Madhyan v Wema Transporters & 4 others (Civil Appeal E787 of 2021) [2025] KECA 1152 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KECA 1152 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL E787 OF 2021

FA OCHIENG, SG KAIRU & AO MUCHELULE, JJA

JUNE 20, 2025

BETWEEN

LATA SURESH MADHYAN .... APPELLANT

AND

WEMA TRANSPORTERS .... 1ST RESPONDENT

PRIME BANK LIMITED .... 2ND RESPONDENT

PETER GAITHO KAMANDE .... 3RD RESPONDENT

JOSEPH M GIKONYO T/A GARAM INVESTMENTS AUCTIONEERS .... 4TH RESPONDENT

COVERGYS PROPERTIES LIMITED .... 5TH RESPONDENT

(Being appeal from a ruling of the High Court of Kenya, Commercial and Tax Division (Mativo, J.) dated and delivered on the 2nd June 2022 in HC. Commercial Suit No.319 of 2019)

JUDGMENT

1. The appeal before us challenges the ruling delivered by the Honourable Justice J. M. Mativo (as he then was) on 2nd June 2021, in High Court Commercial & Tax Division Commercial Suit No. 319 of 2019. The appellant, Lata Suresh Madhyan, being aggrieved by the said ruling, filed the present appeal.

2. The impugned ruling granted a mandatory injunction directing the appellant to vacate the suit property known as L.R. No. 209/16/2, Krishna Park, 3rd Parklands Avenue, Parklands, Nairobi. The court directed the appellant to hand over the suit property to the 4th and 5th respondents.

3. A background to the dispute is that the suit property was sold in a public auction held on 8th October 2019, by the 3rd respondent, acting under the 2nd respondent's statutory power of sale under Sections

90 and 96 of the *Land Act*. Following the public auction sale, the 4th respondent, as the highest bidder, nominated the 5th respondent, who was later registered as the owner.

4. Prior to the sale, the appellant filed a suit against the 1st and 2nd respondents, along with an application seeking an injunction to stop the intended auction. On 26th August 2019, the court granted a temporary injunction on condition that the appellant pays the outstanding auctioneers' fees and costs by the end of business on 30th August 2019; and also deposits 5,000,000 in an interest-earning account in the names of both lawyers, within 20 days. The court further directed that in the event the appellant failed to comply, the respondents were at liberty to proceed with the sale, without further reference to the appellant.

5. There was no evidence on record that the appellant had complied. The appellant then filed an application seeking stay of execution of the auction which was scheduled for 8th October 2019. On 4th October 2019, the court granted the order for stay on condition that the appellant pays the auctioneers fees and costs, in respect of the previous auction and the one that was scheduled for 8th October 2019. The appellant was also directed to deposit 3,000,000 in court by close of business, 7th October 2019. The court further directed that in the event that the appellant failed to comply, the stay would automatically lapse, and the auction scheduled for the 8th would proceed.

6. There was no indication that the order was complied with. The auction proceeded on 8th October 2019. The suit property was bought by the 4th respondent, and registered in the 5th respondent's names.

7. After the sale and being issued with notices to vacate the suit property, the appellant joined the 4th and 5th respondents to the suit by amending the plaint in the main suit. Upon being joined to the suit, and prompted by the appellant's failure to vacate the suit property, the 4th and 5th respondents filed an application dated 18th December 2020, seeking, among other prayers, a mandatory injunction for the appellant's eviction. After giving due consideration to the application, the learned judge granted the mandatory order.

8. Being aggrieved by the ruling, the appellant lodged the present appeal in which he raised several grounds in the memorandum of appeal dated 7th December 2021. The appellant condensed the grounds of appeal into two principal issues for this Court's determination: whether the learned judge erred in law and fact by misapplying the test for the grant of mandatory injunctions; and whether the learned judge erred in law and fact by issuing orders that determined the entire suit at an interlocutory stage of proceedings.

9. On the first issue, the appellant submitted that the principles for granting mandatory injunctions at an interlocutory stage are well-settled, requiring that such an order should only be granted in exceptional circumstances. The appellant relied on Kenya Breweries Ltd & Another vs. Washington O. Okeyo [2002] KECA 284 (KLR), to buttress this submission.

10. The appellant further submitted that although the learned judge cited the applicable principles, he did not identify or justify the exceptional circumstances warranting the injunction. Specifically, the appellant faulted the learned judge for holding that the 4th and 5th respondents had demonstrated exceptional circumstances, but failed to identify with precision how or what these exceptional circumstances were.

11. On the second issue, the appellant submitted that the judge made a finding on a substantive issue, namely, that the 4th and 5th respondents were bona fide purchasers for value without notice, at an interlocutory stage. The appellant contended that this was a premature finding, which effectively determined the suit without a full hearing.

