



**Naker & 3 others v Thairu (Environment & Land Case  
12B of 2024) [2024] KEELC 5746 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5746 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 12B OF 2024**

**JG KEMEI, J  
JULY 30, 2024**

**BETWEEN**

**MAHESHCHANDRA RAMNIKLAL NAKER ..... 1<sup>ST</sup> PLAINTIFF  
JAYANT RAMNIKLAL NAKER ..... 2<sup>ND</sup> PLAINTIFF  
JITENDRA RAMNIKLAL NAKER ..... 3<sup>RD</sup> PLAINTIFF  
NEETA NAKER & PALLAVI MAHESHCHANDRA NAKER (IN THEIR  
CAPACITY AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF  
KANTABEN RAMNIKLAL NAKER AS WELL AS RAMNIKLAL MANISHAKER  
NAKER AND/OR R AMNIKILAL MANISHAKER NAKER WHO OPERATED  
AS AAREM INVESTMENTS) ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**MICHAEL KIMANI THAIRU ..... DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants filed the instant Motion dated 18/9/2023 seeking Orders That;
  - a. Spent.
  - b. Spent.
  - c. An injunction do issue restraining the Defendant/Respondent whether by himself, his servant, agents or employees as well as any and all other persons claiming any interest or right in the suit property land reference number 4953/1977 under him them or otherwise from entering onto or trespassing upon or occupying or using or remaining thereon or continuing to trespass or from taking possession of or damaging, wasting, developing, selling, leasing, alienating, transferring, charging, mortgaging, or in any way from dealing howsoever with all that parcel known as Land Reference Number 4953/1977 (herein the suit property) for an initial period



of 14 days and thereafter until the inter partes hearing upon service of this Application on the Defendants and until the hearing and final determination of the suit or until further Orders of this Honorable Court.

- d. Spent.
  - e. Costs of this Application be provided for.
2. The application is based on the grounds on the face it which are reiterated in the Supporting Affidavit of even date sworn by Jayant Naker on behalf of all Applicants pursuant to copy of authority marked JN-2. He deponed that he is the partner of Aarem Investments Ltd, a general partnership with beneficial interest in the suit property pursuant to their principal having fully paid the Respondent for the suit property. Copy of the certificate of registration of the partnership is annexed as JN-1. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were in partnership with the late Ramniklal Manishanker Naker and Kantaben Ramniklal Naker while the 4<sup>th</sup> Applicant comprises of the executrixes of the Estate of the late Kantaben Ramniklal Naker, their mother, as shown by the copy of grant of administration (JN-3) issued on 6/3/2023. That the Respondent is the owner of the suit land as shown by copy of allotment letter dated 28/5/1991 annexed as JN-4. That sometime in 1991, their father the Late Ramniklal Naker entered into a sale agreement (JN-5) with the Defendant to purchase the suit property for Kshs. 600,000/-. That by the time of his demise in 1999, their late father had not been issued with title of the suit land but that notwithstanding he used to pay land rates which also their late mother continued to pay as shown by annexure JN-6. The deponent outlined a series of events which according to him hampered the transfer of the suit land title to them including succession proceedings of the estate of their late father; closure of Nairobi land office for a period of about 18 months; discovery of a fake duplicate title of the suit land issued to Victor Kangethe leading to the filing of the Defendant's suit in Thika Environment and Land Court namely Michael Kimani Thairu Vs. Peter Kinyanjui Gedraph & Another and that yet all this time the Respondent had assured the Applicants that their interests in the suit land were secured. Copies of their correspondences with the Respondent were annexed as JN12. That however, the Respondent suddenly raised the issue of costs expended in obtaining the suit land title deed and alluded to lack of spousal consent to enable the transfer of the suit land to Aarem Investments. According to the deponent, the requirement of spousal consent cannot apply retrospectively noting that it was not a prerequisite in 1991 when the sale agreement was entered. Accordingly, that the Respondents move to put a 'For sale' sign (JN-14) on the suit property causes the Applicants apprehension that the Respondent may illegally and fraudulently dispose of the suit land despite their beneficial interests aforesated.
3. Opposing the application, the Respondent Michael M.K Thairu filed his Replying Affidavit sworn on 11/10/2023. He deposed that the Applicants have not satisfied the requirements of a prima facie case as laid in the case of *Giella Vs. Cassman Brown & Co Ltd* (1973) E A 358 and in particular that the Applicants have not proven that they are bonafide purchasers by paying the entire purchase price; the sale agreement relied on is undated save for indicating the year 1991 and such a claim is now time barred and having not demonstrated occupation or use of the suit land from the date of purchase being over 12 years, their claim is barred by operation of the [Limitation of Actions Act](#).
4. In rebuttal, the Applicants filed a Supplementary Affidavit sworn on 16/1/2024. It was averred that it is not true that the purchase price of the suit property has not been paid. That their List of Documents dated 18/9/2023 and annexures J-11 and J-12 contain correspondence from Ramniklal Naker and his daughter Daksha confirming he had finished all payments in respect of the suit property. That the sale agreement entered into was self-executory and until the Defendants was able to transfer the title to Aarem Investments the common law doctrine of conversion and equitable ownership crystallized in favor of Aarem Investments. That the Applicants' List of Documents dated 18/9/23 (item 12) shows



copies of rates and rates payments by the late Ramnikial and later by his widow up to the year 2000 which when taken in totality proof ownership of the suit property.

