



REPUBLIC OF KENYA



KENYA LAW
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**Ng'ang'a v Kajiado Land Disputes Tribunal & 2 others (Environment & Land
Petition 2 of 2021) [2024] KEELC 6940 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 2 OF 2021
LC KOMINGOI, J
OCTOBER 17, 2024**

BETWEEN

KENNETH MUNGAI NG'ANG'A PETITIONER

AND

KAJIADO LAND DISPUTES TRIBUNAL 1ST RESPONDENT

RESIDENT MAGISTRATE, KAJIADO LAW COURTS 2ND RESPONDENT

KUNINI OLE MUANTA NTIAPUI 3RD RESPONDENT

RULING

1. This is the Notice of Motion application dated 20th May 2022 is brought under: (Rules 5, 18 and 19 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013) seeks:
 - i. Spent.
 - ii. Spent.
 - iii. That pending the hearing and determination of this Petition, this Hon. Court grants a temporary injunction to restrain the 3rd Respondent, his servants, agents or any other person whatsoever from selling, attempting to sell, subdividing or in any way interfering with the property known as Kajiado/Kaputiei North/1034, being the suit property herein.
 - iv. Spent.
 - v. That pending the hearing and determination of this Petition, this Hon. Court grants a temporary injunction to restrain the 3rd Respondent, his servants, agents or any other person whatsoever from inhibiting the Petitioner's access to the property known as Kajiado/Kaputiei North/1034, being the suit property herein.



- vi. That costs of this application be in the cause.
2. The application which is supported by the Petitioner's sworn Affidavit is based on the grounds that the suit property was fraudulently transferred to the 4th, 5th and 6th Respondents by the 3rd Respondent who was charged and convicted of the offence of fraud and forgery in Kajiado SRM criminal Case No. 486 of 2015 (Republic vs Kunini Ole Munata). The 3rd Respondent has made it impossible for the Petitioner to access the suit property by hiring goons to chase him every time he attempts to access it.
3. The Respondents neither entered appearance nor filed their responses.
4. This application was canvassed by way of written submissions.

Submissions of the Petitioner/Applicant.

5. Counsel submitted that grant of a temporary injunction was provided for under Order 40 Rule 1 of the Civil Procedure Rules when a property was in danger of being wasted, damaged or alienated. The threshold for grant of such orders was espoused in *Giella vs Cassman Brown & Co. Ltd* (1973) EA 358 and *American Cyanamid Co. vs Ethicom Limited* (1975) A AER 504. Therefore, on whether the Applicant had established a prima facie case with a probability of success, counsel submitted that they had produced evidence to show that the Applicant was entitled to the prayer sought. This is because the 3rd Respondent had transferred the suit property to the 4th, 5th and 6th Defendants fraudulently and had been charged and convicted of fraud and forgery. Additionally, the 3rd Respondent had been hiring goons to chase the Applicant from the suit property and thus the prayers sought in the application were warranted.
6. On whether the Applicant would suffer irreparable loss that cannot be compensated by an award of damages, counsel submitted that the Applicant's life was in danger because every time he attempted to access his property, he would be met with hostility and if the orders sought are not granted, the imminent violence could not be compensated by way of damages. Additionally, deprivation of his right to his property could not be adequately compensated by monetary damages.
7. On the question as to whose favour the balance of convenience lies, counsel submitted that if the injunction is not granted, the Applicant would suffer greater loss than if the injunction was granted and the suit dismissed making reference to *Chebii kipkoech vs Barnabas Tuitoek Bargarora & Another* [2019] eKLR and *Paul Gitonga Wanjau vs Gathuthis Tea Factory Co. Ltd & 2 others* [2016] eKLR.
8. He urged the court to grant the orders sought.

Analysis and determination

9. I have considered the Notice of Motion, the written submissions, and the authorities cited. The issues for determination are:
 - i. Whether the Petitioner's Application meets the threshold for grant of temporary injunction.
 - ii. Who should bear the costs of this application?
10. The Petitioner/Applicant's case is that he purchased the suit property from the 3rd Respondent on 13th November 1989 and was issued a title deed on 18th July 1991. Seventeen (17) years later, the 3rd Respondent would file a boundary dispute claim at the Kajiado Land Disputes Tribunal on the grounds that the land sold to the Petitioner was bigger than what was indicated on the title deed and he was entitled to the excess land. The Tribunal granted the prayers in their award dated 27th March 2007. Aggrieved, the Petitioner/Applicant filed a Judicial Review on 21st September 2007 but it was



struck out on 6th March 2009 on technicality. The Petitioner filed an application for review of the said order but later withdrew it. In 2010, the Petitioner/Applicant discovered that the 3rd Respondent using forged documents had registered the suit property in his name, subdivided it and sold part of it to other persons. The 3rd Respondent was charged and convicted of the offences of fraud and forgery. The Petitioner/Applicant seeks a temporary injunction to restrain the Respondents from interfering with the suit property.

11. It is the Petitioner/Applicant's case that the suit property has now been transferred to the 4th to 6th Respondents albeit fraudulently. It has therefore become necessary to amend the Petition which to also include the 4th to 7th Respondents. The 7th Respondent being the Land Registrar Kajiado.
12. I find that the prayer to amend the Petition is merited and the same is granted.
13. The principles for grant of temporary injunction were laid down in the precedent setting case of *Giella Vs. Cassman Brown & Co. Ltd* (1973) EA 3568. In the case of *Mrao Ltd & 2 Others* (2003) KLR 125, the Court of Appeal in determining what amounts to a prima facie stated;

“So what is a prima facie case? I would say that in a civil application it is a case in which on the material presented to court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, so as to call for an explanation from the latter.”
14. As stated earlier the 4th – 6th Respondents bought their parcels from the 3rd Respondent. They may not have been aware of the Petitioner's interest in the said parcels.
15. As clearly stated by the Petitioner/Applicant, the parcels are now registered in the names of the 4th to 6th Respondents. I find that the Petitioner/Applicant has failed to establish a prima facie case with a probability of success at the trial.
16. The upshot of the matter is that I decline to grant the orders of temporary injunction at this stage.
17. In conclusion the Notice of Motion succeeds only in respect of Prayer No.1. The costs do abide the outcome of the Petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2024.

L. KOMINGOI

JUDGE

In the presence of:

Ms. Kamene for Ms. Wanja for the Petitioner.

N/A for the Respondents.

Court Assistant – Mutisya.

