



REPUBLIC OF KENYA



KENYA LAW
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**Leawin Limited & another v Rono & 3 others (Environment & Land Case
E022 of 2023) [2024] KEELC 1571 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E022 OF 2023
LC KOMINGOI, J
MARCH 14, 2024**

BETWEEN

LEAWIN LIMITED 1ST PLAINTIFF

LEAH CHELAGAT SAWE 2ND PLAINTIFF

AND

EDWIN KIPNGENO RONO 1ST DEFENDANT

JENGO MALL LIMITED 2ND DEFENDANT

COUNTY LAND REGISTRAR KAJIADO COUNTY 3RD DEFENDANT

KAJIADO COUNTY GOVERNMENT 4TH DEFENDANT

RULING

1. This is the Notice of Motion dated 30th August 2023 brought under;

(Pursuant to Article 40 of *the Constitution* of Kenya 2010, Sections 26 and 80 of the *Land Registration Act*, Order 40 Rules (1) & (2), Order 1 Rule 10(2) of the *Civil Procedure Rules*, 2010 and Sections 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling provisions of the law)

2. It seeks orders;

- a. Spent.
- b. Spent.
- c. Spent.



- d. That an injunction is issued restraining the 1st and 2nd Defendants/Respondents and their respective servants, agents, privies, and proxies from taking possession, acquiring any right whatsoever, selling, leasing, demolishing any structure, developing, evicting the tenants, collecting further rent or in any way dealing with all those properties described Plots No. L.R. 403 B (Now A719), Plot 276 C (Now A728), Plot 832A (Now A738) all within Ongata Rongai Trading Centre, Kajiado County pending the hearing and full determination of the Plaintiff's suit.
 - e. That there be a stay of the proceedings and orders from at the Magistrate's Court at Ngong on ELCOS No. 10 of 2023 – Jengo Mall Limited v Agnes Sakwa and others pending the hearing and full determination of the Plaintiff's suit.
 - f. That order directing the 3rd and 4th Defendants/Respondents herein to nullify the entries and allotment letters issued to the 2nd Defendant and restore/register and issue new allotment letters to 1st Plaintiff/Applicant herein, Leawin Limited as the sole proprietors of the properties known as Plots No. LR 403 B (Now A719), Plot 276 C (Now A728), Plot 832A (Now A738) all within Ongata Rongai Trading Centre, Kajiado County.
 - g. That the costs of and incidentals to this Application be borne by the 1st and 2nd Defendant/ Respondents.
 - h. That such other, further, alternative, or incidental Order (s) as this Honourable Court may deem expedient.
3. The grounds are on the face of the application and are set out in paragraphs A to Q.
 4. The application is supported by the affidavit of Leah Chelagat Sawe the 2nd Plaintiff/Applicant herein, sworn on the 30/8/2023.
 5. The application is opposed. There are grounds of opposition dated 4th October 2023 and the Replying Affidavit sworn on the 18th October 2023 filed on behalf of the 1st and 2nd Defendants/Respondents.
 6. On the, 5th October 2023 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

The Plaintiff's/Applicant's Submissions.

7. They are dated 11th December 2023. Counsel submitted that the 2nd plaintiff owns 90% shares in the 1st Plaintiff. While the 1st defendant owns 10% hence both are directors in the 2nd plaintiff.
8. It is further submitted that following the Judgement by Hon. Okwany J in Petition E029 of 2018, the 1st Defendant fraudulently transferred to himself shares of the 2nd Plaintiff and falsified an affidavit and minutes removing the 2nd plaintiff as director of the 1st plaintiff.
9. It is submitted that the Registrar of Companies unmasked the 1st Defendant, and on 19th July 2022 reverted the shareholding and directorship of the 1st plaintiff to its legitimate state.
10. That the 1st defendant fraudulently transferred the suit properties to the 2nd defendant to illegally defeat the interest of the 2nd plaintiff and nullify the Judgement of Honourable Lady Justice Okwany. He has put forward the cases of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others*.
11. It is also submitted that the 1st and 2nd Defendants have infringed on the plaintiff's rights by illegally dispossessing them of the suit properties.



