



REPUBLIC OF KENYA



**Kimeu v Kimeu & 4 others (Environment & Land Case E078 of 2023)
[2024] KEELC 970 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 970 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E078 OF 2023
JA MOGENI, J
FEBRUARY 28, 2024**

BETWEEN

PHILIP KIMEU PLAINTIFF

AND

WILLY KIMEU 1ST DEFENDANT

SOLOMON WERE 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

CHIEF REGISTRAR LANDS 4TH DEFENDANT

DIRECTOR OF SURVEYS 5TH DEFENDANT

RULING

1. By a Notice of Motion dated 19/09/2023, brought under Order 40 Rule 1, 4 and 10 and Order 51 Rule 1, 3 and 4 of the [Civil Procedure Rules](#) 2010 and Sections 1A, 1B and 3A of the [Civil Procedure Act](#), the Applicant is seeking for the following orders: -2
 1. Spent
 2. Spent
 3. That the Honorable Court be pleased to issue a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants whatsoever from leasing, selling, subdividing, disposing off or occupying the property LR No. Nairobi/Block 263/3071 pending inter partes hearing of this application
 4. That the Honorable Court be pleased to issue a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants whatsoever from leasing,



selling, subdividing, disposing off or occupying the property LR No. Nairobi/Block 263/3071 pending the hearing and determination of this application.

5. That the Honorable Court be pleased to issue a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants whatsoever from leasing, selling, subdividing, disposing off or occupying the property LR No. Nairobi/Block 263/3071 pending the hearing and determination of this suit.
 6. That this Honorable court be pleased to issue an order of permanent injunction restraining the respondents whether by themselves their agents and/or servants whatsoever from leasing, selling, subdividing or disposing off or occupying the property LR No. Nairobi/Block 263/3071
 7. That the OCS Commanding Villa Police Station, Nairobi County Police Commander and OCPD Villa Police Station do enforce compliance with the orders above
 8. That the costs of this application be borne by the respondent.
2. The application is premised on the grounds on the face of the application and on the 19 paragraph supporting affidavit of the Applicant sworn on 19/09/2023.
 3. A summary of the grounds and the averments by the Applicant is that the Applicant is the registered owner of the suit property having applied from the National Government and been allotted the same via an allotment letter dated 28/04/1998 by the Commissioner of Lands. LR No. 209/13407. He also attached a copy of the allotment letter marked as “PKT-1”.
 4. That he was granted a lease on 23/01/2022 which was registered on 25/07/2022 and due to the digitalization and conversion process the registration number of the suit property was changed to LR 209/Nairobi/Block 263/3071. He attached a copy of the gazette notice marked as “PKT-4”
 5. It is the plaintiff’s averment that the 1st defendant has trespassed on his property and he has reported to the police who have not been of assistance to him since they have advised that he needs to have a court order. He stated that he visited the Land Registry where he was assured him that his file for his land exists under the number 322425 and therefore he attached a copy of deed plan, photos and demand letter marked as “PKT-5”.
 6. He alleges that the respondent has trespassed on his suit property and he should not be allowed to continue with his actions which have caused him irreparable loss which cannot be compensated by an award of damages.
 7. Despite being served as evidenced by the affidavit of service deponed on 13/10/2023 by Nicky Ernest Ademba none of the defendants field any replying affidavit. In fact, when the parties appeared in court on 18/10/2024, Counsel for the 3rd Respondent Ms Chepkoyo sought leave of 7 days from 18/10/2023 to enable them file their response which was granted. The parties were also encouraged to attempt an out of court settlement.
 8. The 4th and 5th defendants despite filing their memorandum of appearance dated 12/10/2023 did not attend court and this despite having been served.
 9. Since this application was canvassed by way of written submissions, at the time of writing this ruling I was only able to interrogate the submissions filed by the applicant dated 16/11/2023 which I have duly considered.



