands for processing of the title. She contends that the allotment letter and title were to bear their joint names, since she had already paid a hefty amount to the defendant, but instead title was issued in the sole name of the 1st defendant. In the suit, she seeks orders for a declaration that she is entitled to 3,000 hectares of the land or 30% of all amounts realized from the sale of the land.

2. The application is opposed through the replying affidavit of Bwanaidi Mustafa Jillo, a director of the 1st defendant/respondent. He avers that there is no irregularity in the registration of the land in the name of the respondent. He has deposed that the plaintiff was dealing with the directors of the respondent and not the respondent, and payments were made to them, therefore, the claim ought to be directed at the directors and not the respondent. He avers that the application is amorphous and does not lay down a clear claim, either for shares or for the land, or for agency to dispose of the land on behalf of the 1st respondent. He contends that the respondent has been wrongly sued and should be expunged from this suit and the plaintiff compelled to collect any amount owing from the directors that she was dealing with.
3. Both Mr Angaya learned counsel for the plaintiff, and Mr Kwengu learned counsel for the respondent, filed written submissions which I have considered.
4. What is before me is an application for injunction and I stand guided by the principles laid down in the case of *Giella vs Cassman Brown (1973) EA 358*. One needs to demonstrate a *prima facie* case with a probability of success; demonstrate irreparable loss; and where the court is in doubt, it will decide the case on a balance of convenience.
5. I have gone through the documents presented by the plaintiff (painstakingly I must say, for the copies are in very small font and not very legible and counsel clearly needs to do better next time). Her case in a nutshell is that the respondent engaged her to help in pursuing title to the suit land and that she did so. She claims to have paid the requisite fees for stand premium and incurred other expenses towards this exercise. In turn, she contends that the respondent agreed to compensate her by paying her a commission or allowing her have a stake in form of shares in the company. She has annexed various agreements in form of memoranda of understanding (MOU) between her and the respondent. From what I can see, they are executed by her and the respondent acting through her directors. I have also seen resolutions said to be company resolutions of the respondent. One is dated 21 July 2018 where it is resolved that the applicant is authorised to pursue title on behalf of the respondent at her own expense and that she will be entitled to 20% of the purchase price. I have also seen another resolution passed on 20 August 2018 wherein three shareholders resolve to transfer some of their shares to the applicant. From them, the applicant is supposed to benefit from 200 shares in the company. There is a subsequent memorandum of understanding dated 11 June 2020 where the company avers that it will pay the plaintiff 30% of the purchase price. From what I can see, at least at this stage of the proceedings, these are understandings or agreements with the respondent, not with the directors of the respondent. At the moment, I do not see the argument that the respondent has been wrongly sued. From the documents that she has provided, the applicant may have a stake in the company in form of



shares, or a stake on the purchase price. I have used the word “may” deliberately because the matter has not been heard conclusively.

6. Now, in this application, she seeks to restrain the defendant from selling, transferring or charging, or interfering with the suit land. I do not see the place of this order because if I issue it then the land cannot be sold, and if it cannot be sold, then she cannot get her 30% share, or whatever it is that the parties may have agreed she should get. In fact it seems as if the understanding of the parties is that the land be sold and from the purchase price the plaintiff be entitled to some payment in form of commission. My view is that the case of the plaintiff is hinged on suspicion that she may not be paid her commission or whatever it is that she believes is due to her. But this is speculative and courts do not issue injunctive orders on mere speculation and suspicion. As far as I can see, her right to the money will crystalize once a sale is concluded, or maybe (and I am saying this carefully and not conclusively for the suit is yet to be heard) the plaintiff may have a right to sue out rightly for what she considers to be agreed as due to her, or to sue to be included as a shareholder in the company.
7. I have not seen any document where it was agreed that title would issue in both names of the applicant and respondent as co-owners. I have also not seen any concrete agreement that the plaintiff is entitled to 3,000 hectares of the suit land. If there was such, then I probably would have been moved to issue an injunction preserving 3,000 hectares in her favour. The last memorandum of understanding that I have seen states that the plaintiff will be entitled to Kshs 250,000,000/= equivalent to the selling price of 2,000 acres at Kshs 125,000/= per acre. There is no land which is actually reserved exclusively to the applicant. It follows that there is a right for the respondent to sell and what the plaintiff may be entitled to is a piece of the selling price. At the risk of sounding repetitive, she cannot get her stake if the land is not sold and therefore her remedy cannot be one for injunction to stop a sale.
8. For the above reasons, I am afraid that no case for an injunction has been made out and I therefore dismiss the application with costs.
9. Orders accordingly.

DATED AND DELIVERED THIS 6 DAY OF JULY 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

