



**Rihal Investment Limited & another v Rihal & another (Environment & Land  
Case E087 of 2023) [2024] KEELC 3950 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3950 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E087 OF 2023**

**EK WABWOTO, J**

**APRIL 30, 2024**

**BETWEEN**

**RIHAL INVESTMENT LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**HARJINDER SINGH RIHAL ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JASWINDER SINGH RIHAL ..... 1<sup>ST</sup> DEFENDANT**

**MOHINDER K RIHAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiffs filed a Notice of Motion Application dated 27<sup>th</sup> July 2023 brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 of the *Civil Procedure Rules*, Section 68 and 69 of the *Land Registration Act* 2012. The application was accompanied by a Supporting Affidavit sworn by Harjinder Singh Rihal in which they sought the following orders:

- i. ...Spent.
- ii. This Honourable Court be pleased to issue an inhibition order barring the Defendants either by themselves or their agents from transferring, charging, alienating or dealing in any manner whatsoever with the property Land Reference No. 25407 pending the hearing and determination of this Application.
- iii. This Honourable Court be pleased to issue an inhibition order barring the Defendants either by themselves or their agents from transferring, charging, alienating or dealing in any manner whatsoever with the property Land Reference No. 25407 pending the hearing and determination of this suit.



- iv. This Honourable Court be pleased to issue an order directing the Defendants to deposit in court any rental income arising from property Land Reference No. 25407, or in a joint interest earning account in the names of advocates for both parties pending the hearing and determination of this Application.
- v. This Honourable Court be pleased to issue an order directing the Defendants to deposit in court any rental income arising from property Land Reference No. 25407, or in a joint interest earning account in the names of advocates for both parties pending the hearing and determination of this suit.
- vi. The costs of this Application be provided for.

2. The Application was premised on the grounds that:

- i. The suit property is a developed entailing business premises, offices and shops that generate rental income, The 1<sup>st</sup> Plaintiff is the co-owner of the suit property and received part of the rental income.
- ii. The 1<sup>st</sup> Defendant as director of the 1<sup>st</sup> Plaintiff and elder brother of the 2<sup>nd</sup> Plaintiff managed the affairs of the 1<sup>st</sup> Plaintiff which included receiving the 1<sup>st</sup> Plaintiff's share of the rental income
- iii. Sometime in December 2019, the 2<sup>nd</sup> Plaintiff stopped recovering the monthly stipend which he believed originated from the 1<sup>st</sup> Plaintiff. Upon inquiring, the 1<sup>st</sup> Defendant informed him that it was a good gesture which he was unable to extend any further.
- iv. The 2<sup>nd</sup> Plaintiff then discovered that by transfer dated 12<sup>th</sup> February 2008 the 1<sup>st</sup> Plaintiff 1/3 share of the suit property was transferred to the 2<sup>nd</sup> Defendant for Kshs 5,000,000 which essentially raised the 2<sup>nd</sup> Defendant's share in the property to 2/3.
- v. The 2<sup>nd</sup> Plaintiff disputes the transfer which he claims he could not have executed the documents since he was in the United Kingdom.

3. The application was canvassed by way of written submissions.

4. In the Plaintiffs' submissions dated 20<sup>th</sup> February 2024, it was submitted that relying on the case involving *Giella v Cassman Brown and Dorcas Muthoni & 2 others v Michael Ireri Ngari* [2016] eKLR only three main issues should be determined this being; whether the applicant has established a prima facie case with chance of success, whether the applicants shall suffer irreparable harm if the orders sought are not granted and whether the balance of convenience lies with granting the orders sought.

5. It was submitted that the 1<sup>st</sup> Plaintiff's share of the suit property was fraudulently and illegally transferred to the 2<sup>nd</sup> Defendant and therefore the Plaintiffs stood to be left out of any dealings with third parties. In the event that the suit property was to be transferred, it was submitted that damages would not be sufficient for such a great loss.

6. The application was opposed vide the Defendants' Replying affidavit sworn by Jaswinder Singh Rihal dated 2<sup>nd</sup> November 2023 and submissions dated 21<sup>st</sup> February 2024 in which several key arguments were made, including that:



- i. The plaintiffs have no legal or beneficial interest whatsoever in the suit property and had no legal right to protection. Making reference to entry no. 3 and 6 of the title, it was submitted that ownership was clearly held by the 1<sup>st</sup> Defendant (1/3 share) and 2<sup>nd</sup> Defendant (2/3 share).
  - ii. The recorded transfer, had gone on for 15 years without issue. The 2<sup>nd</sup> Plaintiff's delay in filing the suit was unreasonable and inexcusable.
  - iii. The 1<sup>st</sup> Plaintiff under whom the 2<sup>nd</sup> Plaintiff claims interest on the suit premises has not authorized the 2<sup>nd</sup> Plaintiff to file the suit on its behalf. Additionally, the 2<sup>nd</sup> Plaintiff has not sought leave to file a derivative suit as required under Part IX of the [Companies Act](#) 2015.
  - iv. There was no credible evidence to support the 2<sup>nd</sup> Plaintiff's allegations of fraud.
7. I have considered the application, rival affidavits, submissions and evidence herein. In my view, the sole issue that arises for determination is whether the Plaintiffs' application dated 27<sup>th</sup> July 2023 is merited.
  8. Section 13(7) of the [Environment and Land Court Act](#) outlines an array of powers given to the Court including granting of preservation orders, compensation among others. Section 68 of the [Land Registration Act](#) lives out the powers of the Court by outlining the power of the court to inhibit registered dealings.
  9. Section 91 to 97 of the [Land Registration Act](#) currently recognizes the rights of tenants in common and duly lays out a prescribed manner in which the rights are to be relinquished either by sale, consent or partition. This is echoed in Halsbury's Laws of England, Fourth Edition (Reissue) Volume 39(2) at paragraphs 214-215 as follows in this regard:
    - “214. Determination of union of interests in one person. A tenancy in common may be determined by the union of the various interests, whether by acquisition inter vivos or by testamentary disposition, in the same person, who therefore holds the entirety of the land.
    215. Determination by partition. A tenancy in common may be determined by partition. The legal term 'partition' is applied to the division of land, tenements and hereditaments belonging to co-owners and the allotment among them of the parts so as to put an end to community of ownership between some or all of them.”
  10. In this instance, based on the evidence before the Court, it is unclear as to whether the tenancy in common was rightfully terminated.
  11. 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."

12. 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 Plaintiffs 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.

12. 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) Ally any doubts as to (b) by showing that the balance of convenience is in his favour"

13. The Court's perusal of the evidence confirms that the parties have been engaged in several rounds of litigation over their role as directors of the 1<sup>st</sup> Plaintiff which is seemingly intertwined with the issue of ownership of the suit premise. Bearing this in mind, the Court is cognizant of the delicate balancing act in play of the parties' interests (being relatives) vis a vis their respective long-term investments upon the suit premises. The parties have raised pertinent issues of ownership and the alleged fraudulent transactions which should be rightfully tried, heard and determined exhaustively at trial. In this instance, it is necessary to have issue some interim reliefs preserving the suit property.

14. In view of the foregoing, this Plaintiff's application dated 27<sup>th</sup> July 2023 is hereby allowed in terms of its prayers (c) and (e). Each party shall bear own costs of the application.

PARA 15.

It is so ordered.



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

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**Mr. Khaseke for the Plaintiffs.**

**Ms. Munene for the Defendants.**

**Court Assistant; Caroline Nafuna.**

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