



**Kotey v Chemarich & another (Environment & Land Case  
E013 of 2024) [2024] KEELC 5323 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5323 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E013 OF 2024**

**EO OBAGA, J  
JULY 18, 2024**

**BETWEEN**

**WILLY KIPKORIR KOTey ..... APPLICANT**

**AND**

**ERICK KIPTOO CHEMARICH ..... 1<sup>ST</sup> RESPONDENT**

**WILLY CHEPKOLE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 13<sup>th</sup> March, 2024 in which the Plaintiff/Applicant seeks the following orders;
  - a. Spent
  - b. That this Honourable Court be pleased to issue an order of Temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, by themselves, their agents or servants or any other person claiming under them, from entering into, ploughing, planting, weeding, grazing animals, fencing or any other manner dealing with all that parcel of land known as Moi's Bridge/ziwa Block 10 (lemoru) 163, pending the hearing of this application inter-parties and subsequently the hearing of the main suit.
  - c. That the order in prayer (b) above be served upon the O.C.S Ziwa Police Station to ensure compliance.
  - d. That the cost be borne by the Defendants
  - e. Any other and further relief that this Court may deem fit to grant.
2. The Applicant was the beneficial owner of 5.5acres comprised in LR.No.Moi's Bridge/Ziwa Block 10(Lemoru)25 measuring 26.53 hectares which is registered in the name of the Applicant's father



Julius Maina Rongei who is now deceased. Prior to the demise of the Applicant's father, the land had been subdivided and the 5.5 acres (known as Moi's Bridge/Ziwa Block 10 (Lemoru) 163 (suit property) had been identified in a mutation which had been prepared.

3. As the suit property had been earmarked for the Applicant, the Applicant entered into a sale agreement with the 1<sup>st</sup> Defendant/Respondent for the sale of the suit property at a consideration of Kshs. 1,072,500 on 20<sup>th</sup> March, 2012. Later on in January, 2024, the 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Defendant/Respondent.
4. It is the Applicant's contention that the 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Respondent without his consent and before clearing the balance of the purchase price as had been agreed. It is on this basis that the Applicant is seeking an injunction against the Respondents.
5. The Respondents opposed the Applicant's application through replying affidavits sworn on 12.4.2024 in which the 2<sup>nd</sup> Respondent contends that he purchased the suit property from the 1<sup>st</sup> Respondent with the full knowledge of the Applicant and after he had carried out due diligence as to the ownership of the suit property. The 1<sup>st</sup> Respondent contends that he cleared the purchase price and that it is the Applicant who owes him money as he had already sold 0.5 acres to a third party before he entered into an agreement with him.
6. In a supplementary affidavit sworn on 14.5.2024, the Applicant while acknowledging that the Respondents visited him over the suit property, he denies that the visit was for purposes of sale of the suit property but that it was over lease of the suit property from the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent. He states that if the 1<sup>st</sup> Respondent wanted to sell the suit property, he should have given him the first priority to redeem the same.
7. The Applicant filed his submissions dated 14.5.2024. The Respondent's filed their submissions dated 15.5.2024. I have carefully considered the Applicant's application together with the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of a temporary injunction.
8. There is no contention that the Applicant sold the suit property to the 1<sup>st</sup> Respondent on 20.3.2012. The 1<sup>st</sup> Respondent was put in possession upon payment of the first instalment of the purchase price. It is also not in contention that in 2024, the 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Respondent.
9. The principles for grant of temporary injunction were well set out in the case of *Giella v Cassman Brown & Co. Ltd (1973) EA 358*. First an applicant has to show that he has a prima facie case with probability of success. Second, an injunction will not be issued unless the Applicant shows that he will suffer loss which will not be compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.
10. In the case of *Mrao Ltd v First American Bank of Kenya Ltd (2003) eKLR*, a prima facie case was defined as follows: -  

“...in civil case, it is a case in which on the material presented to the court a tribunal property 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.
11. I have carefully gone through the material placed before the court. There is no doubt that the Applicant has not made out a prima facie case with probability of success. The Applicant claims that his issue with the 1<sup>st</sup> Respondent is failure by the 1<sup>st</sup> Respondent to pay the balance of the purchase price. If



this turns out to be the case, then the damage which the Applicant will suffer is ascertainable and can be compensated in damages.

12. In the instant case, there is no contention that it is the 2<sup>nd</sup> Respondent who is in possession of the suit property. Even if the court were to be in doubt, the balance of convenience will still tilt in favour of the 2<sup>nd</sup> Respondent. What the Applicant is trying to do is to evict the 2<sup>nd</sup> Respondent from the suit property before the dispute is resolved. This is why he is seeking for Police intervention to enforce any order which the court will issue. All in all, I find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF JULY, 2024.**

**E. O. OBAGA**

**JUDGE**

**18<sup>th</sup> JULY, 2024**

In the virtual presence of;

Mr. Misoi for Plaintiff/Applicant

M/s Kinyua for Respondents.

Court Assistant –Laban

