



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ecoeng Limited v Ominde & another (Environment & Land Case E350 of 2022) [2024] KEELC 1139 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1139 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E350 OF 2022  
EK WABWOTO, J  
FEBRUARY 29, 2024**

**BETWEEN**

**ECOENG LIMITED ..... PLAINTIFF**

**AND**

**WALTER EDWIN OMINDE ..... 1<sup>ST</sup> DEFENDANT**

**GRACE SELINA OMINDE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed a Notice of Motion Application dated 29<sup>th</sup> November 2022 which was accompanied by a Supporting Affidavit sworn by Jackline Pauline Atieno Omolo. The Plaintiff sought the following orders:
  - i. ...spent.
  - ii. .... spent.
  - iii. That pending hearing and determination of this suit, a temporary injunction does hereby issue against the Defendants/Respondents restraining them from selling, letting, leasing, disposing or in any way whatsoever from interfering with Land Title No. Nairobi/Block 60/447 Nairobi City Ngei 1 Estate.
  - iv. That the Honourable Court do issue an order of inhibition stopping further dealings, registration and transactions over Land Title No Nairobi/Block 60/447 Nairobi City Ngei 1 Estate.
  - v. That this Honourable Court be pleased to issue an order of *status quo* preserving the suit property Land Title No. Nairobi/Block 60/447 pending the hearing of this application interpartes and main suit



- vi. That the costs of this Application be awarded to the Applicant.
2. The Application was premised on the following grounds:
    - i. The Defendants/Respondents are the registered owners of land registered as Land Title No Nairobi/Block 60/447 Nairobi City Negi 1 Estate.
    - ii. That the parties entered into a sale agreement dated 20 June 2022 for the consideration of Kes 20,000,000.
    - iii. Upon execution of the sale agreement the Plaintiff through their advocate paid the Defendants Kes 6,500,000 and the balance would be financed by HFC Limited and paid within 14 days of the registration of transfer
    - iv. The suit property is registered under the repealed *Registered Land Act*(RLA) which required the Defendants/Respondents to complete the verification of the title on Ardhi Sasa Platform.
    - v. On 7<sup>th</sup> October 2022, the 1<sup>st</sup> Defendant via SMS informed the Purchaser's director that he longer wished to proceed with the transaction.
    - vi. There is a threat of possible disposal of the suit property to a third party.
  3. On 12<sup>th</sup> October 2023, the Court directed that the application would be canvassed by way of written submissions. The Plaintiff filed written submissions dated 20<sup>th</sup> December 2023 while the Defendant filed written submissions dated 28<sup>th</sup> November 2023.
  4. The Plaintiff submitted on the following two issues; whether the Applicant is entitled to the orders sought and who bears the costs of this application.
  5. It was submitted that the Plaintiff had proven a prima facie case citing the proof of payment marked as JPAO2. It was also argued that the Defendants offer to sell a different property, located in Kisumu was a fundamental breach of contract. Referring to their evidence marked JPA05, it was submitted that the Defendants preference to sell the suit premise to a third-party bidder was sufficient proof of the irreparable harm that would be occasioned upon them.
  6. The application was opposed vide the Defendants' submission dated 28<sup>th</sup> November 2023 in which three key issues for determination were highlighted; whether the applicant has met the criteria for the grant of orders of temporary injunction pending hearing and determination of the suit, given the finding above, whether prayers 4,5, and 6 are tenable and who is entitled to costs?
  7. It was argued that the Plaintiff's claim on the property could not crystallize until Clause 2 had been complied with and therefore allow for possession under Clause 6. It was further argued that as per Clause 9 of the agreement, the Plaintiff could either seek to remedy the breach, by committing to payment or a full refund paid back to the Plaintiff upon demand, all of which had not been fulfilled. Lastly, it was submitted that the balance of convenience titled in favour of the respondents and as such the application ought to be dismissed with costs.
  8. I have considered the application, rival affidavits and respective submissions. In my view, the sole issue that arises for determination is whether the Plaintiff's application dated 29<sup>th</sup> November 2022 is merited?
  9. With regards to the prayers for injunctive orders sought, this Court is guided by Section 63 of the *Civil Procedure Act* and Order 40(1) of the *Civil Procedure Rules*, where in any suit it is proved by affidavit or otherwise—



- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.[Emphasis Mine]
10. In *Nguruman Limited V. Jan Bonde Nielsen & 2 Others*, Ca No. 77 Of 2012, the Court outlined that:
- “In an interlocutory injunction application, the applicant has to satisfy the three requirements to;
- (a) Establish his case only at a prima facie level,
  - (b) Demonstrate irreparable injury if a temporary injunction is not granted, and
  - (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour”
11. It is undisputed that the parties entered into a sale agreement dated 20<sup>th</sup> June 2022. Bearing this in mind, the Court is cognizant of the delicate balance of the rights of the parties as well as their respective investments upon the suit premise. The evidence presented by the parties raises an issue of contractual breach which should be rightfully tried, heard and exhaustively determined at trial. Therefore, at this juncture, preservation of the subject matter would be prudent and in the best interest of justice for all parties.
12. In the foregoing, the Notice of Motion application dated 29<sup>th</sup> November 2022 is determined in the following terms:
- i. That pending hearing and determination of the main suit an order of *status quo* is hereby preserving the suit property- Land Title No. Nairobi/Block 60/447 Nairobi City Ngei 1.
  - ii. Costs will abide the determination of the main suit.
- It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

N/A for the Plaintiff/Applicant.

N/A for the 1<sup>st</sup> Defendant/Respondent.

N/A for the 2<sup>nd</sup> Defendant/Respondent.

Court Assistant; Caroline Nafuna.

