



**Chepkwony v Cheruiyot (Environmental and Land Originating Summons
E002 of 2024) [2024] KEELC 6802 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6802 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2024
CG MBOGO, J
OCTOBER 17, 2024**

BETWEEN

ELIJA CHERUIYOT CHEPKWONY PLAINTIFF

AND

VICTOR CHERUIYOT DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 24th June, 2024 filed by the plaintiff/ applicant, and it is expressed to be brought under Article 40 of the Constitution, Order 40 Rule 1(a), Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1, 1A, 3, 3A and 63 (e) of the Civil Procedure Act seeking the following orders: -
 1. Spent.
 2. That the defendant/respondent instructed the Assistant County Commissioner together with the area chief to visit the suit property with some police officers to supervise the fencing of the suit land with the intention of forcefully taking over possession of the suit property (sic).
 3. Spent.
 4. That the honourable court be pleased to issue an order of injunction against the defendant, his servants, agents, assigns, representatives or heirs restraining them from taking possession, alienating, subdividing, selling, demarcating, transferring or in any way dealing with the said parcel of land number LR No. Cis-Mara/ Ololulunga/ 21172 pending the hearing and determination of the main suit.
 5. That the costs of the suit and this application be awarded to the plaintiff.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that by an



agreement dated 16th December, 2007, he bought a portion of the suit land measuring 3.5 acres from Samson Meitamei Kapeen at Kshs. 120,000/- per acre. That he paid the full amount of the purchase price and he took possession immediately, which he has put into use of rearing dairy cows to generate income. Further, that he uses a portion of his land to cultivate, and which he has invested on by planting indigenous trees among others.

3. The plaintiff/ applicant deposed that he conducted a search on LR Cis-Mara/ Ololulunga/ 6223 and found the same to have been subdivided, and his portion of land Cis Mara/ Ololulunga/ 21172 had been transferred to the defendant/ respondent without any colour of right. He deposed that the unlawful transfer of his land to the defendant/ respondent does not interrupt adverse possession from running since it continues even after registration of the defendant. The plaintiff/ applicant deposed that he has been in occupation of the suit land for more than 12 years, and the defendant/respondent has no right to enter, encroach, construct or carry out any work on the suit land. Further, that the defendant's/ respondent's action of subdivision if not halted, will result in destruction, wastage and ruin of his property.
4. The defendant/ respondent filed grounds of opposition dated 18th September, 2024 challenging the application on the following grounds: -
 1. That the application is frivolous and vexatious.
 2. That the application has not met the conditions of a grant of interlocutory injunction as set out in the famous case of *Giella versus Cassman Brown and Company*.
5. The application was canvassed by way of written submissions. The defendant/respondent filed his written submissions dated 1st October, 2024 where raised two issues for determination as listed below: -
 1. Whether the plaintiff/ applicant has a prima facie with probability of success.
 2. Whether there is likelihood of irreparable harm in case the orders of injunction sought is not granted.
6. On the first issue, the defendant/ respondent submitted that the plaintiff/ applicant has no case with a probability of success for the reason that there is nothing that suggests that he is in occupation. Further, that the plaintiff/ applicant is trying to hoodwink the court to enjoy the orders of injunction. The defendant/ respondent admitted that indeed it is true that the plot no. Cis/ Mara-Ololulunga/ 6223 from which the plaintiff/ applicant purchased the land was closed for subdivision. Further, that in the absence of the previous owner, the plaintiff/ applicant has no case against him.
7. On the second issue, the defendant/respondent submitted that he is a beneficiary of the subdivision, where he was issued with a title deed, and the plaintiff/ applicant has not indicated that there was any fraud in the acquisition of the land. He submitted that being the holder of the title, he will suffer irreparably.
8. The plaintiff/ applicant did not file written submissions. Be that as it may, I have considered the application, the grounds of opposition and the written submissions filed by the defendant/respondent. I am of the view that the issue for determination is whether the plaintiff/applicant has met the criteria for the grant of an order of temporary injunction pending the hearing and determination of the main suit.
9. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of *Giella v Cassman Brown* [1973] EA 358. This position has been reiterated in numerous



decisions and more particularly in the case of *Nguruman Limited v 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.”

10. From the above cited authority, the plaintiff/applicant ought to, first, establish a prima facie case. The plaintiff/ applicant argued that he purchased 3.5 acres vide an agreement of sale dated 16th December, 2007 which he took possession immediately upon paying the full purchase price. He argued that he has established a prima facie owing to the fact that whereas the defendant has title to his portion of land, he has been in actual possession of the same where he has utilized the land to generate income. In support thereof, the plaintiff/ applicant annexed photographs of the suit land, an agreement for the sale of land, and a copy of the green card of parcel number Cis-Mara/Ololulunga/6223 where the subdivision is said to have emanated from.
11. In my view and upon analysis of the documents in support of the plaintiff/applicant’s case, there is no material to show that the defendant/ respondent is indeed the registered owner of the suit land being parcel no. Cis-Mara/Ololulunga/6223. Equally, the defendant/ respondent has admitted to have been registered as the owner of the suit property but this admission has been raised in his written submissions. Without evidence to prove that indeed the title deed is registered in the name of the defendant/ respondent, the court cannot rely on the said submissions. In *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR, 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.”
12. The agreement dated 16th December, 2007 refers to a parcel of land known as Narok Cis/Mara/Ololulunga/6323, and not 6223 as deposed in the affidavit. In my view, the plaintiff/ applicant has not established a prima facie case to warrant the grant of the orders of temporary injunction.
13. Having said the above, it would be needless to delve into the other conditions necessary for the grant of the orders sought. The upshot of the foregoing is that the notice of motion dated 24th June, 2024 lacks merit, the same is hereby dismissed. Costs in the cause. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 17TH DAY OF OCTOBER, 2024.

HON. MBOGO C.G.

JUDGE

17/10/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

