



**Sweet Pie Company Ltd v Randu (Environment & Land Case
E011 of 2023) [2024] KEELC 1512 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E011 OF 2023
EK MAKORI, J
MARCH 20, 2024**

BETWEEN

SWEET PIE COMPANY LTD PLAINTIFF

AND

DANIEL HARE RANDU DEFENDANT

RULING

1. Application dated 18th August 2023 seeks among other orders an injunction to restrain the respondent from entering upon, threatening to trespass into, erecting any structures thereon, interfering with in any other manner Parcel No. Chembe/Kibabamshe/354 (the suit property), situated in Kilifi County till the present case is heard and determined. Costs be provided.
2. The application is supported by the annexed affidavit of one Anthony Fredrick Gross sworn on 18th August 2023. It is opposed. There is a replying affidavit by one Daniel Hare Randu deposed on 18th October 2023. The Court directed that parties canvass the same by way of written submissions.
3. The main grievance I can see from the applicant is that he is the registered owner of the suit property by way of purchase. A title was among the documents exhibited as proof of ownership. There is also a finding by the National Land Commission when it made inquiries in 2017 as to the ownership and disposition of land within the Chembe/Kibabamshe Land Adjudication Section which further confirms the applicant as the rightfully registered owner of the suit property.
4. The applicant alleges that on or about 19th July 2023, the respondent with goons trespassed onto the suit property and pulled down the perimeter wall as can be seen from the photographs annexed, and also that the issue was reported to the police station as per the attached OB Report and hence the filing of the current suit.



5. The respondent avers that the title document was procured fraudulently and that the findings of the NLC have not been authenticated. He further states that he has documents to show he was the initial allottee of the land in question *vide* letter dated 13th July 2011.
6. Parties submitted before this Court on the threshold to be achieved before the Court could grant a temporary injunction. The applicant referred this Court to several judicial precedents including *Giella v Cassman Brown & Company Limited* [1973] E.A. 360, *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 12, *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
7. The respondent on the other hand contends that the title document was obtained fraudulently and that there needs to be further investigations on how it was acquired. For the grant of an injunction, the decision in *Giella v Cassman Brown & Company Limited* [1973] E.A. 360, was cited.
8. The issues for the determination of this Court at this point are whether the applicant has put across a case to necessitate the issuance of an injunction and who should bear the costs of the current application.
9. For an injunction to be granted, as held in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] E.A. 360, the following threshold has to be surmounted:

“The applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”
10. Firstly, this Court has to check whether the applicant established a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125:

“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 been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
11. And that the principles stated in the *Giella case* (supra) are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd Afraba Education Society* [2001] 1 EA 86 as cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed.”
12. The applicant has shown that he is the registered owner of the suit property and has title to it. This is confirmed by the 2017 NLC report and Gazettement on inquiries made by it on the acquisition and dispositions of the Chembe Kibabamshe Land Adjudication Section.
13. On the other hand, the respondent argues that the title must have been obtained through fraud since he was the 1st allottee of the suit property as can be shown by a letter dated 13th July 2011.
14. The Indefeasibility of the title is provided for in Section 26 (1) (b) of the *Land Registration Act* which states:

“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all Courts as *prima facie* evidence that the person named



as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except –

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.”

15. What I have so far indicates that the applicant is the registered owner of the suit property. As to fraud alleged by the respondent, at this point remain mere allegations that need to be surmounted at the hearing hereof. The respondent therefore has no colour of right in trespassing into the applicant's land. I am satisfied that a prima facie case with a probability of success has been proved by the applicant on a balance of probabilities. I need not address the other two limbs as proposed in the *Giella Case* (supra).

16. The application dated 18th August 2023 succeeds in the following manner:

- i. An injunction does and hereby issues to restrain the respondent and or those who claim under him from entering upon, threatening to trespass into, erecting any structures thereon, interfering with in any other manner Parcel No. Chembe/Kibabamshe/354 (the suit property), situated in Kilifi County till the present case is heard and determined.
- ii. The respondent shall bear the costs of this application.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 20TH DAY OF MARCH 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Ojiambo for the Applicant

Ms. Omollo for the Respondents

Court Assistant: Happy

