



**Wanjohi v Ngige & another (Environment & Land Case  
E091 of 2023) [2024] KEELC 3515 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3515 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E091 OF 2023  
EK WABWOTO, J  
APRIL 30, 2024**

**BETWEEN**

**ISAAC GATHUNGU WANJOHI ..... PLAINTIFF**

**AND**

**ROBERT MATATHIA NGIGE ..... 1<sup>ST</sup> DEFENDANT**

**ELIZABETH WANJIRU NGIGI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed a Notice of Motion Application dated 22<sup>nd</sup> September 2023 which was accompanied by a Supporting Affidavit sworn by Isaac Gathungu Wanjohi. The Plaintiff sought the following orders:
  - i. ...Spent.
  - ii. ....Spent.
  - iii. That this Honourable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents, servants, officers and/or any other body or entity from selling, transferring, charging, leasing or dealing in any with the properties comprised LR No 14702/31 and LR No 14702/32 pending the hearing and determination of this suit.
  - iv. Costs of this application be provided for.
2. The Application was premised on the grounds that:
  - i. The Plaintiff is a bona fide purchaser of the suit properties having bought them from the Defendants.



- ii. The Plaintiff/Applicant has a legal interest over the properties comprised in LR No 14702/31 and LR No 14702/32.
  - iii. The Defendants are likely to sell, transfer, charge, lease or deal with the properties without regard to the Plaintiff's interest.
  - iv. The Plaintiff stands suffering irreparable damage if the orders are not granted.
3. The application was vehemently opposed vide the 1<sup>st</sup> Defendant's Replying affidavit dated 18<sup>th</sup> October 2023, grounds of opposition, a further replying affidavit sworn by Joseph Mwaniki Gitau and written submissions dated 20<sup>th</sup> February 2024.
  4. It was argued that there was no nexus between the substantive prayers in the Plaint seeking specific performance for LR No 14702/31 and LR No 14702/32 and the sale agreements relied upon which were based on LR No 14702/12-14. The defendants raised issues on the content of the contracts, in specific fundamental changes that had not been counter-signed. In addition, it was argued that by effluxion of time the agreement terms expired within 180 days from 15<sup>th</sup> October 2008. Relying on the cases involving *Morris and Co Ltd v Kenya Commercial Bank* [2003] and *Sunrise Properties Ltd v Fifty Investments Ltd & another* [2007] eKLR it was submitted that the application violated the provisions of Order 40 Rule 2 of the *Civil Procedure Rules*.
  5. The Plaintiff filed a supplementary affidavit dated 4<sup>th</sup> December 2023 and submissions dated 26<sup>th</sup> January 2024. It was submitted that the Defendants have not contested receipt of the purchase price paid by the Plaintiff. Referring to exhibit JMG 2, it was argued that the Defendants had made attempts to sell the parcels to a third party and as such the Plaintiff interests were under threat.
  6. I have considered the application, rival affidavits and written submissions filed by the parties. The Court is of the view that the sole issue that arises for determination is whether the Plaintiff has met the threshold for grant of the injunctive orders sought.
  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. The 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) Ally any doubts as to (b) by showing that the balance of convenience is in his favour”
10. At this juncture, the Court is cognizant of the heavily disputed facts, as presented by the parties. My perusal of the Further Replying affidavit sworn by Joseph Mwaniki Gitau does confirm the nexus between LR 14702/31 and LR 14702/32 and LR No 14702/12-14. Paragraph 2 and 3 states:
- “That the original titles being LR 14702/31 and LR 14702/32 were surrendered to Muritu W. Advocates to undertake the conversion... THAT I am aware that the Titles were surrendered for the purposes of amalgamation, sub division, and sale to other parties one of whom has acquired interest...”
11. Additionally, my perusal of the affidavits filed herein did not find refutable evidence by the Defendants to counter the receipt of alleged purchase price by the Plaintiff. I have also considered the Sale Agreement dated 25<sup>th</sup> February 2023(see JMG-1) between the Defendants and Ernest Kamau Nguri and Emma Nyambura Mwambia (as third parties) and the same is sufficient proof of the Defendants intent to dispose of the suit premises.
12. Undoubtedly, the evidence presented by the parties raises questions as to the validity of the sale contracts and contractual obligations of respective parties. For this reason, the pertinent issues should be distilled and determined in trial.
13. In view of the foregoing, this Court finds that the Plaintiff has met the threshold to warrant the grant of the injunctive orders sought. The application dated 22<sup>nd</sup> September 2023 is merited and the same is hereby allowed under the following terms:
- i. That pending hearing and determination of the main suit an order of temporary injunction is hereby issued restraining the Defendants/Respondents either by themselves, their agents, servants, officers and/or any other body or entity from selling, transferring or charging the properties comprised LR No 14702/31 and LR No 14702/32.



ii. Costs will abide the determination of the main suit.

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. Njenga for the Plaintiff/Applicant.

Mr. Mwaniki for the Defendants/Respondents.

Court Assistant; Caroline Nafuna.

