



**Scaria v Karuga & 2 others (Environment & Land Case  
18 of 2024) [2024] KEELC 4304 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4304 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 18 OF 2024**

**A OMBWAYO, J  
MAY 28, 2024**

**BETWEEN**

**GEORGE SCARIA ..... PLAINTIFF**

**AND**

**HELLEN TIBI KARUGA ..... 1<sup>ST</sup> DEFENDANT**

**ELIF SAFARIS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR NAKURU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

- George Scaria, (hereinafter referred to as the applicant) has come to this court vide notice of motion dated 26<sup>th</sup> Day of February 2024, praying for orders against Hellen Tibi Karuga and Elif Safaris Limited and the Land Registrar Nakuru (hereinafter referred to as the respondents) that pending the hearing and determination of the suit a temporary injunction be issued restraining and/or preventing the 1<sup>st</sup> defendant, by herself, their agents, servants, relatives, and any other person acting under the 1<sup>st</sup> defendants instructions from entering upon, trespassing, interfering, and or in any other way from interfering with the plaintiffs parcel of land registered as Kiambogo/Kiambogo block 2/515(Mwaniki) and a copy thereof be served upon the OCS Mwariki Police Station to ensure compliance. The costs of this Application be provided for. The costs of this Application be provided for.
- The application is premised on the grounds that the plaintiff is the registered owner of all that parcel of land known as Kiambogo/Kiambogo Block 2/515(Mwariki). The plaintiff purchased the subject parcel of land from the 2<sup>ND</sup> defendant herein vide an agreement executed on 27<sup>th</sup> December 2023. At the time of the purchase, the 2<sup>nd</sup> defendant was the registered owner of the subject parcel of land as was shown in the search and a title deed. That subsequent to the said sale, the plaintiff paid the full purchase price to the 2<sup>nd</sup> defendant.



3. Upon the said parcel of land being sold to the plaintiff as stated, and having fully paid the purchase price, transfer and consent forms were duly executed and a valuation of the subject parcel of land was done for purpose of stamp duty. Eventually, the subject parcel of land was transferred to the plaintiff and a title deed issued to him on 23<sup>rd</sup> January 2024.
4. Upon the plaintiff taking possession of the subject parcel of land by fencing, the 1<sup>st</sup> defendant came on to the parcel of land and prevented the workers instructed by the plaintiff from continuing with the fencing, and started to lay claim that the subject parcel of land belongs to her deceased husband.
5. The plaintiff and the 1<sup>st</sup> defendant went to the lands office on a later date and from the records availed it confirms that the land was transferred to the plaintiff by and/or from the 2<sup>nd</sup> defendant, but there were other previous owners prior to the 2<sup>nd</sup> defendant.
6. The 1<sup>st</sup> defendant herein made a report to Mwariki police station over the said land dispute and the officers from the said station under the 1<sup>st</sup> defendant instructions resorted to harassing and intimidating the plaintiff herein.
7. A further complaint has been made to the DCI Nakuru by the 1<sup>st</sup> defendant herein and the plaintiff was summoned there, where he appeared and presented 3 copies of his ownership documents of the subject parcel of land and where he recorded a statement.
8. According to the plaintiff, the actions of the 1<sup>st</sup> defendant of preventing the plaintiff from occupying the subject parcel of land and further, by using police officers to harass and intimidate the plaintiff are illegal and ought to be stopped by this honorable court. The actions of the defendant are unlawful and are occasioning the plaintiff loss and damage. The plaintiff has established a prima facie case to warrant the orders sought. The application is supported by the affidavit of George Scania that reiterates the grounds of this application.
9. In the replying affidavit the 1<sup>st</sup> respondent states that the plaintiff's title was obtained unprocedurally because she still has the original title in the names of Abraham Tibi Karuga Gachuhi. She has a certified copy of transfer of land in favour of Abraham Tibi Karuga Gachuhi. She has produced original certificate of official search dated 2<sup>nd</sup> July 2012 in the name of the deceased.
10. I have considered the application and do find that the root of the plaintiff's certificates is under challenge. It is not clear how Moses Maina Kariuki became a registered owner. It is possible that he was a conduit of an illegality because the 1<sup>st</sup> defendant still has the original title. The court of appeal has stated that for a temporary injunction to be granted, three issues must be satisfied. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the locus classicus and the over quoted judicial decision of *Giella Versus Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates 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 rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states



are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

11. In the judicial decision of *Mrao Ltd Versus First American Bank of Kenya Ltd (2003) ECLR* in which the Court of Appeal gave a determination on a prima facie case. The court stated that:

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

12. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) eCLR* provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

13. Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. In the case of *Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) ECLR* which defined the concept of balance of convenience as:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

14. In the case of *Paul Gitonga Wanjau Vs Gathuthis Tea Factor Company Ltd & 2 others (2016) eCLR*, the court dealing with the issue of balance of convenience expressed itself thus:-

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”



15. In this case, I do find that the plaintiff is trying to get possession of the property from the 1<sup>st</sup> defendant not the 2<sup>nd</sup> defendant who allegedly sold the plaintiff the property. It is not clear whether the 2<sup>nd</sup> defendant obtained possession from Moses Maina Kariuki. I do find that since the property is registered in the names of the plaintiff it cannot be sold by the 1<sup>st</sup> defendants because she is not the registered owner. Moreover, there is a restriction entered by the Land Registrar Nakuru thus no dealings can be undertaken by any person. A temporary injunction is meant to pre-empt wastage of the property. There is no evidence that the property is being wasted. I do find that though the plaintiff has established a prima facie case with a likelihood of success as the property is in his name, he has not established that he will suffer irreparable loss of injunction if not granted. He has not shown that the defendant will not compensate him if he succeeds in the suit. Moreover, the balance of convenience tilts towards not granting an order of temporary injunction because the 1<sup>st</sup> defendant is in possession of the land and a grant of temporary injunction will amount to an eviction hence the 1<sup>st</sup> defendant will be inconvenienced. The upshot of the above is the application is dismissed. Costs in the cause.

Ruling dated, signed and delivered this 28<sup>th</sup> May 2024.

**A. O. OMBWAYO**

**JUDGE**

ELC LC 18 OF 2024	0
-------------------	---

