



Mbugua & another v Mbugua & 4 others (Miscellaneous Application E064 of 2023) [2024] KEHC 2405 (KLR) (16 January 2024) (Ruling)

Neutral citation: [2024] KEHC 2405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E064 OF 2023
DO CHEPKWONY, J
JANUARY 16, 2024**

BETWEEN

SARAH NJAMBI MBUGUA 1ST PLAINTIFF

JANE WANJIKU MBUGUA 2ND PLAINTIFF

AND

JAMES KIARIE MBUGUA 1ST DEFENDANT

NANCY WAIRIMU MBUGUA 2ND DEFENDANT

ANTHONY MBUGUA MBUGUA 3RD DEFENDANT

KIAMBU COUNTY GOVERNMENT 4TH DEFENDANT

THE REGISTRAR OF COMPANIES 5TH DEFENDANT

RULING

1. Before the court for determination is the Notice of Motion application dated 17th May, 2023 brought pursuant to Order 51 of the Civil Procedure Rules and Article 159 of the Constitution of Kenya seeking the following orders:
 - a. Spent;
 - b. That pending the hearing and determination of the application this Honourable Court be pleased to issue mandatory injunction compelling the 1st, 2nd and 3rd Respondents by themselves, their agents, their servants and or employees and or any other person acting on their behalf from encroaching, trespassing, interfering, alienating, transferring, occupying, possessing, selling or advertising for sale by way of private treaty or public auction or in any way disposing all that parcel of land known as L.R. No. Ndumberi/Riabai 1780.



- c. That pending the hearing and determination of the suit this Honourable court be pleased to issue mandatory injunction compelling the 1st, 2nd and 3rd Respondents by themselves, their agents, their servants and or employees and or any other person acting on their behalf from encroaching, trespassing, interfering, alienating, transferring, occupying, possessing, selling or advertising for sale by way of private treaty or public auction or in any way disposing all that parcel of land known as L.R. No. Ndumberi/Riabai 1780.
 - d. That pending the hearing and determination of the application this Honourable Court be pleased to issue mandatory injunction to the 5th Respondent to provide a historical search and or perusal of Saraki Properties Estate Limited From the time of transmission as per Certificate of Confirmation of Grant dated 29th October, 2003 so as to show how the misrepresentation came into being.
 - e. That pending the hearing and determination of the suit this Honourable Court be pleased to issue mandatory injunction to the 5th Respondent to provide a historical search and or perusal of Saraki Properties Estate Limited from the time of transmission as per Certificate of Confirmation of Grant dated 29th October, 2003 so as to show how the misrepresentation came into being.
 - f. That pending the hearing and determination of the application this Honourable Court be pleased to issue mandatory injunction to the 4th Respondent not to reverse , interfere, decline, intervene and or remove the current change of user status on the suit property.
 - g. That pending the hearing and determination of the suit this Honourable Court be pleased to issue mandatory injunction to the 4th Respondent not to reverse , interfere, decline, intervene and or remove the current change of user status on the suit property.
 - h. That the Honourable court be pleased to give directory orders to have the Company status reverted to how it was at the time of transmission after the completion of the succession and subsequent granting of the confirmation of grant.
 - i. That the Honourable Court be pleased to grant any other order which it may deem expedient in the circumstances.
 - j. That the costs of this application be provided for.
2. The Application is based on the Supporting Affidavit of Sarah Njambi Mbugua and the following grounds which are as set out in the face of the application as follows:
- a. That a Confirmation of Grant issued on the 29th October, 2003 in the matter of the estate of the late Francis Mbugua Kiarie (Deceased) bequeathed the 1st Applicant LR. NO. Ndumberi/Riabai 1780 as a whole.
 - b. That Applicant and her deceased husband were equal directors in the company Saraki Properties Estates Limited, in whose name the title to the above cited property was written.
 - c. That the 1st Applicant, who is currently residing in the United States of America (USA), granted co-directorship over the Company to her daughter, the 2nd Applicant.
 - d. That the 1st and 3rd Respondents misrepresented to the 4th and 5th Respondents that they were the bonafide directors of Saraki Properties Estate Limited to the extent that CR12 documentation were altered and/or changed to reflect their status as directors; an act that is depriving the Applicants of their rightful shareholding.



