



REPUBLIC OF KENYA



KENYA LAW
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**Ndegwa v Asila & another (Environment & Land Case
9 of 2024) [2025] KEELC 132 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 9 OF 2024
OA ANGOTE, J
JANUARY 23, 2025**

BETWEEN

JACKSON KAMAU NDEGWA APPLICANT

AND

PAUL MABWA ASILA 1ST RESPONDENT

NAIROBI CITY COUNTY 2ND RESPONDENT

RULING

1. The Applicant instituted this suit by way of a Complaint filed contemporaneously with a Notice of Motion both dated the 22nd March, 2024 at the High Court. Vide the Complaint, he sought, inter-alia, that the 1st Respondent be ordered to pay him the contractual sum, accrued interest at 14% daily and damages on account of compounded annuity rate of 24%.
2. The matter came up before the High Court on the 18th April, 2024. The Court, noted that the Applicant is seeking the attachment of debts owed to the 1st Respondent by a third party, Nairobi City County, pursuant to a decree issued by the Environment and Land Court (ELC). Consequently, the High Court transferred the matter to this Court for further proceedings.
3. The matter first came up before this Court on 24th April, 2024, where directions were issued setting down the Motion of 22nd March, 2024 for hearing on 13th May, 2024. The Applicant was absent on the 13th aforesaid but filed a Certificate of Urgency supported by an Affidavit of an even date. There is no Motion attached thereto.
4. Considering the Certificate, it is apparent that the Applicant was aggrieved by his failure to address the Court on the 13th May, 2024 and sought to be granted preservative orders/status quo, in particular orders 1 and 2 as stated in para 7 of the Certificate. Nonetheless, the Applicant was in Court on the



- 3rd June, 2024 where he orally sought preservative orders. The Court issued status quo orders pending the Ruling.
5. Consequently, the Motion before this Court is the one dated 22nd March, 2024 in which the Applicant is seeking for the following orders:
 - i. That pending the determination and disposal of this Application, the duty Trial Court does issue a temporary injunction against Nairobi City County-2nd Respondent from paying money to the 1st Respondent pending hearing and determination of this Application.
 - ii. That pending the determination and disposal of this Application, the Court freeze the 1st Respondents money ex-parte, either in his account with Kenya Commercial Bank, Kencom House Branch. A/C 1311747729 or any other account he could be holding nationally or through his Advocate or intermediaries to preserve the interest of the Applicant and company.
 - iii. That upon the determination of this Application, the 1st Respondent be ordered to pay the Applicant within 21 days the contractual sum, accrued interest at 14% daily and damages on compounded annuity rate of 24% and any other consolation costs the Court may deem fit.
 - iv. That the Trial Court condemn the costs incidentals to the Respondents.
 6. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of Jackson Ndegwa, the Applicant of an even date. It is his case that he entered into a contractual agreement with the 1st Respondent in which he undertook to ensure that the 1st Respondent is paid the decretal sum from ELC 247 of 2019; that the 1st Respondent is about to be paid and should the situation not be arrested, he will hide his monies and that the revocation of a contract after one party has performed his obligation constitutes an illegality.
 7. The Applicant contends that there is a letter dated 28th September, 2022, by the 1st Respondent to his Advocate instructing him to pay to any prospective contractors who would assist him in settling the matter out of Court and that there is equally an irrevocable contract between him and the 1st Respondent dated 18th December, 2023 which effectively cancelled all other subsisting contracts, including the one dated the 10th August, 2023.
 8. According to the Applicant, on 18th January, 2024, the 1st Respondent wrote to County Secretary of Nairobi County Government asking for payment of the decretal sum citing dire need for urgent specialized medical treatment; that by a letter dated 16th March, 2024, the 1st Respondent purportedly revoked his contract and that correspondence adduced shows that the 1st Respondent is fond of hiring and firing contractors at will.
 9. He urges that the 1st Respondent's actions are calculated to cause him and his colleagues embarrassment and attempts to take away his legitimately earned monies should not be countenanced.
 10. In response to the Motion, the 1st Respondent filed a Replying Affidavit dated 9th May, 2024. He deponed that he was the Plaintiff in ELC 247 of 2019: Paul Mabwa Asila vs Nairobi City County which matter was concluded and is pending execution and that sometime in 2023, he was introduced to the Applicant by a lady known as Margaret Wanja Mwaniki who represented to him that the Applicant was in a position to cause Nairobi City County to pay him the decretal sum in the foregoing matter through the President of the Republic of Kenya.
 11. Upon their meeting, he contends, the Applicant represented to him that he was a personal friend to the President, was in constant communication with him and could cause the payment to be made within 48 hours; that the aforesaid misrepresentation turned out to be false and misleading and that after a



period of two months, he decided to cease any association with the Applicant which he communicated to him in writing.

