



Wambugu & another v Administrators of the Estate of Kaiho Karugo & 4 others (Environment & Land Case E136 of 2023) [2024] KEELC 905 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E136 OF 2023
EK WABWOTO, J
FEBRUARY 22, 2024**

BETWEEN

ROBIN MWANGI WAMBUGU 1ST PLAINTIFF

FRANCIS KIMANI MWANGI 2ND PLAINTIFF

AND

ADMINISTRATORS OF THE ESTATE OF KAIHO KARUGO . 1ST DEFENDANT

KAMAU NJIGUA 2ND DEFENDANT

**ADMINISTRATORS OF THE ESTATE OF MUGURU MWANGI 3RD
DEFENDANT**

ADMINISTRATORS OF THE ESTATE OF NGUGI NGANGA . 4TH DEFENDANT

**ADMINISTRATORS OF THE ESTATE OF NYAMU MUCHUNU 5TH
DEFENDANT**

RULING

1. This ruling is in respect to the Plaintiffs application dated 17th April 2023 which was accompanied by a Supporting Affidavit sworn by Robin Mwangi Wambugu. The Plaintiffs sought the following orders:
 - i. ...Spent.
 - ii. ...Spent.
 - iii. A temporary injunction be granted restraining the Defendants by themselves, their agents and/ or servants or any other person acting for the Defendants or with the Defendants’ authority from damaging, wasting, encroaching or trespassing onto selling, collecting rent, further alienating or disposing of or in any other way whatsoever interfering with the parcel of land known as LR 209/230/5 situated in Nairobi pending hearing and determination of this suit.



- iv. A mandatory injunction be granted compelling Pinnacle Properties ltd to only disburse all rent collected to the actual beneficial owners, pending hearing and determination of the suit.
 - v. A mandatory injunction be granted compelling Pinnacle Properties Ltd to only disburse all rent collected to the actual beneficial owners of the registered owners of the property being the plaintiffs herein.
 - vi. That in the alternative the Honourable Court do order that all rent collected from the suit property be held by the collecting agent.
 - vii. That the costs of this application be borne by the Defendants/Respondent.
 - viii. Any other or further relief that the court may deem fit.
2. The Application was made on several grounds, including that:
- i. That the Defendants have illegally and fraudulently laid claim to LR 209/230/5 situated in Nairobi, which properties are owned by the Applicant.
 - ii. Vide a judgement in HCC O.S 90 of 2010, the alleged partnership was dissolved by a judgement delivered on 5th October 2018.
 - iii. The Defendants are benefiting from the said property by way of collected rent.
 - iv. The applicants face imminent danger of loss of their property and enjoyment of proprietary rights.
3. The application was canvassed by way of written submissions. Both the parties filed extensive submissions in support of their respective positions.
4. The court has considered the application, the rival affidavits, written submissions and the cited cases. The main issue for determination is whether the Plaintiffs have met the threshold for grant of the temporary and mandatory injunctive orders sought.
5. In respect to the mandatory injunction, the Court must reiterate the very high bar that has been set when considering an application for mandatory injunction. In addition to the standard requirements of an temporary injunction being met an applicant seeking a mandatory injunction must establish the existence of special circumstances. A mandatory injunction is different from a prohibitory injunction in the sense that an applicant for mandatory injunction must prove his case on a standard higher than the standard in prohibitory injunctions.
6. The case of *Locabail International Finance Limited v Agro-Export (1988) 1 All ER 901*, outlines general principles which the court applies when determining applications for a mandatory injunction at in interlocutory proceedings as follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the Plaintiffs. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.” [Emphasis Mine]



7. This position was echoed by the Court of Appeal in the case of Nation Media Group & 2 Others vs John Harun Mwau [2014] eKLR,:

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted.”[Emphasis Mine]

8. The above cited cases lay down the principles of law to be considered in an application for mandatory injunction and the condition that stands out is that the applicant must establish the existence of special and exceptional circumstances that warrant the granting of orders of mandatory injunction.

9. In this instance, the Plaintiffs did not present evidence in support of any special circumstances. Needless to say, the Court must endeavour to protect rights all the parties and will therefore decline from issuing mandatory injunctive orders which would be tantamount to determining the suit to finality.

10. With regards to the temporary injunction sought, it is trite law that an applicant must establish the existence of a prima facie case with high chances of success, and that he will suffer irreparable loss/ damage which cannot be adequately be compensated by an award of damages if the injunction is not granted, and further that the balance of convenience tilts in his favour (See Giella vs Cassman Brown & Co. Ltd (1973) EA 358). At this interlocutory stage, it would be prudent to ensure the property is preserved from further change, wastage or deterioration. It is undoubtedly clear that general issues of ownership and requisite rights and benefits accruing would be best handled during trial.

11. In the upshot, the Court makes the follows orders:

- a. A temporary injunction is hereby granted restraining the Defendants by themselves, their agents and/or servants or any other person acting for the Defendants or with the Defendants’ authority from damaging, wasting, encroaching or trespassing onto selling, further alienating or disposing of or in any other way whatsoever interfering with the parcel of land known as L.R 209/230/5 situated in Nairobi pending hearing and determination of this suit
- b. Costs will abide final determination of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF FEBRUARY 2024.

E. K. WABWOTO

JUDGE

