



**Mathea v Kamotho (Environment & Land Case 418 of 2017)
[2018] KEELC 4902 (KLR) (11 December 2018) (Ruling)**

Francis Gatimu Mathea v Gichuru Kamotho & another [2018] eKLR

Neutral citation: [2018] KEELC 4902 (KLR)

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

ENVIRONMENT & LAND CASE 418 OF 2017

DO OHUNGO, J

DECEMBER 11, 2018

BETWEEN

FRANCIS GATIMU MATHEA PLAINTIFF

AND

GICHURU KAMOTHO DEFENDANT

RULING

1. This ruling is in respect of Notice of Motion dated 3rd November 2017, an application pursuant to which the plaintiff sought the following orders:
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to issue an order of temporary injunction restraining the 1st respondent either by himself, agents and/or servants howsoever from selling, transferring, alienating, dealing with or otherwise interfering with Land Parcel No. Naivasha/Municipality Block 4/41 formerly LR.1144/1/IX and specifically plots number 167, 168 and 169 that are adjacent to the Railway pending the hearing and determination of this suit.
 - c. Spent.
 - d. That this honourable court be pleased to issue an order of inhibition against Land Parcel No. Naivasha/Municipality Block 4/41 formerly LR.1141/1/IX and/or specifically plots number 167, 168 and 169 that are adjacent to the Railway pending the hearing and determination of this suit.
 - e. That the costs of this application be borne by the respondents.



2. The application is supported by an affidavit sworn by the plaintiff in which he deposed that the 1st defendant who is his brother in-law, offered to sell to him a 50 by 100 feet plot on 28th September 2002 through a letter of offer of that date. The plot was to be excised from the 1st defendant's Plot No. Naivasha/Municipality Block 4/41 formerly LR. No. 1144/1/IX (the suit property). Completion was agreed to be 30th September 2002. The parties executed a Memorandum of Understanding dated 8th September 2002 and a sale agreement dated 28th September 2002. The consideration was agreed at KShs.200, 000 which the plaintiff paid in full vide cheque dated 20th September 2002. The plaintiff further stated that the 1st defendant subdivided the suit property but has refused to transfer the portion that the plaintiff purchased.
3. The 1st defendant responded to the application through his replying affidavit sworn on 22nd November 2017. He admitted being the plaintiff's brother in-law but denied having signed the letter of offer, the memorandum of understanding and the sale agreement. He pointed out that the Memorandum of Understanding exhibited by the plaintiff is undated while the alleged sale agreement is not signed by the plaintiff or even the 1st defendant.
4. The 2nd defendant neither responded to the application nor attended its hearing.
5. The principles that guide the court when considering an application for an interlocutory injunction are long settled. The applicant must satisfy the test in *Giella –vs- Cassman Brown & Co. Ltd* [1973] E.A 358. He must establish a prima facie case with a probability of success. Even if a prima facie case is established, an injunction would not to issue if damages can adequately compensate him. Finally, if the court is in doubt as to the answers to the above two tests then the court would determine the matter on a balance of convenience. As was recently held by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, all the three *Giella* conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if prima facie case is not established, then irreparable injury and balance of convenience need no consideration.
6. I note that the plaintiff seeks orders in respect of “Land Parcel No. Naivasha/Municipality Block 4/41 formerly LR.1144/1/IX and specifically plots 167, 168 and 169.” According to the plaintiff he purchased one plot measuring 50 by 100 feet. It is thus not clear how the plots known as 167, 168 and 169 come into the transaction. Further, it has not been demonstrated how the transition from LR. 1144/1/IX to Naivasha/Municipality Block 4/41 came about. Suffice it to state that the sale agreement exhibited by the plaintiff does not mention Naivasha/Municipality Block 4/41. It is neither signed by the plaintiff nor the 1st defendant and just like the letter of offer and the Memorandum of Understanding, it has alterations in the details regarding the plot number. All in all, I am not persuaded that the plaintiff has a prima facie case.
7. In view of the foregoing, Notice of Motion dated 3rd November 2017 is dismissed with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAKURU THIS 11TH DAY OF DECEMBER 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Bore holding brief for Mr Kipkoech for the plaintiff/applicant



Ms Amulabu holding brief for Mr Otieno for the 1st defendant/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Gichaba & Lotkomoi