5. On 21/2/2024, directions were taken and parties agreed to prosecute the Application by way of written submissions.
6. The firm of Sarange Mwaniki & Co. Advocates filed submissions dated 16/1/2024 on behalf of the Applicants. A singular issue was drawn for determination; whether the Applicants have met the threshold for grant of injunction. Outlining the principles set out in the case of *Giella Vs. Cassman Brown Company Limited* (1973) EA 358, the Applicants highlighted that they established a prima facie case on the strength of a valid sale agreement containing the name of the parties to this suit, description of the suit property and its purchase price. That it has been shown that the Respondent re-acquired the original title deed from the Applicants after good faith discussions between them to institute a suit in Environment and Land Court Thika, [\*Michael Kimani Thairu Vs. Peter Kinyanjui Gedraph & Another\*](#) [2015]eKLR. That upon delivery of Judgment in 2019, the title was upheld but the Respondent has refused to transfer the suit property's ownership to its rightful owners.
7. On irreparable injury, it was submitted that the Respondent's move to put up notice of sale of the suit land amounts to illegal and fraudulent disposal of the suit property which he has no interest in that such an action curtails the Applicants' right of their proprietary rights.
8. Last but not least on the limb of balance on convenience, the Applicants posited that if the Orders sought are not granted and the suit property is adversely dealt with, the proceedings will be rendered nugatory and a mere academic exercise.
9. On the other hand, the Respondent through the firm of through Muigai, Kemei & Associates filed submissions dated 4/3/2024. The Respondent submitted that the Applicants have a convoluted story as the basis of their application. That their claim of paying the purchase price is not supported by evidence. That the Applicants were not parties to the contract but it was their late father who entered into a contract with the Defendant in November 1991. That at the time of their father's demise in April 1999, the contract had lapsed by effluxion of time and in any event, the suit property was not included in his assets a fact confirmed by the certificate of Grant dated 26/6/2001. Ultimately it was the Respondent's position that the Applicants' claim is time barred by Sections 7 & 18 of the [\*Limitation of Actions Act\*](#). Accordingly, that the Court is devoid of jurisdiction and the prayer for injunction cannot issue. Reliance was placed on the case of [\*Monata Matiko Chonchorio Vs. John Marwa Chabaro\*](#) [2012] eKLR.
10. Having considered the rival evidence and submissions before Court, the sole issue for determination in my view is whether the Applicants have met the criteria for the grant of an order of temporary injunction.
11. The relevant law on temporary injunction is enshrined in Order 40 rule 1 of the [\*Civil Procedure Act\*](#) that; -

“Cases in which temporary injunction may be granted [Order 40, rule 1.]

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.”

12. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Vs. 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), establish his case only at a prima facie level, b) demonstrate 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.”

13. Flowing from the above text, the Plaintiffs ought to, first, establish a prima facie case. The Applicants submitted that they have established a prima facie case and relied on the judicial decision of *Mrao Ltd Vs. First American Bank of Kenya Ltd* (2003) eKLR 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.”

14. According to the Applicants, the sale agreement between the Respondent and Aarem Investment is valid and enforceable and is in tandem with the provisions of Section 3(3) *Law of Contract Act* as it contains names of the parties, the suit land description, the purchase price and conditions thereto. That the Respondent having re-acquired the suit and title pursuant to this Court Judgment in the Thika Environment and Land Court *Michael Kimani Thairu Vs. Peter Kinyanjui Gedraph & Another* [2015] eKLR, the title ought to pass to its beneficial owners, the Applicants.
15. Denying the foregoing, the Respondent posited that the Applicants have a long-convoluted history and relevantly they were never involved in the sale agreement. That it was their late father who entered the sale agreement in 1991 and according to him, a claim of ownership cannot arise due to effluxion of time as stipulated by Sections 4(1)a, 7 and 18 of the *Limitation of Actions Act*. In addition that the Applicants have never been in possession of the suit land.
16. The Applicants annexed JN5 being the copy of the sale agreement entered between the Respondent and Aarem Investments. The agreement is undated and provides for the purchase price as Kshs. 600,000/- for land known as Thika Municipality Plot No. 103131/11b which agreement was subject to the Law of Society of Kenya conditions of sale 1989 Edition. The Respondents have not contested the said agreement but seem to allude to time bar to the agreement. To that end I find that the Applicants have demonstrated a prima facie case in their favor.



17. Secondly, the Applicants have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The decision of *Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai* (2018) eKLR 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.”

18. In light of the analysis in para 16 above, I am not persuaded that the Applicants have shown they will suffer an irreparable injury that cannot be compensated by an award of damages.

19. Thirdly, the Applicants have to demonstrate that the balance of convenience tilts in their favour. In the case of Pius (supra) the concept of balance of convenience was defined 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.”

20. Whereas the Applicants claim beneficial interests arising from the sale agreement entered into in 1991 by their late father and the Respondent, the Respondent appears to admit as much but states that the plaintiffs have never been in occupation of the suit land. Further that their claim in any event is time barred under the *Limitation of Actions Act*. I am of the view that whether or not the claim is time barred is a matter of evidence that this Court can only determine upon full hearing of the suit. The beneficial ownership also is a matter of evidence that this Court can rightly determine at the opportune time. The Applicants produced JN -14 a sign of putting up the suit land for sale by the Respondent as a basis of the Applicants’ apprehension of disposal of the suit land. The Respondent has not refuted this averment.

21. In conclusion therefore and guided by the proviso of Order 40 Rule 1 of the *Civil Procedure Rules* above, I find that this is a proper case for the Court to grant status quo order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the suit property pending the hearing and determination of the suit.

22. The Application is allowed.

23. Costs shall be in the cause.

24. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30<sup>TH</sup> DAY OF JULY 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**



## **JUDGE**

Delivered online in the presence of;

Ms. Ongaki for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs

Mary Muigai for the Defendant

Court Assistants – Phyllis/Oliver

