



REPUBLIC OF KENYA



EpcO Builders Limited v Ndungu t/a Bhuta Enterprises & 2 others (Environment & Land Case E182 of 2023) [2024] KEELC 3954 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3954 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E182 OF 2023**

EK WABWOTO, J

APRIL 30, 2024

BETWEEN

EPCO BUILDERS LIMITED PLAINTIFF

AND

DANIEL NJOROGE NDUNGU T/A BHUTA ENTERPRISES ... 1ST DEFENDANT

**MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT 2ND
DEFENDANT**

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion Application dated 20th November 2023 which was accompanied by a Supporting Affidavit sworn by Ramji Varsani. The Plaintiff sought the following orders:
 - i. ...SPENT.
 - ii.SPENT.
 - iii.SPENT.
 - iv. THAT this Honourable Court be pleased to issue a temporary injunction restraining the 1st Defendant/Respondent whether by himself or by his servants, agents, employees and/or whomsoever claiming through him from alienating, offering for sale, selling, charging, transferring and/or in any manner whatsoever interfering with the Plaintiff's ownership and peaceful and quiet occupation of land parcel Number L.R. 21937 pending hearing and determination of this application.



- v. THAT this Honourable Court be pleased to issue an order directing the OCS Langata Police Station to enforce and ensure compliance with order 4 above.
- vi. THAT this Honourable Court be pleased to issue a temporary injunction restraining the 1st Defendant/Respondent whether by himself or by his servants, agents, employees and/or whomsoever claiming through him from alienating, offering for sale, selling, charging, transferring and/or in any manner whatsoever interfering with the Plaintiff's ownership and peaceful and quiet occupation of land parcel Number L.R. 21937 pending hearing and determination of this suit.
- vii. THAT this Honourable Court be pleased to issue an order directing the OCS Langata Police Station to enforce and ensure compliance with order 6 above.
- viii. Costs as to this application be provided for.

2. The Application was premised on the grounds that:

- i. The Plaintiff is a bona fide purchaser for value and registered owner of LR No. 21937 (suit property) measuring approximately 0.407 Ha near Wilson Airport within Nairobi.
- ii. That prior to the purchase, the Plaintiff through its advocates performed all the requisite due diligence and was satisfied that the land was encumbered, it proceeded to purchase and transfer the land on 6th May 2020.
- iii. That the Plaintiff began excavating when a group of armed men forcefully removed the Plaintiff's authorized personnel from the pretence that they were trespassing.
- iv. It is during the encounter that the Plaintiff became aware that the 1st Defendant claimed ownership of the said premises. Following this incident, the Plaintiff wrote to the 1st Defendant who responded to the letter.
- v. However, the 1st Defendant continued to interfere with the Plaintiff's peaceful and quiet possession yet he lacks legal claim to the property and neither has the Plaintiff had any dealings with him. The interruptions have forced the Plaintiff to halt any development plans.
- vi. The Plaintiff risks being driven out of the suit property which is registered in its name if the Court does not intervene.

3. The application was opposed vide the 1st Defendant's Replying affidavit dated 15th March 2024 in which it was averred that the 1st Defendant was the lawful proprietor of LR No. 21937(Grant No. LR 159434). It was further argued that there existed two parallel certificates of titles and therefore ABDIWAHAB ABDULLAHII ALI (vendor) did not have good title to the suit property to pass to the Plaintiff/Applicant.

4. It was also averred that the Plaintiff had failed to disclose that they had entered into a Deed of Settlement with the vendor for refund of the purchase and as such, the Plaintiff was acting in bad faith by prosecuting this suit. Lastly, it was submitted that the balance of convenience titled in favour of the



1st Defendant who had laid out all the facts and in the interest of justice, the application ought to be dismissed with costs.

5. No party had filed any written submissions as at the time of writing this Ruling.
6. I have considered the application and the rival affidavits filed. In my view, the sole issue that arises for determination is whether the Plaintiff's application dated 20th November 2023 is merited?
7. The principles upon which this court exercises its discretion in applications for a temporary injunction are now well settled. In *Giella v Cassman Brown & Co. Ltd.* [1973] E.A 358, it was held that an applicant for a temporary injunction must show a prima facie case with a probability of success and such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR the Court of Appeal adopted the definition of a prima facie case that was given in the case of *Mrao Limited v First American Bank of Kenya Limited & 2 Others* [2003] KLR 125 and went on to state as follows:-

“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. ...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 threatened with violation...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.”

8. With regards to the prayers for injunctive orders, this Court is guided by Section 63 of the [Civil Procedure Act](#) and Order 40(1) of the Civil Procedure Rules, where in any suit it is proved by affidavit or otherwise—

- (a) 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; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.[Emphasis Mine]

9. In *Nguruman Limited V. Jan Bonde Nielsen & 2 Others*, Ca No. 77 Of 2012, the Court outlined that:

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

10. It is undisputed that the Plaintiff and 1st Defendant both claim ownership of LR 21937, albeit via separate Grants No IR no 203481/1 and IR No. 159434 respectively. In addition, each party presented their respective titles which are hinged on their transaction with one ABDIWAHAB ABDULLAHII ALI.

11. The evidence presented by the parties at this stage raises questions on the root of title and consequent merits of ownership which should be rightfully tried, heard and determined exhaustively at trial. Therefore, at this juncture, the preservation of the subject matter would be prudent and in the best interest of justice for all parties.

12. In view of the foregoing, this Plaintiff's application dated 20th November 2023 is hereby allowed in terms of its prayers 6 and 7. The costs of the said application shall abide the determination of the main suit.

13. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2024.

E. K. WABWOTO

JUDGE

In the presence of: -

Ms. Maritim for the Plaintiff/Applicant.

Mr. Wachira for the 1st Defendant/Respondent.

N/A for the 2nd Defendant/Respondent.

N/A for the 3rd Defendant/Respondent.

Court Assistant; Caroline Nafuna.

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