



Mathiomi Holdings Limited v Mathiomi House Limited & 3 others (Environment & Land Case 005 of 2023) [2024] KEELC 6005 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6005 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 005 OF 2023
JO OLOLA, J
SEPTEMBER 20, 2024**

BETWEEN

MATHIOMI HOLDINGS LIMITED PLAINTIFF

AND

MATHIOMI HOUSE LIMITED 1ST DEFENDANT

MATHIOMI PROPERTIES LIMITED 2ND DEFENDANT

LAND REGISTRAR NYERI COUNTY 3RD DEFENDANT

HON ATTORNEY GENERALN 4TH DEFENDANT

RULING

1. By the Notice of Motion dated 12th September 2023, Mathiomi Holdings Limited (the Plaintiff) prays for orders:-
3. That pending the hearing and determination of this application and suit, an order of temporary injunction be and is hereby issued restraining the Respondents by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienating, dealing, disposing, trespassing and/or in any other manner interfering with the Plaintiff's quite use, occupation, possession and ownership of all those parcels of land known as follows:-

Karatina Town/Block 1/241 measuring approximately 0.0373 Ha and Karatina Town /Block 1/242 measuring approximately 0.0316 Ha.
4. That pending the hearing and determination of this application and suit this Honourable court be pleased to issue orders of mandatory injunction restraining the Respondents by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation (sic) dealing, disposing, trespassing and/or in any other manner



interfering with the Plaintiff's quite use, occupation, possession and ownership of (the two parcels of land aforementioned);

5. That pending the hearing and determination of this suit, this Honourable court be pleased to issue orders of a permanent injunction restraining the Respondents by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation, dealing disposing, trespassing and/or in any other manner interfering with the Plaintiff's quite use, occupation, ownership and possession of (the two parcels of land aforementioned); and
 6. That the costs of this application be provided for.
2. The application which is supported by an Affidavit sworn by one Stephen Wachira Njogu is based on the grounds inter alia:
- i). That the Plaintiff is the registered proprietor of the suit properties;
 - ii). That the Plaintiff is a family company incorporated on 15th June 1999 comprising of 4 directors and 8 shareholders who are all siblings. It was founded by Mzee Sospeter Njogu Mahihu, the father of the shareholders who is now 98 years old and demented;
 - iii). That the Plaintiff has leased out the suit properties to 85 tenants for commercial purposes and draws a rental income of about Kshs. 420,000/=
 - iv). That the 1st Defendant whose directors and shareholders are also the directors and shareholders of the Plaintiff have incorporated or caused to be incorporated Mathiomi House Limited, and Mathiomi Properties Limited and have now issued notices to the tenants of the Plaintiff demanding rent to be paid to themselves with immediate effect;
 - v). That the Defendants have no proprietary right over the suit properties which now stand in the danger of being wasted, damaged or alienated as the tenants are confused as to whom to pay rent to and that consequently, service charges, water and electricity bills as well as salaries have not been paid to the Plaintiff's detriment;
 - vi). That the 1st Defendant has fraudulently purported to transfer ownership of the suit properties through forged documents, false misrepresentations and non-disclosure of material facts; and
 - vii). That the 1st Defendant has now threatened all tenants with eviction and as of 3rd September 2023, it hired machete-wielding goons to cause mayhem and forcefully evict tenants, a matter which was reported to Karatina Police station and is currently pending investigations.
3. Mathiomi House Limited (the 1st Defendant) is opposed to the application. In a lengthy Replying Affidavit sworn by its director and shareholder Mary Muthomi Njogu, the 1st Defendant avers that the suit properties were acquired and solely developed by Sospeter Njogu Mahihu who is now 98 years old and suffering from senile dementia. The said Sospeter Njogu Mahihu and his wife Elizabeth Nyoka Njogu (deceased) were the sole founding directors of the Plaintiff.
4. The 1st Defendant avers that the said Sospeter Njogu Mahihu has never ceased to be a director and a shareholder of the Plaintiff and that the shareholding of his deceased spouse Elizabeth has never been transmitted to any beneficiary. It is further the 1st Defendant's case that to be able to pay for his expensive medical needs, in October 2020, the Plaintiff's sole surviving director independently and freely incorporated both the 1st Defendant as well as Mathiomi Properties Ltd (the 2nd Defendant herein).



