



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Owino v Siololo & 4 others (Environment & Land Case E007 of 2024)  
[2024] KEELC 6153 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6153 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E007 OF 2024  
CG MBOGO, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**RHODA KUUSA OWINO ..... APPLICANT**

**AND**

**PARMONTORO OLE SIOLOLO ..... 1<sup>ST</sup> RESPONDENT**

**KIPINGOT OLE SIOLOLO ..... 2<sup>ND</sup> RESPONDENT**

**LEMERIA OLE SIOLOLO ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**THE DISTRICT LAND REGISTRAR NAROK ..... 1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 2<sup>nd</sup> May, 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules and Sections 3A and 63 (e) of the [Civil Procedure Act](#) seeking the following orders: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction to restrain the defendants/respondents by themselves, their agents or servants or those acting on their instruction from entering upon, remaining upon, invading, threatening to invade, to evict, removing or threatening to remove fences, interfering with the plaintiffs/applicants employees or in any other way from interfering with the



plaintiff's/applicants use and occupation of plots numbers Narok Cis/Mara-Maji Moto/29, 30, 31 and 32.

4. That the costs of this application be borne by the respondents/defendants.
2. The application is premised on the grounds inter alia that the plaintiff/applicant is the registered owner of properties numbers Narok Cis/ Mara-Maji Moto/29, 30, 31 and 32. The application is supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that the four portions of land border each other and which are fenced as a single plot measuring approximately 200 acres. She further deposed that she has invested heavily on the same where she carries out both livestock and crop farming. That since she took the development from the year 2022, the defendants/ respondents have on numerous occasions threatened her employees with eviction and bodily harm. The plaintiff/applicant deposed that she sought the assistance from the area chief where the defendants/respondents were summoned on 29<sup>th</sup> June, 2023 and they promised to maintain and to keep away from her land.
3. The plaintiff/ applicant further deposed that despite having promised to keep off from her land, the defendants/respondents have begun with the threats to the extent that most of her employees have left employment, and that unless this court comes to her aid, she may be not be able to service the loans advanced in making the investments.
4. The application was opposed vide the replying affidavit of the 1<sup>st</sup> defendant/respondent sworn on 4<sup>th</sup> June, 2024. The 1<sup>st</sup> respondent deposed that they are the registered owners of parcels No. Cis-Mara/ Maji-Moto/30,32 and 31 as per the area list. He further deposed that the plaintiff/applicant has not demonstrated how she acquired ownership of the suit properties yet she is not a member of Maji Moto Group Ranch meaning that the whole process is dubious. He further deposed that the photographs are not taken from the suit properties and they stand to be false and misleading.
5. The 1<sup>st</sup> defendant/ respondent deposed that the plaintiff/ applicant ought to have reported the matter to the relevant authorities if there was any kind of threats against her employees with crude weapons. He deposed that owing to the fact that the plaintiff/ applicant has not disclosed how she obtained ownership of the suit properties, she has approached the court with unclean hands as having concealed information that is relevant to the determination of this application. The 1<sup>st</sup> defendant/ respondent deposed that the meeting before the chief was not as a result of persistent breach of peace, but it was meant to seek avenues of preventing possible breach of peace bearing in mind that land issues are emotive.
6. The 1<sup>st</sup> defendant/ respondent further deposed that they have been the rightful owners of the suit properties and have been denied the right to use and enjoy their properties as a result of the actions of the plaintiff/ applicant. He deposed that if the orders are granted, they will be rendered landless as they have no alternative parcels of land.
7. The application was canvassed by way of written submissions. The plaintiff/ applicant filed her written submissions dated 12<sup>th</sup> August, 2024. On whether the plaintiff/ applicant has a prima facie case with a probability of success, she submitted that the defendants/ respondents were issued with a title deed long after she was issued with the same, and that there is no way a single property can have two title deeds as she learnt with surprise that the defendants/ respondents also have title deeds. Further, she submitted that the issuance of title deeds to the defendants/ respondents for land that had been registered and a title deed issued was fraudulent, hence the application is prima facie with a probability of success. She went on to submit that if the defendants/ respondents had any justification, they would have filed a case against her instead.



