



**Ruo v Point A Commercial Agencies Limited & 2 others (Environment & Land Case E181 of 2023) [2024] KEMC 146 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEMC 146 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT & LAND CASE E181 OF 2023  
PA NDEGE, SPM  
JULY 18, 2024**

**BETWEEN**

**FELIX MBUGUA RUO ..... APPLICANT**

**AND**

**POINT A COMMERCIAL AGENCIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DAVID KARANJA MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**SAMWEL WANJOHI KARIUKI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application made herein is dated 23<sup>rd</sup> May 2023 and was filed by the Plaintiff praying: -
  - a. That pending the hearing and determination of this suit inter partes the Honorable court be pleased to issue a substantive order for temporary injunction restraining the Respondents either by themselves, family members, relatives, employees, general public and their servants or agents from entering and/or interfering in any way whatsoever with Plaintiffs land parcel known as Dundori/Lanet Block 33/78
  - b. That the Chief Dundori being the area chief and OCS Dundori Police Station do ensure compliance with the order of injunction if granted.
  - c. That costs of this application be borne by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
2. According to the plaintiff/applicant's case, he purchased the parcel of land known as (Dundori/lanet Block 33/78) from the 1<sup>st</sup> and 2<sup>nd</sup> defendants via a sale agreement executed on the 8<sup>th</sup> of November 2013. The plaintiff/applicant took immediate possession of the suit property and has been in occupation to date. According to the agreement, the 1<sup>st</sup> and the 2<sup>nd</sup> defendants were to process all the relevant documents to enable the plaintiff acquire his ownership thereof. The plaintiff came to discover that the 3<sup>rd</sup> defendant was on 20<sup>th</sup> September 2021 fraudulently issued with a title deed for the same plot.



3. The 3<sup>rd</sup> Defendant filed a Replying Affidavit dated 03/11/2023, where he avers that he is the rightful registered owner of land parcel number Dundori/ Lanet Block 33/78 having lawfully acquired the same for value from the 1<sup>st</sup> Defendant/ Respondent, which was then represented by the 2<sup>nd</sup> Defendant. He annexed the Sale Agreement as SWK-2. That after the purchase, he processed the transfer of the suit property in his name where he followed all the required procedures. He also annexed a copy of the title deed registered in his name as SWK-3. That he is therefore the legal rightful owner of the subject property having purchased it free from all encumbrances and for a valuable consideration. He then also attached a copy of certificate of official search dated 18/09/2023 as SWK-4. That the plaintiff is therefore misleading the court that the registration of his above parcel of land was obtained fraudulently. That the plaintiff has never been in occupation at any given time as he alleges. That after acquiring the subject property, he commenced productive use of it. On 27<sup>th</sup> February 2024, this Honorable court gave direction that the application be disposed of by way of written submission.
4. With regards to the application herein for an order of temporary injunction, there are prerequisite principles guiding the grant of the same. As ruled in *Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & Another* [2022] eKLR, the principles are set out in the decision of *Giella v Cassman Brown* [1973] EA 358. This position has been reiterated in several decisions from Kenyan courts, particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [\*CA No.77 of 2012\*](#) (2014) eKLR. Where the court of Appeal held that;

In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to (a) Establishes his case only at a prima facie level, (b) Demonstrates irreparable injury if a temporary injunction is not granted and, (c) Show that the balance of convenience is in his favor by allaying any doubts as to (b).
5. The above mentioned three pillars lay the foundation of any order of injunction, interlocutory or permanent. The court in the matter above, *Nguruman Limited v Jan Bonde Nielsen* (supra), stated that all the three conditions above are to be applied as separate distinct and logical hurdles which the applicant ought to surmount sequentially. Therefore, the issue for determination herein then is, whether the applicant has met the conditions for the grant of an order for temporary injunction suit.
6. As of consequence, the Applicant is under obligation to, first, establish a prima facie case. The Applicant/Plaintiff's counsel herein submitted that they have established a prima facie case and have made reliance on the judicial decision of *Mrao Ltd V. First American Bank of Kenya Ltd* (2003) KLR 125 in which the Court of Appeal gave a definition of what amounts to a Prima Facie Case. The court stated that:

...in civil cases, it is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
7. In this matter, the Applicant/Plaintiff has reinforced his claim conveyed vide the supporting affidavit herein, with accompanying documents. These documents provide proof as to the purchase of the land. However, the 3<sup>rd</sup> Defendant has proven ownership of the land vide a title deed, search certificate and land sale agreement. All the above bear his name thus proving actual ownership of the land.
8. Considering the fact that the Plaintiff has failed to provide additional documents to prove ownership or even an iota of fraud at this stage I do hold that at this stage, the 3<sup>rd</sup> Defendant is the undisputed owner and cannot be restrained in any way from exercising his rights to ownership. The issues of how the ownership was acquired shall be canvassed during the trial and or hearing proper. Till then, I do not find him a trespasser at this interlocutory stage. His use or occupation of the land parcel herein



should not be taken to be wronging or harming the plaintiff in any way. There is thus no prima facie case established at this stage.

9. It is therefore evident that the Applicant has failed to meet the required threshold in the first limb. I further wish to state that he has also not demonstrated how he will suffer irreparable loss which cannot be compensated by an award of damages. There is a dispute as to who is in actual possession of the parcel herein. Each party claims to be in actual possession. I thus find the same as having not been proved to the required standard on balance of probability. In the circumstances, the legal and rightful owner cannot be enjoined in any way.
10. In light of the findings above, the court holds that the Applicant has not satisfied the requisite conditions and ingredients informing the foundation for the grant of a temporary injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. Therefore, in premises of the aforementioned, I dismiss this application by the plaintiff, and award costs to the 3<sup>rd</sup> Defendant.

**RULING READ, SIGNED AND DELIVERED AT NAKURU THIS 18<sup>TH</sup> DAY OF JULY, 2024.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff's counsel: Njoroge h/b Mwangi

Defendant's Counsel: Echesa

Plaintiff: n/a

1<sup>st</sup> Defendant: n/a

2<sup>nd</sup> Defendant: n/a

3<sup>rd</sup> Defendant: n/a

