



**Ndembi v Ndembi & another (Environment & Land Case E012 of 2024)
[2024] KEELC 13384 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND CASE E012 OF 2024**

**E ASATI, J
NOVEMBER 21, 2024**

BETWEEN

AMINA EMMY IMINZA JUMA NDEMBI PLAINTIFF

AND

FLORENCE NDEMBI 1ST DEFENDANT

JORAM NDEMBI 2ND DEFENDANT

RULING

1. The application before court for determination is the Notice of Motion application dated 9th September, 2024 brought by the Applicant pursuant to the provisions of sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Order 40 Rules 1 and 2 of the Civil Procedure Rules. The application seeks for orders that;
 1. This application be certified urgent and heard *ex parte* in the 1st instance and service thereof be dispensed with
 2. That pending hearing of this application, the Honourable be pleased to issue a temporary injunction to restrain the 1st and 2nd Defendants/Respondents by themselves, servants, beneficial owner, agents or any person acting under their instructions or their interest from selling, disposing or, sub-dividing, transferring, alienating, leasing or otherwise dealing with the suit property in any manner likely to affect the rights to his portion of the property.
 3. Pending hearing of this application, this Honourable court be pleased to issue injunctive orders restraining the Defendant/Respondent by themselves, servants, employees, agents or any other person acting under their instructions or their interest from entering, interfering with the Applicant entry, occupation and possession, otherwise, dealing, entering, remaining, selling, trespassing or in any other manner interfering with all parcel of land know as E/Bunyore/Ebuchitiwa/2491.



4. Pending hearing of this suit, this Honourable court be pleased to issue an injunctive order restraining the Defendants/Respondents by themselves, servants, employees, agents or any other person acting under their instructions or their interest from entering, interfering with the Applicant's entry, occupation and possession, otherwise dealing, selling, entering, remaining, trespassing or in any other manner interfering with all parcel of land known E/Bunyore/Ebuchitiwa/2491.
 5. That this Honourable court be pleased to grant a declaration that the occupation and use of E/Bunyore/Ebuchitiwa/2491 belonging to the Plaintiff/Applicant without consent amounts to trespass and order that the Defendant/Respondent be at liberty to move to their parcel of land number E/Bunyore/Ebuchitiwa/2492.
 6. This honourable court be pleased to grant an order of eviction against the Respondents being that they are trespassing on the Applicant's parcel of land number E/Bunyore/Ebuchitiwa/2491
 7. This Honourable court be pleased to grant a declaratory order that the piece of land E/ Bunyore/Ebuchitiwa/2491 legally belong to the Plaintiff/Applicant
 8. That this Honourable court be pleased to order the OCS, Luanda Police Station and OCS Esiembero Police Station to enforce the orders of this Honourable Court.
 9. This Honourable Court be pleased to issue such further orders as may meet the ends of justice in this suit; and
 10. That the costs of this application be provided for
2. Prayer 1 – 3 of the application are already spent as they intended for the preliminary ex parte stage of the application. Prayer 5, 6 and 7 of the application seek for an order of eviction and declarations. These are final orders which can only be granted at the end of the suit after hearing the evidence.
 3. Prayer 4 of the application seeks for an injunction order restraining the Defendant/Respondent from entering, interfering with the Applicant's entry, occupation and possession otherwise dealing, selling, entering, remaining, trespassing or in any other manner, interfering with all parcels of land known as E/Bunyore/Ebuchitiwa/2491.
 4. The application was based on the grounds on the face of the application, and the Supporting Affidavit.
 5. The application was canvassed by way of written submission.
 6. The grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358. These are that the Applicant must demonstrate a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience. A prima facie case was defined by the Court of Appeal in *Mrao Ltd -vs- First American Bank Kenya Ltd & 2 Others* [2003] eKLR 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 latter. ”



7. The Applicant's case herein is that she is the legal owner of land parcel known as E/Bunyore/Ebuchitiwa/2491 (the suit land herein) which is in danger of being wasted, damaged or alienated by the Respondents. That the Respondents unlawfully encroached, occupied, built and settled on the suit land for several years with intention to deprive the Applicant of ownership. That the Respondents' entry onto the suit land amounts to trespass. That the Applicant stands to suffer irreparable damage which would not be adequately compensated by way of an award of damages. That there will be no prejudice that will be occasioned to the Respondent if the application is allowed.
8. To the Supporting Affidavit, the Applicant annexed title deed and certificate of official search in proof that the land belongs to the her. The Applicant deponed in paragraph 5 of the Supporting Affidavit that the Respondents have illegitimately occupied, built and settled on the suit land despite having their own portion. That on 22nd June, 2024, the Applicant received information that there were negotiations by the Respondents to sell the suit land to other parties.
9. I have considered the application, the response thereto and the submissions thereon. It is the Applicant's case that the Respondents have built and settled on the suit land for several years. Under Order 40 Rule 1 of the *Civil Procedure Act*, an order of temporary injunction issues, inter alia, where the property in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree. An order of temporary injunction is meant to restrain or prevent an action that is about to take place. It is not meant to have the effects of an eviction order. As the Respondents are already built and settled on the suit land, an order restraining them from entry onto the land will not be appropriate at this stage of the trial. However, it is important to preserve the suit land pending disposal of the suit. The applicant averred that the suit land is registered in her name and that the land is in danger of being sold and/or disposed of.
10. I therefore hereby allow the application in the following terms;
 - a. An order of temporary injunction is hereby granted restraining the Respondents, their agents, servants or employees from selling, transferring, parting with possession or in any manner alienating the suit land parcel No. E Bunyore/Ebuchitiwa/2491, pending hearing and determination of the suit.
 - b. Costs of the application be in the main suit.Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA DELIVERED VIRTUALLY THIS 21ST DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Khafumi h/b for Atemo for the Plaintiff/Applicant.

No appearance for the Defendants/Respondents.