12. The 1st Respondent opines that the Applicant has in no way assisted him in causing the 2nd Respondent to pay the decretal sum which monies are still outstanding and that subsequently, and as advised by Counsel, the Applicant does not have a prima facie case and the present Motion is frivolous.
13. It was his deposition that the letters marked JNO1 and JNO2 were created in the Applicant's office to cause an impression that he had the authority to pursue payment of the decretal sum on his behalf and that the Applicant had informed him that he required a document to show the President that he had instructions and the amounts of 41.67% indicated in the letters of 28th September, 2022 and 18th December, 2023 were monies that he was to pay to the President for causing the satisfaction of the decree.
14. According to the 1st Respondent, he does not owe the Applicant any monies there not being any verbal or written agreement in that respect.
15. The Applicant filed a response to the Replying Affidavit in which he deponed that upon being contracted, him and his team caused the file to move through the various departments and a decision was made to pay the 1st Respondent on medical grounds and that after realizing that the payment was imminent, various cartels undertook to slow the same which they did by serving the 2nd Respondent with a Motion causing it to decline to release the payment until the Motion was withdrawn.
16. The Applicant denied that there were any promises of payments within 48 hours as alleged and stated that having taken up the matter in December, 2023, it has been 6 months and not two years as alleged; that he is not privy to the communication exhibited by the 1st Respondent and that he entered into a written contract with the 1st Respondent.

Submissions

17. The Applicant filed submissions on 18th June, 2024. It was submitted that it is unfair for the 1st Respondent to allege to have terminated the contract between them on account of him having taken two months whereas other various groups took over 39 months and that in any event, the contractual agreement did not stipulate any time lines.
18. It was submitted that after realization that the payment was imminent, the 1st Respondent was pressed upon by other brokers to write a letter to him revoking their contract; that revocation after one party has performed their part under the contract is improper and constitutes a breach of contract.
19. The 1st Respondent did not file submissions. [As at 24th September, 2024].

Analysis & Determination

20. Having considered the Motion, responses and submissions, the sole issue that arises for determination is whether the present Motion is merited?
21. Before addressing the substance of the Motion, it is imperative to underscore the significance of clear, concise, and well-structured pleadings. Pleadings serve as the foundation upon which a case is built, providing clarity and direction on the issues in dispute.
22. As expressed by the Court of Appeal in *JTG Enterprises Limited vs China Gezhouba Group & Another* [2024] KECA 596 (KLR), proper drafting of pleadings is so paramount that it goes to the kernel of administration of justice.



23. Tied to this is the elementary principle that parties are bound by their pleadings. While recognizing that self-represented litigants may lack the technical skills of legal drafting, parties must nonetheless strive to ensure their pleadings are coherent and logical.
24. When pleadings are imprecise, as in this case, the Court faces the difficulty of clearly defining the issues in dispute. This ambiguity not only complicates the court's task, but also places the party at a significant disadvantage.
25. The thrust of the matter and indeed the Motion herein revolves around the alleged contractual breach by the 1st Respondent as against the Applicant. In this respect, it is noted that prayers 1-4 have been indicated to have been sought pending the determination of the Application and are consequently moot. The only question before this Court is whether the 1st Respondent should be mandated to pay the Applicant the contractual sum.
26. This being a Motion, the Court opines that what is being sought herein is in the nature of a temporary mandatory injunction. It has been held that whereas the Court can grant mandatory injunctions at an interlocutory stage, it can only do so under special circumstances.
27. Speaking to this, the Court of Appeal in *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002]eKLR held that the test for a grant of a mandatory injunction was as correctly as in VOL 24 of Halsbury's Laws of England 4th Edition paragraph 948 thus:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally, be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application.

In the English case of *Locabail International Finance Ltd vs Agro Export & Another* (1986), ALL ER 901 which the Court of Appeal in Kenya has followed with approval in many decisions, the court held that: -

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

28. This position was re-affirmed by the Court of Appeal in *Joseph Kaloki t/a Royal Family Assembly vs Nancy Atieno Ouma* [2020] eKLR as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”



29. Persuasive judicial pronouncements by Indian courts have also affirmed that great circumspection is called for before awarding a mandatory injunction at an interlocutory stage. In *Bharat Petroleum Corp Ltd vs Haro Chand Sachdeva*, Air 2003, cited in *INN vs NK* (Civil Case 97 of 2020) [2020] KEHC 10343, the Court observed as follows:

“While courts power to grant temporary mandatory injunction on interlocutory application cannot be disputed, but such temporary mandatory injunctions have to be issued only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship. If a mandatory injunction has to be granted at all on interlocutory application, it is granted only to restore status quo and not to establish a new state of things.”

