



Raghwan v Velji & 2 others; Archwood Park Limited (Interested Party) (Civil Suit E402 of 2022) [2023] KEHC 20402 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)

Neutral citation: [2023] KEHC 20402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E402 OF 2022
A MABEYA, J
JUNE 16, 2023**

BETWEEN

SURESH RAMJI RAGHWAN PLAINTIFF

AND

JAYANTILAL PREMJI VELJI 1ST DEFENDANT

MANJI SHIVJI KERAI 2ND DEFENDANT

NANJI VISHRAM PINDORIYA 3RD DEFENDANT

AND

ARCHWOOD PARK LIMITED INTERESTED PARTY

RULING

1. This is a ruling on an application dated October 13, 2022. It was brought under Order 40 Rule 1, 2 and 4 of the [Civil Procedure Rules 2010](#) and Section 1A, 1B and 3A of the [Civil Procedure Act](#).
2. It sought orders that pending the determination of the suit, injunctive orders be issued restraining the respondents and their representatives from constructing, leasing or interfering in any manner with the suit property being Ruiru LR No 11262/913.
3. The grounds for the application were to be found on the affidavits sworn by Suresh Ramji Raghwan on October 13, 2022 and November 18, 2022, respectively.
4. It was contended that the applicant and respondents were shareholders in the interested party (hereinafter “the company”) each holding 25% of the shares. That they invested Kshs 20 million each to purchase the suit property wherein it was agreed that each party would build six warehouses therein.



5. That on November 22, 2022, each party was invited to book the warehouses and the applicant was the second to share his preferred slots. That he was informed that the slots were already allocated to someone else and issued with new slots. That the respondents constructed warehouses on their slots without a resolution or meeting. That the respondents constructed on the applicant's slots and were in the process of leasing the completed warehouses without authority.
6. That the applicants had also used Kshs 14.5 million to construct a perimeter wall around the property which the defendants refused to reimburse as agreed.
7. The respondents and interested party both opposed the application vide the replying affidavits sworn by Jayantilal Premji Velji. They were both sworn October 24, 2022. It was contended that the applicant had refused to participate in the management of the company and acted in a manner that was defeating the company's objectives.
8. That it was the company that was constructing the warehouses and not the individual members as alleged as the company was the owner of the suit property. That the purchase of the property was Kshs 25 million for each member but the applicant failed to top up Kshs 5 million citing lack of funds.
9. That all members were given an opportunity to bid for the ware-houses and the 1st and 2nd respondent successfully bided and paid deposits. That the applicant did not actualize his bid with a deposit in time thus no warehouse was allocated to him. However, that he was at liberty to comply with the board resolutions and submit his preferred warehouses from the remaining batch and pay deposits.
10. It was denied that the applicant had applied Kshs 14.5 million for construction of the perimeter wall and the same was unsupported. That the company had contractual obligations with other 3rd parties and if the orders sought were issued, they would prejudice the company. It was also contended that the application had not met the standard of granting orders of injunction.
11. The application was canvassed by way of written submissions. The applicants were dated November 14, 2022 whereas the respondents and interested party's were dated 9/12/2022, respectively.
12. The conditions for consideration in granting an injunction are now well settled in the case of *Giella vs Cassman Brown & Company Limited* (1973) E A 358. It was held that an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. And thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
13. On whether the applicant established a prima facie case with probability of success, this Court notes that the gist of the application and suit is grounded on the allocation of go-downs in the suit property.
14. Though the applicant alleges that there was an agreement on how the warehouses will be allocated, the agreement was not produced before this court. The applicant contends that he was allocated other slots. It appears that whatever dispute exists between the parties is internal and personal. There is no imminent risk of losing the substratum of the suit to warrant the granting of injunctive orders.
15. In any case, the applicant was offered other slots thus he has alternative remedies. Further, in the communication between the applicant and respondents, the applicant stated that he was unable to construct on his preferred slots at the moment due to financial constraints. This corroborates the respondents' contention that the applicant did not pay any deposit for the bids he made and they were thus allocated to the members who made the down-payment.



16. In the circumstances, it is not in the interest of the company to stall construction by able members whereas the common agreement as alleged is that the property was bought for the sole purpose of constructing warehouses. Any injury suffered would be compensated by allocation of new slots and payment of damages, if any.
17. There is also no evidence that the applicant applied Kshs 14.5 million to construct the perimeter wall around the property. The applicant merely alleged but failed to provide any evidence to support the allegation. This is an issue that requires formal proof and without it, it cannot be said that there is a prima-facie case against the respondents for failing to refund the amount incurred by the plaintiff. In any event, even if he did, the same can be repaid to him after the trial if he proves it. It cannot be a basis for an interlocutory injunction.
18. In the circumstances, this Court is not satisfied that the applicant has established a prima facie case against the respondents. The applicant has not also demonstrated any irreparable harm that he might suffer if the orders are denied considering that he has been offered other slots and has failed to pay any deposits.
19. In the end, this Court finds that the application dated October 13, 2022 is unmerited and the same is hereby dismissed with costs to the respondents.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JUNE, 2023.

A. MABEYA, FCIArb

JUDGE

