



Kangatta Properties Limited v Kagotho & 3 others (Environment & Land Case E192 of 2024) [2024] KEELC 5805 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5805 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E192 OF 2024**

**JO MBOYA, J
JULY 29, 2024**

BETWEEN

KANGATTA PROPERTIES LIMITED APPLICANT

AND

PETER KAGOTHO 1ST DEFENDANT

JENIFFER MUNJIRU KARANJA 2ND DEFENDANT

THE CHIEF LANDS REGISTRAR 3RD DEFENDANT

ESHRAQ LIMITED 4TH DEFENDANT

RULING

Introduction And Background:

1. The Plaintiff/Applicant herein, which is a limited liability company has approached the court vide notice of motion application dated the 13th May 2024; brought pursuant to the provisions of Sections 1A, 1B, 3A and 27 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya; and Order 22 Rule 22; Order 40 and Order 51 of the Civil Procedure Rules 2010 and in respect of which the Plaintiff/Applicant has sought for the following reliefs;

- i.Spent
- ii. That pending the hearing and determination of the suit, there be temporary orders of injunction restraining the 4th respondent whether by themselves, their agents and or servants employees, assigns, successors nominees or anybody taking or assuming title from any one of them or otherwise however described be temporarily enjoined from transferring, alienating, selling, disposing off, subdividing, fencing, making use of, charging, breaking into, entering, demolishing, and or remaining thereon and/or undertaking any other destruction or in any manner interfering with the applicant's quiet enjoyment and exercise of its proprietary rights of



the suit property known as Nairobi Block/40/526(Formerly LR NO 209/3531/15) situated off park Road Nairobi.

- iii. That the OCS Pangani Police Station to Maintain Peace and order while overseeing compliance with these orders.
 - iv. That costs of this Application be provided for.
2. The instant application is premised and anchored on numerous [various] grounds which have been highlighted at the foot of the application. Furthermore, the application is supported by the affidavit of Peter Kimani Kangata [deponent] sworn on the 13th May 2024 and to which the deponent has exhibited a total of six [6] documents.
 3. Upon being served with the said application, the 1st and 2nd Defendants/Respondents filed a Replying affidavit sworn by Jenifer Munjiru Karanja [the 2nd Defendant/Respondent] and which affidavit is sworn on the 10th June 2024.
 4. On the other hand, the 4th Defendant has responded to the instant application vide Replying affidavit sworn by Shafi Mohamed Bihi as well as grounds of opposition dated the 24th June 2024. Instructively, the 4th Defendant/Respondent contends that the suit property was lawfully sold and transferred to and in her favour and that currently same [4th Defendant/Respondent] holds a certificate of title to the suit property.
 5. Suffice it to point out that the application beforehand came up for hearing on the 27th May 2024 and whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of written submissions. Consequently and in this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
 6. Pursuant to the directions by the court, the Plaintiff proceeded to and filed written submissions dated the 3rd June 2024; whereas the 1st and 2nd Defendants/Respondents filed written submissions dated the 13th July 2024. Furthermore, the 4th Defendant filed written submissions dated the 15th July 2024.
 7. The written submissions [whose details have been highlighted in the preceding paragraphs] form part of the record of the court.

Parties' submissions:

a. Applicants' submissions:

8. The Applicants herein filed written submissions dated 3rd June 2024; and wherein the Applicant has adopted the ground contained at the foot of the application as well as the contents of the supporting affidavit thereto. Furthermore, the Applicant has thereafter raised, highlighted and canvassed four [4] pertinent issues for due consideration and determination by the court.
9. Firstly, learned counsel for the Applicant has submitted that the suit property lawfully belongs to the Applicant and thus the Applicant herein is entitled to exclusive and absolute possession and use thereof. In this regard, the Applicant has invited the court to take cognizance of the certificate of title, which has been annexed as PKK-1, to the supporting affidavit.
10. Besides, the Applicant herein has contended that even though the suit property lawfully belonged to and was registered in the name of the Applicant, the same [suit property] was fraudulently transferred to and registered in the name of the 1st and 2nd Defendants, who thereafter sold and disposed of same [suit property] to and in favour of the 4th Defendant. However, learned counsel for the Applicant has



contended that the sale, transfer and eventual registration of the suit property to and in favour of the 4th Defendant was/is fraudulent and illegal and thus the 4th Defendant/'Respondent has no lawful rights to the suit property.

