



REPUBLIC OF KENYA



**Jashbahi v Nampaso & another (Environment & Land Case E014 of 2024)  
[2024] KEELC 13269 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13269 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E014 OF 2024  
CG MBOGO, J  
NOVEMBER 20, 2024**

**BETWEEN**

**PATEL SANJAYKUMAR JASHBAHI ..... PLAINTIFF**

**AND**

**FREDRICK LANKANONI NAMPASO ..... 1<sup>ST</sup> DEFENDANT**

**NAROK COUNTY LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 11<sup>th</sup> June, 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Sections 1A,1B, 3A and 18 of the Civil Procedure Act and Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules seeking the following orders: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this suit, the respondent whether acting in person, through their agents, servants, employees, assigns or any person acting at their behest be restrained from selling, registering any interest, entering, remaining or in any way interfering with the applicant's possession and ownership of the parcel of land known as Narok Township/132.
  4. That Narok CM ELC No. E014 of 2022 currently pending for hearing before the magistrate court in Narok be withdrawn and transferred to this court and upon transfer it be consolidated with the present suit for hearing and disposal.
  5. That costs of this application be borne by the respondents.



2. The application is premised on the grounds inter alia that the plaintiff/ applicant is the registered owner of the parcel of land known as Narok Township/ 132 (suit property) which he was issued with a certificate of lease in the year 2009. The application is further supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that he is the registered owner of the suit property, and that since he resides in the United States of America, he left Muneer Haroon Ismael to look after his property. He deposed that sometime in the year 2023, Muneer informed him that his brother JagdishKumar Jashbhai Patel had entered into a sale agreement with the 1<sup>st</sup> defendant/ respondent for the sale of land which his brother purported to have been issued with a letter of allocation by the County Government of Narok.
3. The plaintiff/ applicant further deposed that the County Government of Narok declined to transfer the land to the 1<sup>st</sup> defendant/ respondent on the grounds that it was his property. He deposed that his brother and the 1<sup>st</sup> defendant/ respondent filed a suit at the Magistrates' court in CM ELC No. E041 of 2022 seeking to compel the County Government of Narok to transfer the suit property to the 1<sup>st</sup> defendant/ respondent. He deposed that he obtained copies of the pleadings filed at the Magistrates Court and sought to be enjoined as an interested party. He went on to depose that while the matter was pending, the defendants/ respondents registered the purported conveyance and a certificate of leased was issued in favour of the 1<sup>st</sup> defendant/ respondent. He deposed that the 1<sup>st</sup> defendant/ respondent has gone ahead and placed a notice on the suit property indicating that the same is available for short leases.
4. The plaintiff/ applicant deposed that the registration of the 1<sup>st</sup> defendant/ respondent is fraudulent and corrupt since he was allocated the land in 2009 and further, a certificate of lease cannot be issued on top of another. It was deposed that the conduct of the defendants/ respondents is illegal, fraudulent and constitutes misfeasance of office.
5. The 1<sup>st</sup> defendant/ respondent filed his replying affidavit sworn on 4<sup>th</sup> September, 2024 in opposition to the application. The 1<sup>st</sup> defendant/ respondent deposed that he is the registered owner of the suit property, and that he was issued with a certificate of lease dated 15<sup>th</sup> April, 2024, and at the time of the allocation, the lessor had satisfied itself that there was no other applicant for the said parcel upon purchase from Barun Patel Singh who was the previous registered owner. He further deposed that he conducted due diligence which reflected that Barun Patel Singh was the registered owner, and that he also made enquiry from the County Government of Narok which confirmed the said ownership vide the letter dated 24<sup>th</sup> January, 2024.
6. The 1<sup>st</sup> defendant/ respondent further deposed that as per the valuation report dated 27<sup>th</sup> February, 2024 the value of the property is estimated at Kshs. 4,000,000/-, which is within the jurisdiction of the magistrates' court and not this court. He deposed that he followed all the prescribed steps and procedure for allocation of the lease and that he paid all the requisite fees. He also deposed that after allocation, the plaintiff/ applicant started encroaching on his property which led to the filing of CM ELC No. E014 of 2022 which is pending hearing and determination. The 1<sup>st</sup> defendant/ respondent deposed that the plaintiff/ applicant filed the instant suit in order to defeat his suit, and that this suit is an abuse of the court process.
7. The application was canvassed by way of written submissions. The plaintiff/ applicant filed his written submissions dated 26<sup>th</sup> July, 2024. While relying on the case of Mrao Limited v First American Bank of Kenya Ltd [2003] eKLR, the plaintiff/ applicant submitted that he was issued with a certificate of lease on 22<sup>nd</sup> December, 2009, and that the 1<sup>st</sup> defendant/ respondent obtained registration of the same in April, 2024. He submitted that the very existence of a certificate of lease in the name of the 1<sup>st</sup>