8. The plaintiff/ applicant further submitted that she made developments on the suit properties with the defendants/ respondents' knowledge as they live less than 100 metres from her land. On whether there is likelihood of irreparable harm if the orders sought are not granted, the plaintiff/ applicant submitted that considering the nature of immense development on the land by virtue of loans from financial institutions, there is real danger that the defendants/ respondents may attack, forcefully evict and destroy all the investments on the strength of the titles held by them. She submitted that it is not disputed that she is not in actual occupation of the suit properties.
9. The defendants/ respondents filed their written submissions dated 13<sup>th</sup> September, 2024 where they raised two issues for determination as follows: -
  - a. Whether the application dated 2<sup>nd</sup> May, 2024 meets the threshold for grant of an injunction.
  - b. Who bears the cost of the application.
10. On the first issue, the defendants/ respondents while relying on the cases of Giella versus Cassman Brown (1973) EA 358, Nguruman Limited versus Jan Bonde Nielsen & 2 Others [2014] eKLR, and Mrao Limited versus First American Bank of Kenya Limited [2003] eKLR submitted that they have made full and frank disclosure of all the relevant facts, and that they have a legal right which requires protection by this court. They submitted that the plaintiff's/ applicant's claim to the land is highly questionable as she has failed to disclose how she obtained ownership of the suit properties, and that given the facts presented the plaintiff/ applicant has not established a prima facie case with a likelihood of success.
11. While further relying on the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR and Robert Mugo Wa Karanja versus Eco-Bank (Kenya) Limited & Another [2019] eKLR, the defendants/ respondents submitted that they are likely to suffer irreparable injury should the temporary injunction be granted to the plaintiff/ applicant which cannot be adequately compensated by way of damages. That having been issued with the title deeds, the land in question is not merely a financial asset but it holds a significant personal and ancestral value to them and any attempt to deprive them of their lawful ownership, and use of land would result in a loss that transcends monetary compensation.
12. The defendants/ respondents further submitted that the balance of convenience tilts in their favour, and that the court must weigh which party is likely to suffer greater harm if the injunction is granted or denied. Reliance was placed in the case of Paul Gitonga Wanjau versus Gathuthi Tea Factory Company Limited & 2 Others [2016] eKLR. Further, they submitted that they have challenged the authenticity of the evidence presented by providing photographs showing the true state of the properties which contradicts the plaintiff's/ applicant's claim.
13. On the second issue, the defendants/ respondents submitted that the costs of the application ought to be borne by the plaintiff/ applicant.
14. I have considered the application, replying affidavit, and the written submissions filed by the respective parties herein. I am of the considered view that issue for determination is whether the plaintiff/ applicant has met the threshold for grant of injunction orders. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of Giella versus Cassman Brown (1973) EA 358. This position has been largely pronounced in numerous decisions 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, establishes his case only at a prima facie level, b, demonstrates irreparable injury if



a temporary injunction is not granted and c, ally 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”.

15. As a result, the plaintiff/ applicant ought to first establish a prima facie case. In *Mrao Limited versus First American Bank of Kenya Limited* [2003] eKLR, the court stated as follows: -

“... 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.”

16. The plaintiff/ applicant contended that she is the registered owner of parcels of land known as Narok Cis/Mara-Maji Moto/29, 30, 31 and 32. In support thereof, the plaintiff/ applicant attached four copies of titles deeds to the suit properties. The defendants/ respondents on the other hand, averred that they are the registered owners of parcels of land known as Cis-Mara/ Maji-Moto/30, 32 and 31, having acquired the same as members of Maji Moto Group Ranch. They attached copies of title deeds in support of their allegation and they contended that the plaintiff/ applicant has failed to disclose the manner in which she acquired the suit properties. They accused the plaintiff/ applicant of concealing information that is material to the determination of this application. In other words, the defendants/ respondents strongly challenge the root of the title as held by the plaintiff/ applicant. Also, it should be noted that there is no contention as regards the parcel of land known as Cis-Mara/Maji-Moto/29 which brings me to the conclusion, that the rights of the plaintiff/ applicant as the registered proprietor of this one parcel of land are protected by virtue of Section 26 of the [Land Registration Act](#).