11. At any rate, learned counsel for the Applicant has invited the court to take cognizance of the discrepancies appearing in the certificate of lease which was issued to and in favour of the 1st and 2nd Defendants/Respondents vis a viz the certificate of title which has since been issued to and in favour of the 4th Defendant. Instructively, counsel has pointed out that the discrepancy evident thereunder is a pointer to fraud and illegality, which ought not to be sanctioned.
12. Secondly, learned counsel for the Applicant has also submitted that by virtue of having being the lawful proprietor over and in respect of the suit property, the Applicant herein shall be disposed to suffer irreparable loss, unless the orders of temporary injunction are issued and or granted.
13. Besides, the Applicant has posited that same has a direct claim to challenge the powers pertaining to and concerning the manner in which the suit property was sold to and transferred in favour of the 4th Defendant/Respondent.
14. Thirdly, the counsel for the Applicant has submitted that the Applicant herein has established and or demonstrated a basis [balance of convenience] to underscore that an order of temporary injunction ought and should be granted.
15. To buttress the submissions that the Applicant herein has established and demonstrated the requisite ingredients towards granting an order of temporary injunction, learned counsel for the Applicant has cited and referenced inter-alia *Giella v Casman Brown & Co Ltd* [1973] EA; *Satros Ayuma & 11 Others v Registered Trustees of the Kenya railways Staff Benefits Scheme & 2 Others*; *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003]eKLR and *East African Portland Cement Ltd v Capital Markets Authority & 4 Others* [2014]eKLR, respectively.
16. Fourthly, learned counsel for the Applicant has also submitted that the instant suit and by extension the Application for temporary injunction are not barred/prohibited by the doctrine of res-judicata either in the manner contended or at all. For coherence, learned counsel for the Applicant has submitted that previous suit, namely, ELC No. E059 of 2023, which had hitherto been filed by the Applicant herein and which concerned the same suit property [sic] abated on account of want of summons to enter appearance.
17. To the extent that the said suit, namely, ELC No. E059 of 2023, was neither heard nor determined on merits, Learned Counsel has thus contended that the invocation of the doctrine of res-judicata is therefore misconceived and hence thus legally untenable.
18. Based on the foregoing submissions, learned counsel for the Applicant has therefore implored the court to find and hold that the Applicant herein has duly established and demonstrated the requisite ingredients to warrant the grant of the application beforehand.
19. Further and in any event, it has been contended that unless the orders of injunction are granted and/or issued, the suit property shall be exposed to alienation and/or wastage, which situation will destroy the substratum of the case herein.
20. In a nutshell, the Applicant herein invites the court to find and hold that the application beforehand is meritorious and thus same ought to allowed.



b. 1st & 2nd defendants'/respondents'submissions:

21. The 1st and 2nd Defendants/Respondents have filed written submissions dated the 13th July 2024 and in respect of which same, has adopted the contents of the Replying affidavit sworn on the 10th June 2024; and thereafter highlighted and canvassed three [3] pertinent issues for consideration and determination.
22. First and foremost, learned counsel for the said Respondents has submitted that the Applicant herein had previously filed a similar suit vide ELC No. E059 of 2023 and wherein same [Applicant] had sought for similar reliefs before the court.
23. Nevertheless, learned counsel for the said Respondents has submitted that the Applicant herein endeavoured to procure and obtain an order of temporary injunction, but when no such order was issued, the Applicant proceeded to and filed another case before the Chief Magistrate's Court – Milimani and wherein same sought to obtain an order of temporary injunction.
24. Nevertheless, learned counsel for the said Respondents has submitted that despite the proceedings which were filed before the chief magistrate's court, the Applicant has yet again reverted to this court and is now seeking for an order of temporary injunction to restrain inter-alia the 4th Defendant/Respondent, who is the lawful and legitimate proprietor.
25. Secondly, learned counsel for the said Respondents has submitted that the Applicant herein, is guilty of forum shopping with a view to procuring favourable orders from the court, with a view to defeating the rights and interests of the said Respondents.
26. In this regard, learned counsel for the said Respondents has cited and referenced the holding in the case of Caliph Properties Ltd v Barbel Sharma & Another [2015]eKLR, respectively.
27. Thirdly, learned counsel for the 1st and 2nd Respondents has submitted that the Applicant herein has no lawful rights to and/or interests over the suit property, which is admittedly registered in the name of the 4th Defendant/Respondent.
28. To the extent that the suit property belongs to and is registered in the name of the 4th Respondent, learned counsel for the said Respondents has contended that there is no known or legitimate rights inhering in the Plaintiff and which is capable of being vindicated vide an order of temporary injunction.
29. Finally, the said Respondents have submitted that the suit property was lawfully transferred to and registered in the name of the 4th Defendant and in this regard, the 4th Defendant/Respondent is entitled to exclusive and absolute rights over and in respect of the suit property.
30. In short, learned counsel for the said Respondents have posited that the Applicant has failed to establish and/or demonstrate any basis to warrant the grant of the orders sought.
31. Owing to the foregoing, learned counsel for the 1st and 2nd Respondents has implored the court to find and hold that the application beforehand is not legally tenable.

