



**Mugambi v Joseph & 2 others (Environment and Land Appeal  
E020 of 2023) [2024] KEELC 472 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 472 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E020 OF 2023  
CK NZILI, J  
JANUARY 31, 2024**

**BETWEEN**

**HIKE MUGAMBI ..... APPELLANT**

**AND**

**KENNEDY KABURU JOSEPH ..... 1<sup>ST</sup> RESPONDENT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**JK AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The court is asked to issue temporary injunctive orders restraining the respondents from registering, completing, or perfecting the sale and transfer of L.R No. Nkuene/Kathera/2222 pending hearing and determination of this appeal. The reasons are set on the face of the application and in the supporting affidavit of Hike Mugambi sworn on 31.8.2023. The applicant contends that he learned of the intended auction after a friend shared with him an advertisement on the morning of 25.8.2023. He indicates that he moved to court on 25.8.2023, which gave an inter-parties hearing for 28.8.2023. It was averred that the trial court declined to issue a conservatory order and instead gave an inter-party hearing for 23.10.2023, thus allowing the auction to proceed as scheduled.
2. The applicant avers the suit property risks changing ownership, hence rendering his appeal nugatory. Further, the applicant avers his statutory rights will be defeated, risking losing his inheritance share through an irregular sale.
3. The applicant contends that he applied for the orders soon after filing his appeal, and therefore, the interest of justice favors preserving the substratum of the appeal.



4. When this matter came for an inter-parties hearing on 31.9.2023, counsel present for the 3<sup>rd</sup> respondent informed the court that the public auction did not occur since the 1<sup>st</sup> respondent had sought an out-of-court negotiation.
5. The court granted the respondents more time to respond by 26.10.2023. Further, on 26.10.2023, the 1<sup>st</sup> respondent appeared in person while Mrs. Kinoti advocate appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The court was informed that the parties held a meeting on 14.10.2023, but could not reach any possible settlement. Therefore, no replying affidavit had been filed in opposition to the application.
6. Order 42 Rule 6 (6) of the *Civil Procedure Rules* provides that a court may issue a temporary injunction on such terms as it thinks just. In *Stanley Kangethe Kinyanjui vs Tony Keter and others (2013)* eKLR, the court observed that a party must demonstrate he has an arguable appeal, which is likely to be rendered academic if the substratum of the appeal is not preserved. Further, in *Patricia Njeri & 3 others vs National Museum of Kenya (2004)* eKLR, the court said an injunction pending appeal was a discretionary order that will be exercised against an appeal that is frivolous and or where it will inflict more hardship than it would avoid.
7. The court said an applicant must demonstrate how his appeal would be rendered nugatory and satisfy the requirements in *Giella vs Cassman Brown (1973)* E.A 358.
8. Additionally, in *Madhupaper International Ltd vs Kerr (1985)* eKLR, the court said it would be wrong to grant a temporary injunction if it would inflict greater injustice than it would avoid.
9. The applicant has appealed against the trial court's denial of a conservatory order pending the hearing of his application dated 25.8.2023. The trial court only declined to grant prayer Number 1, a temporary injunction pending interparty on 23.10.2023. There is an admission that the public auction did not take place. The discretion to grant interim orders was within the mandate of the trial court. This did not amount to determining the application conclusively for prayers Number 2 of applications was not heard on merits.
10. An arguable appeal, as held in *Kenya Commercial Bank vs Nicholas Ombija (2000)* eKLR may not necessarily succeed but should be argued fully before the court.
11. Granting or refusing a temporary injunction is a discretionary power. As a general rule, an appellate court will not interfere with the exercise of such discretion. In *United India Insurance Co. Ltd vs East Africa Underwriters (K) Ltd (1985)* E. A 898, the court said it could not interfere with such discretion unless there was misdirection in law, misapprehension of facts, or the taking into account of irrelevant considerations, hence reaching a wrong decision.
12. The court has already indicated that the trial court has not heard and determined the pending application. The court is, therefore, reluctant to pre-empt or prejudge the said application.
13. Consequently, I find no arguable appeal demonstrated. There is no danger to the substratum of the appeal since the respondents have confirmed that the auction did not take place. There is no evidence that after 15.8.2023, a fresh auction notice has been served upon the 1<sup>st</sup> respondent.
14. Moreover, the applicant has not demonstrated a prima facie with a probability of success, irreparable loss, and damage, he was likely to suffer or that the balance of convenience tilts in favor of granting an injunction. See *Mrao Ltd vs. First American Bank of Kenya & 2 others (2003)* eKLR and *Nguruman Ltd vs Jan Nielsen Bonde & 2 others (2013)* eKLR. In *Kitho Civil & Engineering Co. Ltd vs NBK Ltd & another C.A No. (E706 of 2021) (2023) KECA (387) (KLR) (31<sup>st</sup> March 2023)* Ruling the court



cited with approval African Safari Club Ltd vs Safe Rentals Ltd (2010) eKLR that the court must look at the hardship of both parties as put on a scale, keeping with aim of acting fairly and justly.

15. I think the application is for dismissal. The same is hereby dismissed, and the appeal stayed until the lower court disposes of the pending application. Costs to the respondents.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31<sup>ST</sup> DAY OF JANUARY 2024**

In presence of

C.A Kananu/Mukami

Miss Kaimenyi for Mugambi for Appellant

**HON. CK NZILI**

**JUDGE**