12. Counsel further submitted that the plaintiffs will suffer irreparably as the suit properties are already registered in the name of a third party the 2nd defendant, who has filed a suit at the Magistrate's Court seeking to evict the tenants from the premises and may demolish the structures thereon.
13. It is further submitted that the purported transfers of the suit properties by the 1st defendant to Rose Chepkoech and subsequently to the 2nd Defendant is untenable.
14. That in the circumstances a mandatory injunction is justifiable in the circumstances.
He has put forward the case of [Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma](#) (2020) eKLR.
15. It is submitted that the court should at this stage nullify the purported transfer of the suit properties.
He prays that the Application be allowed.

The 1st and 2nd Defendants/Respondents Submissions.

16. They are dated 19th January 2024. Counsel submitted that the Plaintiffs/Applicants only produced an alleged letter of allotment to lay a claim over the suit properties. He has put forward the case of [Torino Enterprises Ltd v The AG](#) (2023) KESC 79 KLR.
17. It is further submitted that the plaintiff cannot call upon this court to adjudge the 1st and 2nd defendants as guilty for any alleged criminal complaint against them based on the letter of the office of the Director of Public Prosecution. The 1st defendant is innocent.
18. It is also submitted that the plaintiffs do not have any title to the suit properties hence cannot suffer any irreparable loss.
He has put forward the case of [Pius Kipchirchir Kogo v Franck Kimeli Tenai](#) (2018) eKLR.
19. It is submitted that the balance of convenience tilts in favour of the 1st and 2nd defendants. The 2nd defendant is in occupation and possession of the suit properties.
20. Counsel also submitted that the plaintiffs have not set out the grounds to anchor the prayer for stay of proceedings in the lower court.
He has put forward the case of [Kenya Wildlife Service v James Mutembei](#) (2019) eKLR .
That a similar application for stay has been made before the Ngong Magistrate's Court hence this offends Section 6 of the [Civil Procedure Act](#).
He has put forward the case of [David Ndiu & Others v AG & Others](#) (2021) eKLR.
21. That by virtue of Section 6 of the [Civil Procedure Act](#), this court should not grant this prayer for stay of proceedings.
22. Counsel further submitted that this is not clear case for a grant of a Mandatory Injunction. The plaintiffs do not have a valid title deed over the suit premises. He has put forward the case of [Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma](#) (2020) eKLR . where the Court of Appeal reaffirmed its decision in [Kenya Breweries Limited & Another v Washington O. Okeyo](#) (2002) eKLR .
23. It is also submitted that the plaintiffs have no valid right that can be protected hence this prayer must fail.
24. Counsel also submitted that the plaintiffs' application ought to be dismissed with costs to the 1st and 2nd Defendants/Respondents.



25. I have considered the Pleadings, the Notice of Motion, the Affidavit in support and the response thereto, the rival submissions and the authorities cited. The issues for determination are;
- i. Whether the Plaintiffs/Applicants application meets the threshold for grant of orders of temporary injunction.
 - ii. Are they entitled to orders of Mandatory Injunction?.
 - iii. Whether the Notice of Motion is merited.
 - iv. Who should bear costs of the application?.
26. In considering whether to grant an interlocutory injunction, courts are guided by the principles set out by the Court of Appeal in the celebrated case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR which held:

“In an interlocutory injunction application, the applicant has to satisfy the triple 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) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted...”

27. In the case of *Mrao Ltd v First American Bank Ltd & 2 Others* (2003) KLR 125 the Court of Appeal stated what amounts to a prima facie case.
28. It is the Plaintiffs/Applicants case that the 1st Defendant fraudulently transferred the suit properties to the 2nd Defendant to illegally defeat the interest of the 2nd Plaintiff and to nullify the Judgement of Honourable Lady Justice Okwany.
29. It is their case that they will suffer irreparably if these orders are not granted as the suit properties are already registered in the name of a third party.