c. 4th defendant's/respondent's submissions:

32. Suffice it to point out that the 4th Defendant filed written submissions dated the 15th July 2024 and in respect of which same [4th Respondent] has canvassed three salient issues for due consideration.
33. Firstly, learned counsel for the 4th Respondent has pointed out that the Plaintiff/Applicant herein had previously filed ELC No. E059 of 2023 and wherein same [Applicant] had sought for similar orders like the one beforehand.



34. Other than the foregoing, learned counsel for the 4th Defendant/Respondent has also submitted that the Applicant also filed an application for temporary injunction, but which application was heard and disposed of. In this regard, learned counsel has pointed out that the current application is not only misconceived but same is also an abuse of the due process of the court.
35. Secondly, learned counsel for the 4th Defendant/Respondent has also submitted that same [4th Defendant] is currently the registered proprietor and thus lawful owner of the suit property and in this regard, same [4th Defendant] is entitled to enter upon, remain in possession of the suit property until her title is impeached and/or quashed.
36. Thirdly, learned counsel for the 4th Defendant/Respondent has submitted that the Applicant herein has failed to establish and/or demonstrate any scintilla of irreparable loss that same [Applicant] is disposed to suffer, unless the orders of temporary injunction are issued.
37. To this end, learned counsel for the 4th Defendant has contended that by virtue of being the registered owner of the suit property; the 4th Defendant is obligated to partake of and benefit from the rights attendant to and arising from the provisions of Sections 24 and 25 of the [Land Registration Act, 2012](#).
38. Arising from the foregoing, learned counsel for the 4th Defendant has therefore implored the court to find and hold that the Applicant herein has failed to demonstrate and/or prove that same [Applicant] is entitled to the equitable orders of the injunction, either as sought or at all.
39. Consequently and in view of the foregoing, learned counsel for the 4th Defendant/Respondent has invited the court to find and hold that the application beforehand is devoid and bereft of merits and thus same [application dated the 13th May 2024] ought to be dismissed with costs.

Issues For Determination:

40. Having reviewed the application beforehand; the responses thereto and the written submissions filed by and on behalf of the parties, the following issues do arise [emerge] and are thus germane for determination;
 - i. Whether the Applicant's suit as well as the Application are barred by the doctrine of res-judicata or otherwise.
 - ii. Whether the Applicant herein has demonstrated the existence of a prima facie case with probability of success or otherwise.
 - iii. Whether the Applicant is disposed to suffer any irreparable loss or at all.

Analysis And Determination:

Issue Number 1 Whether the Applicant's suit as well as the Application are barred by the doctrine of res-judicata or otherwise.

41. Learned counsel for the Defendants/Respondents has contended that the Applicant herein had previously filed a similar suit before this court vide ELC No E059 of 2023, but which suit was disposed of vide a ruling of the court.
42. Instructively, it has been contended that upon the filing of the previous suit as well as the application for temporary injunction, same [application for temporary injunction] was placed before this court which proceeded to hear the application and subsequently disposed of same.



