



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**

**ELC CIVIL CASE NO. 826 OF 2015**

JAMES CHERUIYOT ARAP KOSKE.....1<sup>ST</sup> PLAINTIFF/APPLICANT

EVERLYNE CHEPKIRUI MILGO.....2<sup>ND</sup> PLAINTIFF/APPLICANT

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup> DEFENDANT/RESPONDENT

MONIEL INVESTMENTS LIMITED.....2<sup>ND</sup> DEFENDANT/RESPONDENT

**RULING**

1. This is the notice of motion dated 26<sup>th</sup> August 2015 brought under order 40 of the Civil Procedure Rules 2010, Section 1A and 1B and 3A of the Civil Procedure Act, Chapter 21 Laws of Kenya and all other enabling provisions of the law.

2. It seeks orders:-

***(1) Spent.***

***(2) That this honourable court do issue a temporary injunction as against the 1<sup>st</sup> respondent or by any person claiming on their behalf specifically P G Waweru t/a Ideal Auctioneers from selling via auction the applicant's property known as Nairobi/Block 90/231 of the 27<sup>th</sup> August 2015 or any other subsequent date pending hearing of this application interparty.***

***(3) That this honourable court do issue an order in terms of prayer 2 herein above pending hearing and determination of this suit.***

***(4) That costs of this application be provided for.***

***(5) That costs be provided for.***

3. The grounds are on the face of the application and are set out in paragraphs (i) to (vii).

4. The application is supported by the affidavit of James Cheruiyot Arap Koske the 1<sup>st</sup> plaintiff/applicant sworn on the 26<sup>th</sup> August 2015.

5. Upon being served with summons to enter appearance, copies of plaint and application the 1<sup>st</sup> defendant/respondent entered appearance through the firm of M/S Kithi & Company Advocates on 2<sup>nd</sup> September 2015. The 1<sup>st</sup> defendant has not filed any response to the application and/or a statement of defence. The 2<sup>nd</sup> defendant was served by advertisement on the Daily Nation of 27<sup>th</sup> September 2017. The 2<sup>nd</sup> defendant has neither entered appearance, filed any response to this application nor file a statement of defence.

6. The application proceeded by way of written submissions.

7. It is the plaintiff's/applicants case that they are the registered proprietors of LR No. Nairobi/Block 90/231. That in 20<sup>th</sup> August 2015 they received a notification of sale that had been place under their doorstep purporting that they were in debt to the 1<sup>st</sup> defendant/respondent in land rates to a sum of Kshs.7,943,546/- and that their property was up for auction on 27<sup>th</sup> August 2015 to recover the said monies. Further that they have never been aware of civil suit No. 31 of 2014, Nairobi City County vs Moniel Investments Ltd. Efforts to trace the directors

of the 2<sup>nd</sup> defendant have borne no fruit as there are no records of the 2<sup>nd</sup> defendant from the companies' registry. They pray for the orders sought.

8. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the written submissions of counsel and the authorities cited. The issue for determination are:-

*(i) Whether or not the plaintiff's/applicant's application meets the threshold for grant of temporary injunction.*

*(ii) Who should bear costs?*

9. At this juncture it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for injunction the onus is on the application to satisfy the court that it should grant an injunction. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, the Court of appeal stated what amounts to a prima facie case. I am guided by the above authorities.

10. In the case **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557** Bosire J (as he then was) held that:-

***“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”***

I find that the plaintiffs have demonstrated that they are the registered owners of the suit property and they deserve this kind of protection. I also find that they have established a prima facie case with a probability of success at the trial.

11. Section 26(1) of the Land Registration Act, 2012 provides that:-

***“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***

***(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.***

12. The plaintiffs'/applicants' case has not been controverted. They have denied that they owe the 1<sup>st</sup> defendant any rates. The 1<sup>st</sup> defendant was given an opportunity to justify that there are rates owing in respect of the suit property, but they did not appear.

13 In conclusion, I find merit in this application and grant the orders sought namely:-

***(a) That an order of injunction be and is hereby issued restraining the 1<sup>st</sup> defendant/respondent whether by itself, its servants and or agents or by any persons claiming on their behalf specifically P. G. Waweru t/a Ideal Auctioneers from selling through auction the plaintiffs'/applicants' property known as Nairobi/Block 90/231 pending the hearing and determination of this suit.***

***(b) That costs of this application do abide the outcome of the main suit.***

It is so ordered.

**Dated, signed and delivered in Nairobi on this 31<sup>ST</sup> day of JULY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiffs

No appearance for the Defendants

Kajuju - Court Assistant