Analysis and Determination

10. Having considered the application and the written submissions, I find that the only issue for determination is whether the Applicant has met the threshold for the grant of an order of injunction.
11. An interlocutory application, is ideally issued between the parties while the dispute between the parties is pending. In normal circumstances the court is careful not to venture into making definitive findings on facts of law or facts. The power of court in an application for an interlocutory injunction is discretionary, that will be judicially exercised on the basis of law and evidence. The conditions for granting a temporary injunction are well known. Firstly, the applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
12. In the instant case, I have noted that the applicant has produced his letter of allotment and Lease Certificate. It is therefore not clear how the 1st defendant has trespassed on his land yet he did not present any documents in court to claim ownership to the suit property. In fact the plaintiff has not attached any document to show that the 4th defendant might have issued another certificate of lease to any other person. Neither did the applicant present any information to attest to existence of another letter of allotment to the suit property.
13. The applicant claims that the 1st defendant has trespassed on his suit property and is in the habit of erecting tents to use the suit property for church services in an attempt “to sanitize” (as he calls it) the trespass. He attached photographs showing erected tents on the suit property and attached a certificate of electronic evidence as is required under Section 78 A and Section 106 B of the [Evidence Act](#).
14. The evidence of the applicant plaintiff is uncontroverted. The applicant’s claim of ownership of the suit property is an arguable case that raises a serious question that ought to be tried by court during a full trial.
15. The principles applicable in an application for an injunction were laid down in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and I have already referred to them hereinabove.
16. The Applicant in an application for injunction must first establish that he has a prima facie case with a probability of success. The Court of Appeal defined a prima facie case in the case of [Mrao Ltd v First American Bank of Kenya Ltd & 2 Others](#) (2003) eKLR as follows;

“a prima facie case in a civil application includes but is not confined to a genuine and arguable case”. 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.”
17. It does follow therefore that I need to consider whether the Applicant has established a prima facie case with a probability of success, the Applicant’s claim over the suit property is anchored on the Certificate of Lease registered in his name and the gazette notice number 1402 of 11/02/2022 which advertised the conversion and migration of title from property LR No. Nairobi/Block 209/13407 to Nairobi / Block No. 263/3071. So it is my finding from studying the documents presented as attachments to the supporting affidavit that the suit property is registered in the names of the Applicant herein. The Applicant has clearly demonstrated that he is the registered owner of land parcel number Nairobi /



Block No. 263/3071. To that extend therefore I am satisfied that the Applicant has established that he has a prima facie case with a probability of success.

18. On the second issue that concerns irreparable harm, the Court of Appeal in the case of *Nguruman Limited v Bonde Nielsen & 2 Others* (2014) eKLR held that: -

“On the second factor, the applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation of whatever amount, will never be adequate remedy.”

19. It is therefore the applicant’s responsibility to show that they will suffer irreparable harm which cannot be adequately compensated by award of damages. The Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
20. It is not in dispute that the Applicant is the registered owner of land parcel number Nairobi /Block No. 263/. The Applicant further submitted that after he was issued with certificate of lease on 25/07/2022, the trespassing on the land ensued. That he put up notices and made markings on the property’s fence to alert the public and the trespassers but the trespassing continued. He alleges to have reported the action of trespass to the police but he states that he police asked him to get a court order for them to intervene.
21. The Applicant did not produce an OB extract from the police to show that he made a report neither did produce any evidence of the notices that he posted on the suit property nor the markings that he claims to have made to demonstrate that the defendants have trespassed. He has however attached a copy of the demand letter written to the 1st defendant dated 5/06/2023 asking the 1st defendant to desist from trespassing on the suit property which belongs to the plaintiff.
22. The applicant’s case is that the respondents have refused to stop trespassing on the suit property despite the notices posted and the demand letter written. The 1st defendant has not responded to the application to explain or rebut the facts stated by the applicant despite being served. A temporary injunction is needed to protect the rights of the applicant from violation or threats of violation of acts that he cannot be compensated by an award of damages.
23. In the circumstances the balance of convenience tilts towards preserving the property in dispute in the suit until the suit is determined. The suit property could only be preserved if the actions of the Plaintiffs/Respondents were restrained pending the final disposal of the suit. It is for these reasons that, on preponderance of probability, I do find the Notice of Motion dated 19/09/2023 is merited and is hereby allowed. I order as follows: -
- a. That a temporary injunction be and is hereby issued restraining the Respondents whether by themselves, their agents and/or servants whatsoever from leasing, selling, subdividing, disposing off or occupying the property LR No. Nairobi/Block 263/3071 pending the hearing and determination of this suit.



- b. That the OCS Commanding Villa Police Station, Nairobi County Police Commander and OCPD Villa Police Station do enforce compliance with the order above.
- c. That the costs of this application be in the cause

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF FEBRUARY 2024.

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MOGENI J

JUDGE

In the virtual presence of: -

Mr. Kiptoo for the Plaintiff/Applicant

None appearance for the Defendant/ Respondent

Ms. Caroline Sagina: Court Assistant