43. Notwithstanding the foregoing, learned counsel for the Respondent has submitted that owing to the fact that the Applicant herein had previously filed the suit and also sought for an Order of temporary injunction, before withdrawing same, the conduct of the Applicant is less than honourable and thus the Applicant's case is defeated by the doctrine of res-judicata.
44. Suffice it to point out that the suit which was filed by the Applicant as well as the application for temporary injunction were subsequently withdrawn by and at the instance of the Applicant. In this regard, there is no gainsaying that the previous suit having been withdrawn, there is clearly no similar suit pending before this honourable court or such other court seized of the requisite jurisdiction.
45. On the other hand, it is also not lost on this court that by the time the Applicant was withdrawing the previous suit, same [Applicant] had also filed an application for temporary injunction and which application for temporary injunction was dismissed.
46. Arising from the foregoing, it is evident and apparent that there is no more suit as between the parties herein to warrant the invocation and application of the doctrine of res-sub-judice or res- judicata.
47. Notably, the doctrine of res-judicata would only suffice and arise where the previous suit was heard and disposed of by the court; and a final determination/decision made thereunder. However, insofar as the previous suit had been withdrawn, as opposed to dismissed, it suffices to underscore that the contention based on the doctrine of res-judicata is therefore erroneous and misleading.
48. As pertains to the ingredients that underpin the doctrine of res-judicata, it suffices to adopt, restate and reiterate the holding in the case *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015)* [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), where the court held as hereunder;

58. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case^{3/4}to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction.

This test is summarized in *Bernard Mugo Ndegwa v James Nderitu Githae & 2 others*, (2010) eKLR, under five distinct heads:

- i. the matter in issue is identical in both suits;
 - ii. the parties in the suit are the same;
 - iii. sameness of the title/claim;
 - iv. concurrence of jurisdiction; and
 - v. finality of the previous decision.
59. That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in *ET v Attorney-General & another*, (2012) eKLR, thus:

The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the



court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of *Omondi v National Bank of Kenya Limited and others*, (2001) EA 177 the court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J, in the case of *Njangu v Wambugu* and another Nairobi HCCC No 2340 of 1991 (unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata.....”

60. For res judicata to be invoked in a civil matter the following elements must be demonstrated:
- a) There is a former Judgment or order which was final;
 - b) The Judgment or order was on merit;
 - c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
 - d) There must be between the first and the second action identical parties, subject matter and cause of action.(See *Uhuru Highway Developers Limited v Central Bank of Kenya & others* [1999] eKLR and See the decision of the Court of Appeal in *Nicholas Njeru v Attorney General & 8 others* Civil Appeal 110 of 2011 (2013) eKLR)
49. In a nutshell, my answer to issue number one [1] is to the effect that the suit beforehand as well as the application seeking for temporary injunction, is not prohibited by dint of Section 7 of [Civil Procedure Act](#) as well as the rest of the provisions.

Issues Number 2 Whether the Applicant herein has demonstrated the existence of a prima facie case with probability of success or otherwise.

50. Other than the question of res-judicata which has been highlighted and discussed in terms of the preceding paragraphs, there is the question pertaining to and concerning whether the Applicant beforehand has indeed established the existence of a prima facie case with probability of success to warrant the grant of an order of temporary injunction.
51. At any rate, it is pertinent to underscore that an order of temporary injunction can only issue and/or be granted, if the claimant [Applicant] has demonstrated the existence of a prima facie case.
52. To this end, it is sufficient and pertinent that the Applicant tenders and places before the court credible and plausible evidence to demonstrate that indeed same [Applicant] has a prima facie arguable case.
53. In respect of the subject matter, it would have been incumbent upon the Applicant to demonstrate that same indeed has a title to the suit property underpinning her rights to and or in respect thereto. However, there is no gainsaying that the Applicant herein concedes and/or has conceded that the title in respect of the suit property was transferred and is currently registered in the name of the 4th Defendant/Respondent.
54. On the other hand, even though the Applicant contends that the transfer of the suit property to and in favour of the 1st and 2nd Defendants/Respondents was fraudulent, however, it is worthy to point out that the plea of fraud will require to be proved and/or established to the requisite standard, before this court can utilize same to impeach the transfer and registration of the suit property in favour of



the 1st and 2nd Defendants/Respondents. [See the holding of the court of appeal in the case of Kuria Kiarie v Sammy Magera [2018]eKLR].