30. By virtue of the Judgement of Honourable Okwany J in Petition E029 of 2018: *Edwin Kipngeno Rono v Leawin Limited & Another*. I find that the plaintiffs have established a prima facie case with a probability of success at the trial.
31. It is also not in dispute that the 1st Defendant has fraudulently transferred the suit properties to the 2nd Defendant. I find that the Plaintiffs/Applicants have demonstrated that they will suffer irreparable loss that cannot be compensated by an award of damages.
32. The fact that the 1st Defendant/Respondent has filed a suit in the lower Court being Ngong ELCOS No. 10 of 2023; Jengo Mall Ltd v Agnes Sakwa means that he is determined to dispossess the Plaintiffs of the suit properties.
33. In *Kenleb Construction Ltd v Gatitu Services Station Ltd & Another* (1990) KLR SST Bosire J (as he then was) held that;

“To succeed in an application of injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has right legal or equitable; which requires protection by injunction”

I am satisfied that the Plaintiffs/Applicants deserve this kind of protection.

34. The Plaintiffs/Applicants also seek orders to compel the 3rd and 4th Defendants to nullify the entries and allotment letters issued to the 2nd Defendant. These are orders of Mandatory Injunction. In the case of *Washington Jalango Okumu v Boffar Limited* (2005) eKLR the court held;

“A mandatory injunction ought not be granted in an interlocutory application in the absence of special circumstances and then only in clear cases where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary at which could be easily remedied or where the defendant has attempted to steal a match 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 has rightly been granted and that being a different or higher stand than was required for prohibiting injunction.”

35. I am guided by the above authority in finding that the Plaintiffs/Applicants are deserving of grant of orders of Mandatory Injunction.
36. This is because, all the 1st Defendant/Respondent has done since Honourable Okwany J delivered her Judgement is to attempt to steal a match and on the Plaintiffs/Applicants. All the steps taken have been calculated to dispossess the Plaintiffs/Applicants of the suit properties.
37. This flies in the face of the Judgement in Petition E029 of 2018. The 1st Defendant must be stopped. I therefore find that Orders of Mandatory Injunction ought to issue pending the hearing and determination of this suit.
38. In conclusion I find merit in this application and I grant the orders sought, namely;
- a. That an injunction is issued restraining the 1st and 2nd Defendants/Respondents and their respective servants, agents, privies, and proxies from taking possession, acquiring any right whatsoever, selling, leasing, demolishing any structure, developing, evicting the tenants, collecting further rent or in any way dealing with all those properties described Plots No. LR 403 B (Now A719), Plot 276 C (Now A728), Plot 832A (Now A738) all within Ongata



Rongai Trading Centre, Kajiado County pending the hearing and full determination of the Plaintiff's suit.

- b. That there be a stay of the proceedings and orders from the Magistrate's Court at Ngong on ELCOS No. 10 of 2023 – Jengo Mall Limited v Agnes Sakwa and others pending the hearing and full determination of the Plaintiff's suit.
- c. That order directing the 3rd and 4th Defendants/Respondents herein to nullify the entries and allotment letters issued to the 2nd Defendant and restore/register and issue new allotment letters to 1st Plaintiff/Applicant herein, Leawin Limited as the sole proprietors of the properties known as Plots No. LR 403 B (Now A719), Plot 276 C (Now A728), Plot 832A (Now A738) all within Ongata Rongai Trading Centre, Kajiado County.
- d) That costs of the application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH MARCH 2024.

L. KOMINGOI

JUDGE

In the presence of:

Mr. Omondi for the Plaintiffs.

Mr. T. Ochieng for the 1st, 2nd Defendants.

Court Assistant – Mutisya.