12. The 2nd and 3rd respondents, through counsel Mr. Mutua, based their case on their written submissions dated 23rd April 2024. Mr. Mutua emphasized that this is an interlocutory appeal arising from an interlocutory application which invoked the trial court's equitable jurisdiction and involved the exercise of discretion by the judge. He submitted that for this Court to interfere with such an exercise of discretion, the appellant must demonstrate a misdirection on a matter of principle by the trial judge.

13. Mr. Mutua submitted that the appellant had not shown any such misdirection, noting that the judge clearly identified the applicable principles for the grant of mandatory injunctions. He contended that it is not true that interlocutory mandatory injunctions only issue in exceptional circumstances, although he did not elaborate on this point. He urged that the appeal be dismissed with costs.

14. The 4th and 5th respondents, through counsel Ms. Kibe, relied entirely on their written submissions dated 24th April 2024. They reiterated that the appeal arises from an interlocutory application and that the suit property was sold in a public auction on 8th October 2019 to the 4th respondent, who nominated the 5th respondent, to whom the property is registered. They noted that they were joined to the suit after the sale and that the appellant's amended plaint did not seek specific prayers or remedies against them or make specific allegations of fraud or wrongdoing against them, nor did it seek to set aside the sale of the suit property to the 4th respondent.

15. The 4th and 5th respondents submitted that the decision to grant or refuse an injunction is an exercise of judicial discretion. They relied on the principle that an appellate court will not interfere with a trial court's exercise of discretion unless there is a demonstrated misdirection, citing the case of United India Insurance Co. Ltd., vs. East African Underwriters (Kenya) Ltd., [1985] KLR 898.

16. Counsel submitted that allowing the appeal would amount to an injustice to them as purchasers who bought the property at a public auction. They contended that allowing the appeal could effectively be interpreted as setting aside the order which allowed the public auction to proceed, although that was not the order under appeal. They confirmed the appellant is in occupation of the suit property, but was not paying rent. They urged that the appeal should be dismissed with costs.

17. We have considered the grounds of appeal, the written and oral submissions of the parties, the cited authorities, and the law. The issues for determination are: whether the learned judge misapplied the legal threshold for granting a mandatory injunction; and whether the learned judge erred by determining substantive issues prematurely, thereby removing the substratum of the suit.

18. It is trite law, as submitted by the respondents, and supported by numerous authorities including the United India Insurance Co. Ltd. case, that an appellate court is slow to interfere with the exercise of discretion by a trial court unless it is demonstrated that the judge misdirected himself in law, misapprehended the facts, took into account irrelevant considerations, failed to consider relevant factors, or that the decision is plainly wrong. The appellant bears the burden of demonstrating such misdirection. In Mbogo & Another vs. Shah [1968] EA 93, the court held thus:

> " ...because it has misdirected itself or because it has acted on matters on which is should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion."

19. The first issue raised by the appellant is the alleged misapplication of the test for mandatory injunctions. The appellant correctly submitted that mandatory injunctions at an interlocutory stage are exceptional and granted only in clear cases where exceptional circumstances are shown. The appellant also

conceded that the judge referred to these principles, but argued that he failed to identify the exceptional circumstances with precision. The judge, however, explicitly stated at paragraph 33 of the ruling; -

> "I find no difficulty concluding that the applicant has demonstrated exceptional circumstances".

20. The test established that a court may grant a mandatory injunction at an interlocutory stage only in clear cases and where the court is satisfied that the case is one that plainly warrants such relief. In Kenya Breweries Limited & Another vs. Washington O. Okeyo, (supra), this Court held that:

> "The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury's Laws of England 4th Edn. para 948 which reads:
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> "A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff........ a mandatory injunction will be granted on an interlocutory application".
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> Also in Locabail International Finance Ltd. V. Agroexport and others [1986] 1 ALL ER 901 at pg. 901 it was stated:- "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 thought 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 had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory 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 than was required for a prohibitory injunction."
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> The principles of law enunciated by these decisions have received full approval by the courts within our jurisdiction. See the cases of Belle Maison Limited vs. Yaya Towers Limited H.C.C.C. 2225 of 1992, per Bosire, J. (as he then was) and The Ripples Limited vs. Kamau Mucuha H.C.C.C. No. 4522 1992 per Mwera, J. Mr. Onsando Osiemo, for the appellant, has submitted that the learned Judge ought not to have granted a mandatory injunction against the second appellant and thereby compelling him to release the vehicle at the interlocutory stage as no exceptional circumstances existed, and moreover, the respondent was indebted to the second appellant, a fact not disputed by the respondent."

21. While the appellant challenged the sufficiency of the judge's explanation, this does not automatically demonstrate a misdirection in the application of the principles themselves. The judge, having considered the material before him, exercised his discretion and arrived at the conclusion that the threshold was met. Without a clear showing that this conclusion was based on an error of principle or a misapprehension of facts, this Court cannot substitute its own view for that of the trial judge.