55. Furthermore, the Applicant herein has ventured forward and posited that upon the fraudulent transfer and registration of the suit property in favour of the 1st and 2nd Defendant, same have since proceeded to and caused same [suit property] to be transferred to and in favour of the 4th Defendant/Respondent.
56. Be that as it may, the 4th Defendant/Respondent herein has filed a Replying affidavit and wherein same contends that she acquired lawful rights and or interests to the suit property on the basis of a sale agreement. In this respect, what I hear the 4th Defendant/Respondent to be espousing is that same is a bona fide purchaser for value without notice of any defect of title in favour of her predecessor's title.
57. As to whether or not the 4th Defendant/Respondent was duly a bona fide purchaser for value without notice of any defect of her predecessor's title, would be an issue to be interrogated during the plenary hearing.
58. Furthermore, whether the plea of bona fide purchase for value will stand the test of time and scrutiny, is something that can only be adverted to and determined at the tail end of the plenary hearing.
59. Be that as it may, what matters for now is that the 4th Defendant/Respondent is the holder of a certificate of title/lease to and in respect of the suit property whereas the Applicant does not hold any certificate of title as of today.
60. In the premises, the question that does arise is whether the Applicant herein who is divested of the title to the suit property has a prima facie case vis a viz the 4th Defendant/Respondent who holds a certificate of title to the suit property.
61. In my humble view, the question as to whether the Applicant has any lawful or equitable rights to and/or in respect of the suit property can only be determined after the plenary hearing and not otherwise. Consequently, and at this juncture, it is difficult to discern the nature and/or colour of interests that the Applicant herein wishes to protect vide an order of temporary injunction either in the manner sought or otherwise.
62. Simply put, it was incumbent upon the Applicant to demonstrate the existence of some lawful or equitable rights to and in respect of the suit property; but which rights have neither been established nor proven on a prima facies basis.
63. In short, the Applicant herein has failed to meet and/or satisfy the first ingredient that underpins the grant of an order of temporary injunction, namely, the existence of a Prima facie case with probability of success.
64. Suffice it to point out that a prima facie case must be one that is genuine and arguable and which raises lawful or equitable claims worthy of interrogation and/or investigations by the court and not otherwise. Furthermore, a prima facies case also belies bona fides and good faith on the part of the claimant and not otherwise.
65. In the case of Mrao Ltd v First American Bank of Kenya [2003]eKLR, the court defined a prima facie case in the following manner;
 4. A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.



66. Likewise, the meaning, tenor and scope of what constitutes a prima facies case was also elaborated upon by the Court of Appeal in the case of *Nguruman Ltd v Jan Bonde Nielsen* [2014]eKLLR, where the court stated and held thus;

“Prima facie” is a Latin phrase for “at first sight”, whose legal meaning and application has been the subject of varying interpretation by courts in many jurisdictions. Phrases like “a serious question to be tried”, “a question which is not vexatious or frivolous”, “an arguable case” have been adopted to describe the burden imposed on the applicant to demonstrate the existence of prima facie case. The leading English House of Lords case of the *American Cyanamid Co. Ethicon Ltd* [1975] AC 396 is a case in point. The meaning of “prima facie case”, in our view, should not be too much stretched to land in the loss of real purpose. The standard of prima facie case has been applied in this jurisdiction for over 55 years, at least in criminal cases, since the decision in *Ramanlal Trambaklal Hatt V. Republic* [1957] E.A. 332.

67. Flowing from the foregoing, it is my humble view that the Applicant herein has not been able to discharge the obligation cast upon same [Applicant] to prove the existence of a prima facie case.

Issue Number 3 Whether the Applicant is disposed to suffer any irreparable loss or at all.

68. Pertinently, it is worthy to state and underscore that even where an Applicant seeking for an order of temporary injunction establishes and demonstrate the existence of a prima facie case with probability of success, such proof per se does not warrant the grant of an order of temporary injunction.