- defendant/ respondent issued in 2024 when his title was in existence is prima facie evidence of illegality and corruption. He further submitted that it is wrong for a party to enter into a conveyance in respect to a property during the pendency of an active court case. In addition, he submitted that the conduct of the 1<sup>st</sup> defendant/respondent not only contravened the doctrine of lis pendens, but rendered his own suit moot, and that through his own clever tactics, he managed to get the same orders that he sought in court through the back. To buttress on this submission, the plaintiff/ applicant relied on the case of *Ashmi Investment Limited v Riakina Limited & Another* [2021] KECA 184 (KLR).
8. The plaintiff/ applicant further submitted that the 1<sup>st</sup> defendant/ respondent has demonstrated an inclination to alienating the land in spite of the existence of court proceedings, and that it cannot be ruled out that the 1<sup>st</sup> defendant/ respondent will vest the suit property in the names of a third party so as to create an interest of a bona fide purchaser for value without notice. He submitted that the integrity of the court proceedings in the adjudication of party's rights cannot be compensated by way of damages, and that it is only fair and right that the court issues the injunction orders.
  9. The plaintiff/ applicant further submitted that Section 18 of the Civil Procedure Act is discretionary and whose objective is to do justice as well as to prevent the procedures and processes of the court from abuse. That while all the parties had their attention to the case filed at the magistrates' court, the 1<sup>st</sup> defendant/ respondent surreptitiously transferred the suit property and had a certificate of lease issued in his favour. Further, it was submitted that Narok CM ELC E014 of 2022 was rendered moot by the 1<sup>st</sup> defendant/ respondent, and that its transfer to this court will lay a basis upon which this matter can be adjudicated. He further submitted that being an interested party in CM ELC No. E041 of 2022, his participation was very limited, and he is confined to the issues as framed by the parties, and he cannot have his rights vindicated in the case. Reliance was placed in the cases of *Guyo Jarson Daleno v Jamila Mohamed Maalim* [2020] eKLR, *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] eKLR and *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR.
  10. The 1<sup>st</sup> defendant/ respondent filed his written submissions dated 28<sup>th</sup> October, 2024 where he submitted that the plaintiff/ applicant has not established any basis why he filed a parallel suit while he applied and was joined as a party in the matter before the magistrates' court. He also submitted that the plaintiff/ applicant has not challenged the jurisdiction of the lower court to hear and determine the suit before it whose value of Kshs. 4,000,000/- is well within the magistrates' court.
  11. The 1<sup>st</sup> defendant/ respondent submitted that the plaintiff/ applicant has not demonstrated that the balance of convenience will not be met at the magistrates' court, that he will suffer prejudice and that he will have a challenge appearing before the magistrates' court.
  12. I have considered the application, replying affidavit, and the written submissions filed by the respective parties herein. In my view, the issues for determination are whether the plaintiff has met the threshold for grant of injunction orders and whether this court ought to consolidate the present suit with CM ELC No. E041 of 2022.
  13. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case 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”.

14. 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.”

15. The plaintiff/ applicant contended that he is the registered owner of the suit property, and in support thereof, he annexed a copy of the certificate of lease for Narok Township/ 132 issued on 22<sup>nd</sup> December, 2009. The 1<sup>st</sup> defendant/ respondent also laid claim of the property and he too annexed a copy of the certificate of lease which is registered in his name and issued on 15<sup>th</sup> April, 2024. From the documents relied on by the plaintiff/ applicant and the 1<sup>st</sup> defendant/ respondent, it is clear that there are two titles over the same property.