22. The appellant did not dispute his obligation to the 4th and 5th respondents. He did not dispute that they held title to the suit property. The resultant effect was that a mandatory injunction was granted against the appellant, compelling him to vacate the suit property. It was the appellant's obligation to vacate the suit property once it was sold at the fall of the hammer. The property had since been transferred to third parties. It would not be prudent to allow the appellant to steal a match against the 4th and 5th respondents simply because he disputed the sale. He owed them the obligation to vacate the

premises while he pursued other remedies, as there was no order of stay of execution in place, barring the said respondents from taking possession of the suit property.

23. In the circumstances, we concur with the respondents that the appellant has not demonstrated that the learned judge either misdirected himself in principle, or that the exercise of discretion was clearly wrong, to warrant our interference.

24. The second issue concerns whether the learned judge made a finding on a substantive issue at the interlocutory stage. The appellant contended that the learned judge's finding at paragraph *13* regarding the 4th and 5th respondents being bona fide purchasers for value without notice, effectively determined the suit without a full hearing.

25. Although the court cannot conclusively make a finding that a party is a bona fide purchaser at the interlocutory stage, the court may make a provisional or prima facie finding that a party appears to be a bona fide purchaser for value for purposes of determining an interim application. However, such a finding must be expressly qualified as not conclusive and subject to further evidence at trial.

26. In paragraph 29 of the impugned ruling, the learned judge warned himself not to delve into the merits of the subject of the full hearing, as the appellant's suit was still pending. He went on to hold that the appellant's claim was based on the irregular exercise of the statutory power of sale. That being the case, the court held that the 4th and 5th respondents had met the threshold for a mandatory injunction, and that they would suffer an injustice in the broader sense.

27. We have considered the submission that the court must expressly state that a prima facie case has been established before granting the orders sought. However, we find it necessary to clarify the legal position on the requirement to expressly use the phrase "prima facie case" in the context of a mandatory injunction.

28. We are of the view that while the existence of a prima facie case is a requisite legal threshold, it is not mandatory that the court use those precise words, provided the reasoning demonstrates that the threshold has been applied. In Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003] KECA 175 (KLR), this Court held thus:

> " So what is a prima facie case? I would say that in civil cases it is a case in 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. ...But as I earlier endeavoured to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case."

29. This definition underscores the importance of substance over form. The judicial task is to interrogate whether the facts disclose an arguable right deserving of protection, not merely to recite the phrase "prima facie case".

30. In this case, the mandatory injunction sought was to compel the appellant to vacate the suit property, which had already been sold and registered in the name of the 5th respondent following a public auction. The 4th and 5th respondents were joined to the suit after the sale. However, the appellant's pleadings did not have specific allegations of fraud against the 4th and 5th respondents, or an order seeking to set aside the sale as against the 4th and 5th respondents.

31. The judge's finding that the 4th and 5th respondents were bona fide purchasers was not a final determination. Rather, it was part of an assessment of whether they had a prima facie case to justify an order for possession of the suit property.

32. Prima facie findings are permitted at the interlocutory stage to guide the court in determining whether interim relief (such as an injunction, stay, or eviction) should issue. However, such findings are not final, and must not preempt the full trial. In Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] KECA 606 (KLR), this Court stated thus:

> "We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."

33. This reinforces the principle that the court must assess the substance of the claim and not rely on standard language. Provided the analysis in the ruling demonstrates that the court evaluated whether a serious and arguable case exists, the absence of the express term "prima facie case" is not fatal.

34. The right of a registered proprietor under Section 26(1) of the *Land Registration Act* is protected unless it is shown that the title was acquired through fraud or misrepresentation. No such allegations were properly pleaded or proved against the 4th and 5th respondents at this stage.

35. Additionally, Section 99 of the *Land Act* protects bona fide purchasers from having their titles challenged merely due to irregularities in the auction process, provided they were not party to the impropriety. The appellant is at liberty to pursue claims for damages or other remedies against the original parties (e.g., the bank and auctioneer), which remain live in the suit.

36. Given that the suit property had been registered in the 5th respondent's name, he held the legal title, which provided a prima facie right to possession.

37. We find no merit in the submission that the ruling removed the substratum of the case. The claims for damages and mesne profits remain unresolved. Furthermore, the High Court retains jurisdiction to determine the legality of the auction process and grant appropriate remedies where justified.

38. For the reasons set out above, we find no misdirection or error on the part of the learned judge in the exercise of his judicial discretion.

39. Accordingly, the appeal lacks merit and is hereby dismissed.

40. Costs of the appeal are awarded to the 2nd, 3rd, 4th, and 5th respondents.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

S. GATEMBU KAIRU, FCIARB.

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR