



**Nyutho v Njoroge & 3 others (Environment & Land Case
98 of 2013) [2024] KEELC 4712 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4712 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 98 OF 2013**

J OMANGE, J

JUNE 10, 2024

BETWEEN

MARGARET WAKUTU NYUTHO PLAINTIFF

AND

JOSEPH KIARIE NJOROGE 1ST DEFENDANT

DOMINIC KIBIGO KARANJA 2ND DEFENDANT

MAURINE KAWIRA KIBIGO 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. In the application dated 28th March, 2023 the Plaintiff seeks various injunctive orders on grounds that on the 27th March, 2023 the Plaintiff received reports that unknown persons had invaded the suit property and were fencing the same. The Plaintiff avers that she believes that the unknown persons are agents of the Defendants who should be restrained from interfering with the suit property. She also asked the court to order that the land records at the Ministry of Lands be preserved.
2. The 2nd and 3rd Defendant opposed the application which they described as delaying the matter unnecessarily since the matter had already proceeded substantially. They indicated that they had no objection to orders of status quo being maintained.
3. The 5th Defendant on his part opposed the application on grounds that the Plaintiff had not established that she holds title over the suit property. Neither was evidence adduced to confirm that she is in possession of the suit property.

The Director of the 5th Defendant deposed that the 5th Defendant lawfully purchased the suit property from the 2nd and 3rd Defendant whom the Plaintiff and 1st Defendant had sold the suit property to. That the title by the Plaintiff and 1st Defendant had been nullified by the court.



4. Counsel for the Plaintiff did not submit on the prayers for injunction opting instead to request the court for an order of status quo. On the other hand, counsel for the 2nd and 3rd Respondent submitted that the Plaintiff had not proved a prima facie case as the suit property is not registered in her name. Further counsel argued that the suit is time barred.
5. Counsel for the 5th Defendant contended that the Plaintiff has not brought any documentary evidence to prove the claim of ownership and as such has not demonstrated any proprietary interests in the suit property. Counsel submitted that the Plaintiff had failed to establish a prima facie case as envisaged in the Court of Appeal case of *Mrao Ltd Versus First American Bank of Kenya Ltd* [2003] eKLR.
6. Having considered the application and the submissions by all Counsel the only issue for determination by the Court is whether the application for injunction is warranted.
7. The law on interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the *Civil Procedure Rules* as follows:

“Where in any suit 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; or 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 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.”
8. The principles for grant of injunction are well settled by the locus classicus of *Giella vs Cassman Brown & Company Limited* [1973] E.A. 358., where the court stated thus:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
9. In *Nguruman Limited vs Jan Bonde Nielsen & 2* the Court of Appeal had this to say on prima facie case; “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”
10. In the instant case, the Plaintiff while claiming ownership has not produced any evidence for this claim. Neither has she disclosed fully the facts supporting her case which would assist the court to reach a fair determination on the application. For instance, while she says those who invaded the suit property are agents of the Defendants, she does not clearly explain how she reached this conclusion.
11. While the court is not required to make any findings of the fact at this interlocutory stage, the court is of the view that a party who wishes to have the court exercise discretion in their favour should present all the facts before the court, which the Plaintiff has failed to do so.



12. This court would have ordinarily considered issuing an order of status quo. However, in this case it is not clear from the account by the Plaintiff and the 5th Defendant what the status quo is obtaining on the suit property's. In the case of *Bia Tosha Distributors Vs Kenya Breweries Limited & 6 Others* petition 15 of 2020(2023) KESC 14 (KLR) Constitutional judicial review (17th February 2023) the Supreme Court cautioned on issuing status quo orders when it is not very clear what the status quo is.
13. I find that this is a case where justice would not be served by issuing orders which are likely to cause greater confusion. As such I find that the application has no merit and is dismissed with costs to abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON 10TH DAY OF JUNE, 2024 VIA MICROSOFT TEAMS.

J. OMANGE

JUDGE

In the presence of: -

- Ms. Wambua for 2nd and 3rd Respondents
- Mr. Thimba for the 5th Respondent
- Mr. Bariki for Plaintiff
- Court Assistant -Steve

