



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 394 OF 2019

MUUNGANO WA BONDENI SAVINGS SCHEME...PLAINTIFF

-VERSUS-

PETER KIMANI GITONGA T/A RISE AND SHINE MATHARE

BONDENI YOUTH GROUP.....1ST DEFENDANT

RACHEL WAITHIRA GACHICHIO.....2ND DEFENDANT

LUCY WANJIKU.....3RD DEFENDANT

RULING

1. Through a plaint dated 6/12/2019, Muungano Wa Bondeni Savings Scheme brought this suit seeking the following verbatim orders:
  - a. A permanent injunction be issued restraining the defendants either their servants, agents, employees severally and jointly from entry or trespassing into, seizure confiscation, occupation and alienation or interfering with the premises known as LR No 209/11714 or evicting the plaintiffs therefrom. (sic)
  - b. The defendants their agents, servants, employees be evicted from the plaintiffs' parcel of land no 209/11714
  - c. The defendants be compelled to return the water tank to the plaintiffs and remove their employees, and demolish the toilet already in the plaintiff's parcel of land and to clear the water bill balance of Metre No 2626826
  - d. General damages for trespass and illegal occupation
  - e. Costs and interest on (c) and (d) above
  - f. Any other or further relief the honourable court may deem fit and just to grant.
2. Together with the plaint, they brought a notice of motion dated 6/12/2019 seeking the following interlocutory injunctive orders:
  - i. Spent
  - ii. Spent
  - iii. That an injunction be issued restraining the respondents, their agents, servants and/or employees jointly from entry into, evicting, interfering, seizure, confiscation, occupation and alienation of the premises and the private toilet constructed on LR No. 209/11714 (formerly LR 36/V/12/1 and 36/V/13) until the hearing and determination of the suit.
  - iv. That the OCS Pangani Police Station do maintain law and order.
  - v. That the costs for this application be provided for.
3. The said notice of motion (**the application**) is the subject of this ruling. It was supported by an affidavit sworn on 6/12/2019 by Stephen

Njoroge Kinuthia. On 15/1/2020, the court directed the plaintiff to serve the application through a notice in either the *Daily Nation* or the *Standard Newspaper*. On 24/11/2020, counsel for the plaintiff informed the court that he had published a notice in the *Daily Nation* on 30/6/2020. The application was subsequently canvassed *ex-parte* in the virtual court on 18/2/2021.

4. Mr. Kahuthu, counsel for the plaintiff, submitted that the plaintiff was the registered proprietor of the suit property and the defendants were trespassers thereon. He added that the plaintiff had exhibited an official search showing that the suit property belonged to Bondeni Properties Company Limited. He contended that Bondeni Properties Company Limited sold the suit property to the plaintiff but the transfer had not been registered. He urged the court to grant the interlocutory injunctive orders.

5. I have considered the application. I have also considered the applicant's submissions. Further, I have considered the relevant law and jurisprudence. The single question falling for determination in this application is whether the applicant has satisfied the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs.

6. The criteria was articulated in **Giella v Cassman Brown (1973) E.A. 358**. First, the applicant is required to demonstrate a *prima facie* case with a probability of success. Second, the applicant is required to demonstrate that if the injunction is denied, he would stand to suffer injury that may not be indemnified through an award of damages. Third, should the court have doubt on both or either of the above two limbs, the application is to be decided on a balance of convenience. Lastly, at this interlocutory stage, the court does not make conclusive or definitive findings on the key issues in the suit. Definitive and conclusive findings are reserved for judgment after trial.

7. First, the plaintiff described itself in paragraph 1 of the plaint as "a community based organization registered under the laws of Kenya". They did not, however, specify the law under which they were registered. They have at this stage not demonstrated that they possess the requisite legal capacity to sue and be sued in the name under which they brought this suit.

8. Secondly, the plaintiff is not the registered proprietor of the suit property. It is relying on a sale agreement dated 1/2/2017. The cover page of the sale agreement bears the name of "**Bondeni Properties Limited**". The main body of the agreement, however, indicates that the sale agreement was between **Annah Wangari Kinyanjui** and **Lucy Michere Mwaura** on behalf of **Bondeni Properties Limited** on one part and **Charles Ojwang Agutu, Florence Akinyi Wambia, Nancy Njoki Wairimu** and **Stephen Njoroge Kinuthia** on behalf of **Muungano Wa Bondeni Savings Scheme** on the other part. The official search exhibited shows that the suit property is registered in the name of **Bondeni Properties Limited**. The certificate of incorporation which the plaintiff have exhibited relates to **Bondeni Properties Company Limited** (not Bondeni Properties Limited). The above glaring discrepancies have not been explained.

9. In the circumstances, I do not think the plaintiff has demonstrated legal capacity and proper legal or equitable interest in the suit property to warrant grant of an interlocutory injunctive relief. Put differently, the court is not satisfied that the plaintiff has met the requirement in the first limb of **Giella v Cassman Brown (1973) EA 358**.

10. Consequently, the application dated 6/12/2019 is dismissed for lack of merit.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10TH DAY OF JUNE 2021.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Kahuthu for the Plaintiff

Court Assistant: June Nafula