5. The 1st Defendant avers further that immediately after the incorporation of the 2nd Defendant, the said Sospeter Njogu Mahihu who was the sole registered proprietor of the Title No. Karatina Township/Block 1/241 caused the same to be transferred and registered in the name of the 2nd Defendant. To date, the said Sospeter remains the sole director and shareholder of the 2nd Defendant.
6. The 1st Defendant further asserts that after Sospeter incorporated the 1st Defendant, he did freely and independently request the land registrar to transfer Title No. Karatina Township/Block 1/242 to the 1st Defendant. The said Sospeter then forfeited his 999 shares in the 1st Defendant and allotted the same to all his daughters and the children of his deceased daughters.
7. The 1st Defendant further asserts that due to his incapacity, the said Sospeter thereafter appointed Mary Muthoni Njogu and her brother Stephen Wachira to be joint signatories to his rent-bank accounts.
8. Mathiomi Properties Limited (the 2nd Defendant) is however in support of the application. In a Replying Affidavit said to be sworn on its behalf on 13th December 2023 by its sole director Sospeter Njogu Mahihu, the 2nd Defendant avers that the Plaintiff is the registered proprietor of the suit properties which it has leased out to 85 tenants for commercial purposes.
9. The 2nd Defendant asserts that the 1st Defendant has no proprietary rights whatsoever over the suit properties and that the notices issued by the 1st Defendant urging the tenants of the Plaintiff to vacate are illegal.
10. The 2nd Defendant further avers that it has never transferred any of the suit premises to the 1st Defendant and that the title issued in the name of the 1st Defendant has been acquired illegally, un-procedurally and through corrupt means.
11. The Land Registrar (Nyeri County) and the Honourable the Attorney General (sued as the 3rd and 4th Defendants herein) are equally opposed to the application. In a Replying Affidavit sworn on their behalf by the Nyeri County Land Registrar Nathan G. Githaiya, the 3rd and 4th Defendants, assert that Title No. Karatina Township/Block 1/242 is registered in the 1st Defendant's name while Title No. Karatina Township/Block 1/241 is registered in the name of the 2nd Defendant.
12. The 3rd and 4th defendants aver that the registration of the said parcels of land were undertaken in accordance with the law which empowers the 3rd Defendant to register land in accordance with the [Land Registration Act](#) No. 3 of 2012. The Defendants aver further that there's nothing in the 3rd Defendant's records to show that there was any fraudulent play in the registration of the said parcels of land.
13. I have carefully perused and considered the Plaintiff's application as well as the response by the Defendants thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
14. By this application before the court, the Plaintiff prays for an order of temporary injunction to be issued restraining the Defendants from alienating and/or dealing in any manner whatsoever with the two parcels of land known as Karatina Town/Block 1/241 as well as Karatina Town/Block 1/242 pending the hearing and determination of the suit. In addition the Plaintiff craves for an order of a mandatory injunction to restrain the defendants from exercising authority over the suit premises and/or dealing with them in any manner whatsoever. Ultimately, the Plaintiff urges the court to grant an order of injunction to restrain the Defendants from inhibiting, alienating, and dealing with or in any other manner interfering with the said parcels of land.



15. The application was premised on the basis that the Plaintiff/Applicant is a family company incorporated on 15th June 1999 and it was the registered proprietor of the two properties which it had developed and leased out to some 85 tenants. It was the Plaintiff's case that the 1st and 2nd Defendants had fraudulently purported to transfer the suit properties to their name consequent to which they had now given notices to the Plaintiff's tenants to pay rent only to the 1st Defendant. It is the Plaintiff's case that unless the Defendants are restrained by the orders sought herein, the suit properties stand to be wasted and damaged.
16. At prayer No. 5 of the Motion, the Plaintiff urges the court to grant a permanent order of injunction restraining the Respondents from alienating, dealing with disposing, trespassing or in any manner whatsoever interfering with the suit properties. A permanent injunction which is also known as a perpetual injunction is however only granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. That type of injunction is only granted upon the merits of the case after evidence in support and against the claim has been tendered. In the circumstances herein, it was clear that the suit has not been heard and that an order of a permanent injunction is not available to the Plaintiff at this stage.
17. Before embarking on a consideration of the Plaintiff's quest for an order of temporary injunction, it is perhaps important that we delve into the background of this dispute.
18. From the material placed before the court, it is apparent that the suit herein revolves around members of a nuclear family and companies founded by the family Patriarch, one Sospeter Njogu Mahihu, and who between them has the right to collect rent and manage two rental buildings constructed on the suit properties.
19. It was apparent from a perusal of the Supporting Affidavit to the application that while the suit is brought in the name of Mathiomi Holdings Limited as the Plaintiff, the tussle is largely between Stephen Wachira Njogu who has sworn the Affidavit and his sisters Mary Muthoni Njogu and Shelmith Wambui Njogu who are also co-directors and shareholders of the Plaintiff's company. The said two sisters also appear to be directors and shareholders of the 1st and 2nd Defendant companies which, according to the Plaintiff, have now fraudulently purported to transfer ownership to themselves through forged documents, false representation and non-disclosure of material facts.
20. As was long stated in the celebrated case of *Giella –vs- Casman Brown & Co. Ltd* [1973] EA 358:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally 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.”
21. That being the case, the first inquiry that this court must make is whether or not the Plaintiff has made out a prima facie case with a probability to succeed at the trial. As to what would amount to a prima facie case in a matter such as this, the Court of Appeal in *Mrao – vs- First American Bank of Kenya Limited & 2 Others* [2003] KLR 125 held as follows:

