



REPUBLIC OF KENYA



**Ronoh v Omwoyo (Originating Summons 3 of 2021)
[2024] KEHC 10012 (KLR) (9 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
ORIGINATING SUMMONS 3 OF 2021
RN NYAKUNDI, J
AUGUST 9, 2024**

BETWEEN

GLADYS CHEPKEMOI RONOH APPLICANT

AND

COLLINS OMANO OMWOYO RESPONDENT

RULING

1. The applicant approached this court vide a Notice of Motion dated 4th November 2021 seeking the following orders;
 1. Spent.
 2. Spent
 3. The respondent herein is restrained from selling, transferring, charging, leasing out and in any other way interfering with the ownership, possession, occupation and use of a parcel of land known as Plot 17 Munyaka Phase II pending interparty hearing and determination of this suit.
 4. Costs of the Application are granted to the applicant.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the application sworn by the applicant.
3. The brief facts underlying the application is that the applicant was on a relationship with the respondent and they started cohabiting in the year 2014. The respondent purchased the suit property and started constructing a house on the property. They agreed to develop the property and they entered into an agreement on 1st November 2014 where she contributed Kshs. 1,042,000/-. They entered into a marriage on 24th January 2017 and began to live on the property as husband and wife. She further made a contribution of Kshs. 1,011,203/- and other indirect contributions towards the development and improvement of the suit property.



4. In the year 2019 they got into financial distress and they separated but she continued to receive a rental income from the property. The divorce is currently pending and the applicant is apprehensive that the respondent will interfere with the property before the conclusion of the divorce.
5. The applicant filed an affidavit of service deponing that the applicant was served on 19th November 2021. The respondent is yet to file a response to the application or the suit.

Issues for determination

6. Upon considering the application, the following issues arise for determination;
 - a. Whether orders for the injunction should issue

Whether the orders of injunction should issue

7. The principles guiding the grant of interlocutory injunction are now well settled. Those principles were set out in *East African Industries vs. Trufoods* [1972] EA 420 and *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.
8. The foundation of any order of injunction, interlocutory or permanent, rests on these three pillars. It is an established principle that all the above three conditions are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. Basically, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage.
 9. In *JM v SMK & 4 others* [2022] eKLR the court stated as follows;

If a prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”



10. In the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 others* [2014] eKLR the Court of Appeal opined that:

“...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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.”

11. The *Matrimonial Property Act* defines matrimonial property as follows;

- (1) For the purposes of this *Act*, matrimonial property means—
 - (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
- (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
- (3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.
- (4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.

12. The Applicant contends that the respondent had purchased the suit property before they met and therefore the land itself cannot be considered matrimonial property as per the provisions of the *matrimonial property act*. However, she stated that she entered onto an agreement with the respondent for purposes of developing the home on the property which she produced as GCR-2. From a reading of the same, it is evident that the applicant has vested interests in the property. The agreement was entered into on 17th November 2014. I note that the parties formalized their marriage on 24th January 2017.

13. It is my considered view that there exists a *prima facie* case with regards to the matrimonial property. It would be premature to determine the same at this juncture as the divorce proceedings are still pending to the best knowledge of this court. As the applicant contributed to the development of the house and contributed in non-monetary ways, it is in the interest of justice to protect the suit property until the divorce proceedings are concluded and a decision can be made on the matrimonial property. The applicant is at risk of suffering substantial loss and the balance of convenience lies in granting the order for a temporary injunction.

14. In the premises, the application succeeds and I hereby order as follows;



- i. The respondent herein is restrained from selling, transferring, charging, leasing out and in any other way interfering with the ownership, possession, occupation and use of a parcel of land known as Plot 17 Munyaka Phase II pending interparty hearing and determination of this suit.
- ii. Each party shall bear its own costs

DELIVERED SIGNED AND DATED ON THIS 9TH DAY OF AUGUST 2024

R. NYAKUNDI

JUDGE

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