17. Having perused the evidence as presented by the parties, it is clear that the plaintiff/ applicant was the first to be issued with the title deeds which indicate 3<sup>rd</sup> February, 2022, with the defendants/ respondents title deeds being issued on 28<sup>th</sup> August, 2023. From the evidence, it is also clear that there are two title deeds available over the suit properties. At this point, the court cannot confirm with certainty which of the two title deeds is genuine. However, from the face of it, the plaintiff's/ applicant's title deed is the first in time and until contrary evidence is availed, the first in time always prevails. In the case of *Gitwany Investment Ltd & 3 Others versus Commissioner of Lands, HCCC No.1114 of 2002*, it was held that: -

“The first in time prevails so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issued two titles in respect of the same parcel of land, then if both are apparently are and on the face of them issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail”.

18. The manner in which the plaintiff/ applicant obtained the respective title deeds cannot be determined at this stage as that would require a trial process. However, that does not mean that the title deeds cannot be impugned owing to fraud, misrepresentation or having been acquired (the title deeds) through corrupt means. What is not in doubt is that the plaintiff/ applicant was the earlier registered proprietor of the suit properties, and I am satisfied that the plaintiff/ applicant has established a prima-facie case.



19. Secondly, the plaintiff/applicant has to demonstrate that irreparable injury will be occasioned if an order of temporary injunction is not granted. In the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR, irreparable injury was described as follows: -

“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.”

20. The plaintiff/ applicant contended that she has invested heavily on the suit properties with loans facilities from financial institutions, and engages in large scale farming and livestock keeping among others. The plaintiff/ applicant annexed photographs said to have been taken from the suit properties indicating the said investments. The defendants/ respondents countered this argument by stating that the photographs are not taken from the suit properties, and that no investments have been made on the land. Interestingly, the defendants/ respondents did not counter the averments by the plaintiff/ applicant that she is in actual possession of the suit properties.

21. The plaintiff/ applicant further stated that the defendants/ respondents have threatened her with eviction to the extent that her employees have left employment, and that she made complaints to the chief who called the parties to a meeting and from the said meeting, the defendants/ respondents promised to maintain peace. In rebuttal, the defendants/ respondents contended that if at all there were any threats, the plaintiff/applicant would have reported to the relevant agencies. Again, they did not rebut claims of threats as raised by the plaintiff/ applicant. On this issue, and in my view, there is threat to the utilization of the suit properties which to a great extent demonstrates irreparable loss on the part of the plaintiff. The defendants/ respondents having stated that the land is ancestral and of significant value whereas true is not sufficient to prove irreparable loss and damage as they have not indicated that they are in actual occupation of the same.

22. In sum, the balance of convenience lies in favour of the plaintiff as the inconvenience caused will be greater if the orders are not granted in favour of the plaintiff/ applicant as opposed to the defendants/ respondents.

23. From the above, I find merit in the notice of motion dated 2<sup>nd</sup> May, 2024, and the same is hereby allowed as follows: -

i. That a temporary injunction is hereby issued pending the hearing and determination of this suit, restraining the defendants/respondents by themselves, their agents or servants or those acting on their instruction from entering upon, remaining upon, invading, threatening to invade, to evict, removing or threatening to remove fences, interfering with the plaintiff's/ applicant's employees or in any other way from interfering with the plaintiff's/ applicant's use and occupation of parcel numbers Narok Cis/Mara-Maji Moto/30, 31 and 32.

ii. Costs to be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**HON. MBOGO C.G.**

**JUDGE**



**26/09/2024.**

In the presence of: -

Mr. Meyoki – C.A