“.....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 letter.”

22. In the matter before me, the Plaintiff asserts that it is the registered proprietor of the two properties which according to the Plaintiff, was transferred to them in the year 2016 by the said Sospeter Njogu Mahihu who is also a director of the Plaintiff. According to the 1st and 2nd Defendants however, it was the said Sospeter Njogu Mahihu who as the sole surviving director of the Plaintiff did incorporate the 1st and 2nd Defendant companies before transferring the suit properties to either of them.
23. According to the 1st and 2nd Defendants, prior to the transfer of the suit properties to the names of the 1st and 2nd Defendants, the same were previously registered in the name of Sospeter Njogu Mahihu. It was their case that the said Sospeter solely and independently incorporated the 1st and 2nd Defendants in October 2020 after which he transferred Karatina Township Block 1/242 to the 1st Defendant and Karatina Township Block 1/241 to the 2nd Defendant.
24. From the material placed before the court, it was apparent that while the 1st and 2nd Defendants maintained that the said Sospeter Njogu Mahihu was the sole surviving director of the Plaintiff, they also aver separately that all the children of the said Sospeter Njogu Mahihu were also directors and shareholders of the Plaintiff company.
25. That position appears to be supported by annexure “SWN2” of the Supporting Affidavit sworn by Stephen Wachira Njogu which lists 4 directors and other shareholders of the Plaintiff’s company as at 18th January 2021. While the CR-12 form does not contain the name of Sospeter Njogu Mahihu as a director, the names of Stephen Wachira Njogu and his sisters Shelmith Njogu Wambui and Mary Muthoni Njogu are listed thereon as directors and shareholders of the Plaintiff.
26. Again while the 1st and 2nd Defendants contend that the suit properties remained solely in the name of the said Sospeter Njogu Mahihu, it was apparent from the Letters of Allotment annexed to the Replying Affidavit of Mary Muthoni Njogu at Pages 33 to 43 thereof, that the two properties were on 1st January 1999 allotted to Mathiomi Holdings Ltd (the Plaintiff herein). A perusal of the Certificate of Lease annexed at Pages 58 and 59 of the said Replying Affidavit further confirms that LR. NO. Karatina Township/Block 1/242 (one of the suit properties) was registered in the Plaintiff’s name on 16th March 1999.
27. Arising from the foregoing, it was apparent to me that the suit properties were once in the name of the Plaintiff before the purported acquisition by the 1st and 2nd Defendants in the year 2020. Given the fact that some of the admitted directors and shareholders of the Plaintiff dispute the manner in which the transfer was said to have been done by one single director who is now said to be unwell, I think it is only fair and just that the suit properties be preserved pending a full inquiry into the circumstances in which they changed hands and came to be registered in the names of the 1st and 2nd Defendants.
28. It was interesting to note that while both sides concede that the family Patriarch- the said Sospeter Njogu Mahihu was on 3rd April 2022 diagnosed with what they describe as senile dementia, one Sospeter Njogu Mahihu was able more than a year later to swear an affidavit on 19th December 2023 claiming to be the same family Patriarch and refuting the claim that he had transferred the suit properties to the 1st and 2nd Defendants.
29. Whatever the case, I was persuaded in the circumstances herein that the Plaintiff’s Notice of Motion dated 12th September 2023 had merit.
30. Accordingly I allow the same in terms of Prayer No. 3 thereof.



31. The costs shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AND IN OPEN COURT AT NYERI THIS FRIDAY 20TH DAY OF SEPTEMBER, 2024.

In the presence of:

No appearance for the Plaintiff.

Ms. Munyua for the Defendant.

Court Assistant: Michael

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J. O. OLOLA

