



REPUBLIC OF KENYA



**Nagida Construction & Engineering Company Limited v Oriedo & another (Environment & Land Case E001 of 2024) [2024] KEELC 1580 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1580 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT & LAND CASE E001 OF 2024**

**E ASATI, J**

**MARCH 14, 2024**

**BETWEEN**

**NAGIDA CONSTRUCTION & ENGINEERING COMPANY LIMITED ..... PLAINTIFF**

**AND**

**DANIEL MATENDE ORIEDO ..... 1<sup>ST</sup> DEFENDANT**

**ERNEST KALAVU KHAVOGOI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 4<sup>th</sup> January 2024 brought by the plaintiff pursuant to the provisions of sections 1, 1A, 3 and 3A *Civil Procedure Act* and article 159 of *the Constitution* of Kenya 2010, seeking for an order of temporary injunction to issue restraining the Defendant from entering, sub-dividing by erecting poles, destroying the applicant's concrete poles and property on land parcel known as Kakamega/cheptulu/1487 which has now mutated into Kakamega/cheptulu/1894 and 1895. The application was supported by the contents of the Supporting Affidavit sworn by Francis Aligula Engoke.
2. The application was opposed vide the contents of the Replying Affidavit of the 1<sup>st</sup> Respondent sworn on 24<sup>th</sup> January 2024 on his behalf and on behalf of the 2<sup>nd</sup> Respondent.
3. The applicant's case is that it bought the suit land from the 1<sup>st</sup> Respondent vide the land sale agreement dated 7<sup>th</sup> July 2021 and paid the entire purchase price. That the applicant took possession and has constructed a factory worth Kshs.30 million on the suit land. That some time towards November 2023, the 1<sup>st</sup> Respondent returned Kshs.150, 000/= being part of the purchase price that was paid to him by the applicant and immediately thereafter invaded the applicant's premises on the suit land with armed goons, destroyed part of the fence and threatened to attack everyone at the applicant's factory premises. The applicant therefore filed the application to restrain the Respondents' actions.



4. The Respondents' case is that the plaintiff breached the said land sale agreement, that the plaintiff had not taken possession or developed the suit land. That the 1<sup>st</sup> Defendant has not sold the entire of the suit land to the 2<sup>nd</sup> Defendant. That the 1<sup>st</sup> Defendant curved part of the suit land for the purpose of initiating his own project when he sensed delay and dishonesty on the part of the plaintiff and sold a portion of the property to the 2<sup>nd</sup> Defendant as a mitigating factor. That the rights acquired by the Defendants are absolute as against all rights of the plaintiff.
5. The application was argued by way of written submissions. I have taken into account the written submissions dated 12<sup>th</sup> February 2024 filed by the firm of D. C. Chitwah & Co Advocates on behalf of the applicant and written submissions dated 8<sup>th</sup> February 2024 filed by Amasakha & Co Advocates on behalf of the Respondents.
6. Under Order 40 Rule 1 of the [Civil Procedure Rules 2010](#) cases in which temporary injunctions may be granted include where it is proved by Affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. In such cases, the court may by order grant a temporary injunction to restrain such act.
7. Further, the grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 that the Applicant must establish a *prima facie case* with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A *prima facie case* was defined by the Court of Appeal in [Mrao Ltd vs First American Bank 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.”
8. In the case, the existence of the land sale agreement for the suit land between and 1<sup>st</sup> Defendant and the plaintiff is not disputed. The 1<sup>st</sup> Defendant's main contention is that the plaintiff breached the agreement. The plaintiff claims that he took possession of the suit land and has invested about Kshs.30 million developing the land. Photographs annexed to the Supporting Affidavit show the developments on the land. Though the Defendants in the first instance denied that the plaintiff had taken possession or developed the suit land, in paragraph 17 of the Replying Affidavit the 1<sup>st</sup> Defendant states that the part of the suit land that he curved out and sold to the 2<sup>nd</sup> Defendant was “outside where the Plaintiff's buildings and construction works and equipment have been established.” And in paragraph 18 he states that there is no prejudice suffered by the plaintiff as the portion curved out of the suit parcel is not affecting the plaintiff's works on part of the suit property. From these averments, there is no doubt that the plaintiff took possession of the suit land and has done developments on the same. The plaintiff has pleaded that the Defendant has made steps to destroy the plaintiff's property and remove him from the suit land. The court finds that the applicant has demonstrated a *prima facie case* with a probability of success and that the applicant stands to suffer irreparable loss if the actions of the Defendants are not stopped. The balance of convenience in my view tilts in favour of maintaining the status quo and preserving the land and the plaintiff's interests thereon pending hearing and determination of main suit. Hearing and disposal of the main suit can be fast-tracked.
9. For the foregoing reasons, I find that the application has merit and allow it as follows:



- a. Pending hearing and determination of the suit herein, an order of temporary injunction is hereby issued restraining the Defendants/Respondents from entering, subdividing by erecting poles, destroying the applicant's concrete poles and property on land parcel known as Kakamega/cheptulu/1487 which has now mutated into Kakamega/cheptulu/1894 and 1895.
- b. Costs to abide the main suit.

Orders accordingly.

**RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 14<sup>TH</sup> DAY OF MARCH 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

.....

**E. ASATI**

**JUDGE**

In the presence of:

Ajevi - Court Assistant.

No appearance for the Applicant.

No appearance for the Respondents.

