



**Kibwari PLC & another v Bett & another (Environment & Land Case E011 of 2024) [2024] KEELC 4682 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4682 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E011 OF 2024**

**JM ONYANGO, J**

**JUNE 11, 2024**

**BETWEEN**

**KIBWARI PLC ..... 1<sup>ST</sup> PLAINTIFF**

**TOIYOI INVESTMENT LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DAVID BETT ..... 1<sup>ST</sup> DEFENDANT**

**RISPAH BETT ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiffs filed a Notice of Motion dated 6<sup>th</sup> March 2024 seeking an order of temporary injunction to restrain the Defendants from interfering with the land parcel known as title L.R No. 8451/39 pending the hearing and determination of the suit herein.
2. The application is supported by the affidavit of Dennis Gitaka, the Legal Company Secretary of the 1<sup>st</sup> Plaintiff sworn on the 5<sup>th</sup> March 2024. In the said affidavit he depones that the 1<sup>st</sup> Plaintiff is the registered owner of land parcel L.R No. 8451 measuring 52 acres having purchased the same from the 2<sup>nd</sup> Plaintiff which is a sister company of the 1<sup>st</sup> Plaintiff. The 2<sup>nd</sup> Plaintiff in turn purchased the suit property from the Defendants who sold them a portion of the original parcel of land known as L.R No. 8451 /26 measuring 40.47 Ha (approximately 100 acres).
3. Mr Gitaka has further deponed that the Respondents after selling their land remained with the parcels of land known as L.R No. 8451/40, 8451/41,8451/42 and 8451/43 measuring a total of 48 acres. However, they did not vacate a portion of parcel 8451/39 measuring 2acres which is currently registered in the name of the 1<sup>st</sup> Plaintiff.
4. It is the Applicants' contention that they have constructed a residential house, cottage, kitchen and pit latrine with a bathroom for the Defendants on their land but the Defendants have refused to move



from parcel L.R No. 8451/39 and are now occupying the said parcel thus depriving the plaintiffs of the use thereof.

5. The application is resisted by the Defendants through the Replying Affidavit of David Bett and Rispah Bett jointly sworn on the 12<sup>th</sup> April 2024 in which they confirm that they are in occupation of a portion measuring 2 acres forming part of land parcel L.R No 8451/39 where they have been living since 1992.
6. The Defendants confirm that they entered into a sale agreement with the 2<sup>nd</sup> Plaintiff for the sale of L.R No. 8451/26 but state that the 2<sup>nd</sup> Plaintiff did not honour their part of the bargain by off-setting the Defendants' loan of Kshs.4,053,969 with Agricultural Finance Corporation and there is an outstanding balance of Kshs.2,367,680.80 which the 2<sup>nd</sup> Plaintiff has never paid.
7. It is the Defendants' averment that following the 2<sup>nd</sup> Plaintiff's failure to pay the outstanding balance of the purchase price, it was agreed that the Defendants would retain 2 acres out of land parcel L/R No. 8451/39.
8. The Defendants therefore depose that the application is an abuse of the court process as it is full of misrepresentations.
9. The application was canvassed through written submissions and both parties filed their submissions which I have considered.

### **Analysis and Determination**

10. The only issue for determination is whether the Applicants have satisfied the conditions for the grant of a temporary injunction.
11. The law on temporary injunctions is provided under Order 40(1) (a) and (b) of the [Civil Procedure Rules](#) 2010 as follows:

“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 grant a temporary injunction to restrain such act or make such other order to stay and prevent 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.”

12. The conditions that an applicant must satisfy in applications for injunctions were set out in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, where the Court expressed itself in the following terms:

“Firstly, 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.”



### **Prima Facie Case**

13. In the instant case, the Applicants have demonstrated that the 1<sup>st</sup> Applicant is the registered owner of the suit property. Although the defendants have not denied that they sold the suit property to the 2<sup>nd</sup> Plaintiff who in turn sold it the 1<sup>st</sup> Plaintiff, they have alleged that the 1<sup>st</sup> Plaintiff never paid the full purchase price. They later entered into subsequent agreement where the 1<sup>st</sup> Plaintiffs constructed a house for the Defendants and allowed them to occupy a portion of the suit property. This is therefore not a clear case where the Applicants have established a prima facie case with a probability of success.

### **Irreparable Damage**

14. With regard to the second condition, there is no averment by the Applicants that the Respondents intend to waste, damage alienate or dispose of the suit property before the suit is heard and determined. The Applicants have therefore failed to demonstrate that they would suffer irreparable loss that cannot be compensated by damages, if an injunction is not granted.

### **Balance of Convenience**

15. At this stage, the court is not enjoined to determine the rights of the parties with finality. What the court is concerned with it to ensure that the suit property is preserved pending the hearing and determination of the main suit. Since the Respondents have not denied that, the Respondents have been occupying the suit property since 1992, the balance of convenience tilts in the Respondents' favour.
16. In the circumstance, this is a proper case in which the status quo should be maintained to ensure that none of the parties interferes with the suit property until the case is heard and determined.
17. Accordingly, I direct that the status quo obtaining as at the date of this ruling be maintained pending the hearing and determination of the main suit. This means that the Defendants shall continue occupying the portion of land parcel known as L.R No. 8451/39 measuring 2 acres where they have been staying and that they shall not waste, construct new structures, part with possession, sell, transfer, charge or dispose of the same until the case is heard and determined.
18. The costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11<sup>TH</sup> DAY OF JUNE 2024.**

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**J.M ONYANGO**

**JUDGE**

**In the presence of;**

1. Mr. Kimutai for the Plaintiffs/Applicants
2. Mr. Rotich for the Defendant/Respondents

Court Assistant: Brian