69. Notably, an Applicant seeking temporary injunction would be called upon to venture forward and to demonstrate unto the court that the nature of loss and/or injury, to be suffered, is irreparable and thus not capable of being compensated in monetary terms.

70. Owing to the foregoing requirement, I am therefore obligated to proceed further and interrogate whether the Applicant beforehand has availed and/or established any evidence to demonstrate that irreparable loss is likely to arise and/or accrue, unless the orders sought are granted.

71. Nevertheless, I have perused and examined the entirety of the supporting affidavit, that is being relied upon by the Applicant herein, but sadly, I have not discerned and/or come across any scintilla of evidence to demonstrate/espouse the nature of loss that the Applicant is likely to suffer and/or accrue if the orders of injunction are not granted.

72. To my mind and for good measure, the existence or apprehension of irreparable loss must be expressly deponed to and substantiated on the basis of cogent and plausible evidence.

73. To the contrary, the apprehension of irreparable loss cannot be the basis of inference, speculation and/or hypothesis or at all. However in this case, the Applicant herein has remained silent as to the nature of irreparable loss, if any; that is likely to ensue.

74. In the absence of irreparable loss and coupled with the finding pertaining to and concerning proof of a prima facie case, I am afraid that the Applicant herein has not met and/or satisfied the threshold for the issuance/grant of an order of temporary injunction.

75. Pertinently, what constitutes irreparable loss has hitherto received judicial interpretation and application and wherein it was highlighted that such a loss must not be speculative, remote or superficial. For coherence, the loss must be real and tangible and the consequences must be far-reaching and incapable of recompense in monetary terms.



76. To this end, it suffices to re-visit the holding in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, where the court stated and observed as hereunder;

On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.

77. Similarly, the significance of irreparable loss was also highlighted and underscored in the case of *Vivo Energy v Maloba Petrol Station & Another* [2015]eKLR, where the court held as hereunder;

We find in addition that the learned Judge did not properly address his mind to the question of whether an award of damages would have been an adequate remedy to the claim by Total. The second limb of the principles upon which an injunctive remedy is granted in our jurisdiction as set out in

78. Furthermore, the court held and stated as hereunder;

We have not seen anything on record, with respect, that would suggest that damages could not have been an adequate remedy, particularly in view of Mr. Maloba’s insistence that he was ready, able and willing to pay any money that may be found to be due and owing to Total from him. On the contrary, Total’s loss and damage, if any, could be easily calculated and quantified to a cent.

79. In my humble view, the Applicant herein was obligated to demonstrate the likelihood and/or apprehension of irreparable loss arising and/or accruing in the event that the orders of injunction are not granted. Nevertheless, the Applicant before the court was overly engaged and consumed with the questions of fraud, corruption and procedural irregularities, which can only be proven at the tail end of the hearing; but paid scant attention to the critical issue pertaining to irreparable loss.

80. In a nutshell, my answer to issue number three [3] is to the effect that the Applicant has neither demonstrated nor proven the likelihood of irreparable loss arising and/or accruing. Furthermore, it has not been contended that the loss, if any, is not compensable in monetary terms

Final Disposition:

81. Having reviewed and considered the evidence on record; and the submissions by and on behalf of the respective parties, I am unable to discern and/or decipher satisfaction of the requisite ingredients that underpin the grant of an order of temporary injunction.

82. Further and at any rate, it is also important to recall that the Applicant herein had previously filed a similar suit vide ELC No. E059 of 2023, and wherein same had also sought for orders for temporary injunction. Remarkably, this court considered the previous application for temporary injunction but same [court] was not persuaded to grant such orders.



83. Suffice it to point out that even on the basis of the current documentation and arguments; this court is still not persuaded that the equitable order of temporary injunction is merited or at all.
84. In a nutshell, the application dated the 13th May 2024; be and is hereby dismissed with costs to the 1st, 2nd and 4th Defendants/Respondents.
85. It is so ordered.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JULY 2024.

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – Court Assistant

Mr. Ongeru for the Plaintiff/Applicant.

Mr. Gakaria for the 1st and 2nd Defendants/Respondents.

Ms. Hanan for the 4th Defendant/Respondent.

N/A for the 3rd Defendant/Respondent.