30. So, do the circumstances herein warrant the grant of an interlocutory mandatory injunction?
31. By way of brief undisputed background, the 1st Respondent instituted a suit against the Nairobi City County to wit Nairobi ELC 247 of 2019 claiming inter-alia that L.R 209/13669 rightfully belonged to him and that the allocation thereof by the Nairobi City Council was illegal. He also sought to have the Nairobi City Council compelled to compensate him a sum of money equivalent to the current value of the property and general damages for deprivation of the use, and quiet possession of the of the property.
32. Vide a consent dated 22nd November, 2022, adopted as a Judgment of the Court, it was agreed that Nairobi City County Government would pay the 1st Respondent herein the sum of Kshs One Hundred and Twenty Million Shillings (Kshs. 120,000,000).
33. It is the Applicant’s case that he entered into an agreement with the 1st Respondent in which he undertook to ensure that Nairobi City Council paid him the decretal sum aforesaid and that he duly undertook the same after which the 1st Respondent purportedly terminated their agreement, a breach in his opinion. He is seeking for the enforcement of the said agreement.
34. The Applicant has adduced into evidence correspondence dated the 28th September, 2022 in which the 1st Respondent authorized the firm of S.O Owino & Associates to pay to any person who would assist him in settling the matter out of Court, an amount not exceeding 41.67% of the decretal sum.
35. Also annexed is a letter dated 10th August, 2023 by the 1st Respondent directing the firm of S.O Owino & Co Advocates to give an undertaking to pay 50% of the decretal sum to Ochieng Omollo & Co Advocates, Kshs 37 million to himself, Kshs 2,000,000 to the Advocates and the balance to two persons-Meshack Onyango and Hilary Mulamba; and a letter dated 18th December, 2023 by the 1st Respondent authorizing the payment of 50% of the decretal sum to himself.
36. The Applicant further adduced the letter dated 18th January, 2024 by the 1st Respondent to the Nairobi City County asking them to expedite the payment due to his ill health as well as providing his account details; a letter dated 16th March, 2024 by the 1st Respondent to him, informing him that he was withdrawing the exercise from him and asking him to return all the documents as well as his response vide the letter of the 17th March, 2024 and the decree in ELC 247 of 2019.
37. In response, the 1st Respondent stated that he was introduced to the Applicant and informed that he would be able to cause Nairobi City County to pay him the decretal sum; that after two months, he noted that the Applicant had lied to him and ceased further dealings with him and that the Applicant has not aided him in any way and the decretal sum is still pending.



38. He adduced into evidence his letters dated the 16th and 18th March, 2024 informing the Applicant that he was ceasing all associations with him and asking for his documents back, as well as WhatsApp messages.
39. Considering the foregoing narration, it is evident that there is no dispute that the Applicant and the 1st Respondent entered into an agreement in which the Applicant undertook to facilitate the payment of the decretal sum in ELC 247 of 2019 by the Nairobi City County to the 1st Respondent and in turn, he would get a commission amount.
40. However, this is where the clarity ends. The nature of the agreement, be it written as alleged by the Applicant or not as contended by the 1st Respondent is unclear. The Applicant has in this regard only referenced the letter dated the 18th December, 2023. The precise terms of the agreement, have not been fully established.
41. Further still is the debate on whether or not the Applicant actually met his part of the bargain, thus entitling him to sums sought. There is no evidence that the decretal sum has been or is in the process of being paid to the 1st Respondent.
42. Further, the court will be curious to know the details of the agreement. For example, was the consent order recorded after the agreement between the Applicant and the 1st Respondent? And if so, was the consent order fraudulently recorded?
43. I raise these issues because it would appear that the decretal amount, which was to be paid pursuant to the consent order, was to be shared amongst many people, including the Applicant, an indication of some shady dealings between the parties herein and the Nairobi County Government. That arrangement, in my view, requires more investigation, not only by this court, but also by the Nairobi City County Government.
44. In the end, it is the finding of this court that no clear or special circumstances exist herein warranting the grant of the orders sought at this interlocutory stage.
45. For those reasons, the Court finds the Notice of Motion dated 22nd March, 2024 to be unmerited and proceeds to dismiss it with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF JANUARY, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

No appearance for Plaintiff

No appearance for Defendant

Court Assistant - Tracy