16. Having perused the evidence as presented by the parties, it is clear that the plaintiff/ applicant was the first to be issued with the certificate of lease on 22<sup>nd</sup> December, 2009 while the 1<sup>st</sup> defendant/ respondent was issued with one on 15<sup>th</sup> April, 2024. At this point, the court cannot confirm with certainty which of the two title is genuine. However, from the face of it, the plaintiff/ applicant’s certificate of lease 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 issues 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”.

17. The manner in which the 1<sup>st</sup> defendant/ respondent obtained his certificate of lease cannot be determined at this stage as that would require a trial process. However, that does not mean that the certificate cannot be impugned owing to fraud, misrepresentation or having been acquired through corrupt means. What is not in doubt is that the plaintiff/ applicant was the earlier registered proprietor of the suit property, and I am satisfied that the plaintiff/ applicant has established a prima-facie case.

18. 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.”

19. The plaintiff/ applicant contended that during the pendency of the suit before the magistrates’ court, the 1<sup>st</sup> defendant/ respondent went ahead and obtained a certificate of lease in his favour, and further that a notice has been placed on the suit property indicating that the same is available for short term



leases. The plaintiff/ applicant annexed a photograph indicating a sign on the suit property. This claim has not been contested by the 1<sup>st</sup> defendant/ respondent. On this issue, and in my view, there is likelihood of damage and potential threat to the status of the suit property which is capable of demonstrating irreparable loss on the part of the plaintiff/ applicant.

20. In sum, the balance of convenience tilts in favour of the plaintiff/ applicant as the inconvenience caused will be greater if the orders are not granted in his favour as opposed to the 1<sup>st</sup> defendant/ respondent.
21. The second issue is whether the matter before the magistrates' court ought to be transferred to this court and consolidated with this suit. In advancing this argument, the plaintiff/ applicant argued that the matter before the magistrates' court is moot owing to the registration of the suit property in the name of the 1<sup>st</sup> defendant/ respondent, and secondly, that whereas he was joined as an interested party in the same matter, he would not be able to properly adjudicate his rights as he is only confined to the issues raised by the parties, and further that the value of the suit property is estimated at Kshs. 50,000,000/- which fact was not disclosed by the 1<sup>st</sup> defendant/ respondent.
22. The 1<sup>st</sup> defendant/ respondent strongly opposed this move and maintained that the jurisdiction of the subject matter lies at the magistrates court. He adduced evidence to show that the value of the suit property is Kshs. 4,000,000/-. In addressing the above issue, I do note that the plaintiff/ applicant in his plaint pleaded in paragraph 12 that the value of the suit property is Kshs. 50,000,000/-. The 1<sup>st</sup> defendant/ respondent relied on a document dated 27<sup>th</sup> February, 2024 to imply that the value of the land is Kshs. 4,000,000/-. The document relied on by the 1<sup>st</sup> defendant/ respondent is not a valuation report and instead it is a valuation form for collection of stamp duty. This is not sufficient to show that the value of the property is estimated at Kshs. 4,000,000/-.
23. Section 18 of the *Civil Procedure Act* provides as follows;
  - “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the high court may at any stage—
    - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
    - (b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
      - (i) try or dispose of the same; or
      - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
      - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
  - (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.



24. From the above provision of the law, the power to transfer a suit is discretionary, and a party seeking to transfer a matter from one court to another has the burden of providing sufficient reasons as to why the transfer is merited. However, a matter can only be transferred if the court from which the plaintiff/ applicant is seeking to have the same transferred from, had jurisdiction over the said matter. In this case, the respective parties differ on the value of the suit property, and neither of them has produced a valuation report to aid the court in arriving at a fair determination.
25. This court further takes note of the fact that there is a subsisting matter before the magistrates' court over the same property, and for this reason this court cannot grant the prayers sought at this stage. However, and in a bid to ensure a fair and just determination of the matter before the court, I direct that a government valuer visits the suit property for purposes of valuation. Thereafter, the government valuer to prepare and file a report within 28 days from the date of this ruling. For clarity, the plaintiff/ applicant and the 1<sup>st</sup> defendant/ respondent to equally share the costs of valuation. In the meantime, the interim order issued on 25<sup>th</sup> June, 2024 is hereby extended until then. Further mention on 19<sup>th</sup> December, 2024. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL on this 20<sup>TH</sup> day of NOVEMBER, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

**20/11/2024.**

In the presence of: -

Mr. Meyoki Pere – C. A