- e. That as a result of this misrepresentation, the 4th Respondent has stopped and/or withdrawn the change of user that the Applicants had initiated to enter into a lease agreement with a third party.
 - f. That there is correspondence from the firm of Patrick Murage & Co Advocates instructed by the 1st, 2nd and 3rd Respondents and issued to the illegal occupants who had set up their business structures on the suit property. Further, in this letter, the instructions had taken cognizance of the 1st Applicant as the owner and/or director of Saraki Properties Estate Limited.
 - g. That this misrepresentation also poses an additional risk to the Applicants as the 1st and 3rd Respondents could sell suit property to the detriment of the Applicant.
 - h. That the Applicants are prejudiced by the very actions of the 1st, 2nd and 3rd Respondents and stand to suffer irreparable damage and significant pecuniary loss if sought orders are not granted.
 - i. That it is in the interests of justice that the orders sought herein be granted.
3. The 1st, 2nd and 3rd Respondents filed their Replying Affidavit which was sworn by James Kiarie Mbugua, the 1st Respondent herein on 31st May, 2023. They hold that the court cannot give injunctive orders without the filing of a substantive suit and thus the court cannot make substantive orders herein at this stage.
 4. They contend that following the demise of their father, they visited the company registry with respect to their father's shares and were given allotment forms to replace and acquire their father's shareholding and they have been the shareholders together with the Applicants since the year 2016.
 5. According to the Respondents, the Applicants used forgery documents and created a fictitious email which was used to remove their names from the shareholding of the company. They hold that they are the beneficial owners of their father's shareholding in the Company and thus have beneficial interest in the property. The 1st Respondent holds that his father had bequeathed them with Plot No. 21 Kiambu Township which is still in the name of Saraki Properties Estate Limited. It is the Respondents' contention that the issues raised in the application by the Applicant can be best dealt with at the Environment and Land Court and not this court and that the Applicant's conduct of forging signatures to create fictitious accounts show lack of clean hands. The Respondents have urged the court to dismiss the application for being an abuse of court process.

Analysis and Determination

6. Having read the Application, the grounds in the Supporting Affidavit and the Replying Affidavit filed in response thereto, the issue that arises is whether the Applicant has met the conditions set to warrant the orders sought.
7. From the prayers in the application, it is clear that the Applicants are seeking mandatory injunction orders.
8. It is trite law that mandatory injunction orders can only issue at an interlocutory stage where there are special circumstances are demonstrated. In the case of *Nation Media Group & 2 Others- vs- John Harun Mwanu* (2014) eKLR, the Court of Appeal stated:-

‘It is trite law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance. A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted.



Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.’

9. It is also trite law that an application for injunction can only be issued where there is a substantive suit in place otherwise the injunction will be in vain and it cannot stand in law. This was the position held by the court in the case of *Cresta Investments Limited –vs- Gulf African Bank Limited & Another* [2020] eKLR which held:-

“Moreover, an application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”

10. In this case, the court finds that the Applicants have neither shown that existence of special circumstances to warrant the issuance of the mandatory injunctive orders nor have they filed a substantive suit within which the interim injunctive orders can lie. In the absence of these two requirements, the application is devoid of merit and the same is hereby dismissed with costs to the Respondents.
11. This court also notes that the 2nd Respondent had filed an application dated 23rd November, 2023 seeking to be struck out from the suit. However, since the court has already dealt with the main application which has been dismissed, the application dated 23rd November, 2023 is hereby rendered spent.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF JANUARY , 2024.

D. O. CHEPKWONY

JUDGE

