



REPUBLIC OF KENYA



KENYA LAW
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**Daniel & 7 others v Daniel & 2 others (Environment & Land Case
E050 of 2021) [2024] KEELC 7538 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7538 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E050 OF 2021
A NYUKURI, J
NOVEMBER 13, 2024**

BETWEEN

**ROSELINE DANIEL 1ST PLAINTIFF
MONICA NDUNGE NZIOKA 2ND PLAINTIFF
MARY ZAKAYO ALIAS MOLLY M. D. ZAKAYO 3RD PLAINTIFF
CARO MUTETI ALIAS CAROL MUTETI 4TH PLAINTIFF
BRIGIT LOKO MUTISO 5TH PLAINTIFF
REGINA ONYANA ALIAS REGINA MWIKALI ONYUNA 6TH PLAINTIFF
FELISTAS MUSYOKA 7TH PLAINTIFF
ROSEMARY MWANZIA 8TH PLAINTIFF**

AND

**JOSHUA MUTHAMA DANIEL 1ST DEFENDANT
FRANKLINE NZIOKA DANIEL 2ND DEFENDANT
PATRICK KYALO MWANZIA 3RD DEFENDANT**

RULING

1. Before court is a notice of motion dated 20th September 2023 filed by the plaintiffs seeking the following orders;
 - a. Spent
 - b. Spent



- c. That pending the hearing and determination of the main suit, the Honourable Court be pleased to restrain the respondents by themselves, their servants, agents and or anyone else acting through and/or under them from collecting rent from the premises on land Muputi/Kiima-Kimwe/60 and Kalama Kiitinu/1573.
 - d. Spent.
 - e. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order that the rent proceedings from the premises on land Muputi/Kiima-Kimwe/60 and Kalama Kiitinu/1573 be deposited in a joint bank account held under the names of both the applicants and respondents.
 - f. That costs of this application be awarded to the applicants.
2. The application was anchored on the affidavit of the 2nd plaintiff sworn on 20th September 2023. The applicants' case is that the suit seeks a determination of the question as to whether the respondents hold parcel Nos. Muputi/Kiima-Kimwe/60 and Kalama Kiitinu/1573 in trust for the applicants. Further that the suit property have rented premises and it will be unfair for the respondents to benefit from rent from the premises to the exclusion of the applicants. Further that the orders sought will not prejudice any of the parties.
 3. The applicants also stated that all the parties herein were children and beneficiaries of the estate of the late Daniel Nzioka Mutiso. She also stated that it had been agreed by all that rent proceeds be deposited in bank account Number 011xxxxxxx300 at the Cooperative Bank Machakos for the benefit of the family and that the said deposits were done until 2019 when the respondents secretly began collecting rent in cash from the tenants. She also stated that she had been made aware of the fact that the respondents had been trying to withdraw funds from the above bank account. That the orders sought will not prejudice any party and it will be unfair for the respondents to continue receiving rent to the applicants' exclusion.
 4. The application is opposed. Joshua Muthama Daniel, the 1st respondent swore a replying affidavit dated 17th October 2023 opposing the application. The respondents' case is that the suit property was registered in the name of the respondents as partners of Daniel Ventures and that the suit property was not held in trust for anyone as alleged or at all. He conceded that there were premises on the suit property in respect of which rent was paid through a bank account, but stated that the said money is for maintenance and development of the suit property and for the benefit of the partners only. He denied the applicants' allegations that the respondents were trying to access the moneys deposited in the bank and stated that the rent was also deposited at Equity Bank (an account opened by the applicants) in compliance with orders issued in Machakos High Court Succession No. 618 of 2005, on 20th August 2020 till 18th July 2023 when the said orders were vacated by the court.
 5. He stated that they wrote to the Branch Manager of the Cooperative Bank seeking lifting of the restraining orders and that the plaintiffs have not demonstrated the kind of loss that they will suffer.
 6. In a rejoinder, the 2nd plaintiff filed a supplementary affidavit dated 26th October 2023. She stated that Daniel Ventures Co. is a company intended to encompass all the estate's beneficiaries so that all rent is equally shared as the 2nd respondent admitted in his affidavit.
 7. The applicants filed written submissions dated 12th October 2023, which this court has duly considered.



Analysis and determination

8. The court has carefully considered the application, the response thereto and submissions. The only issue that arise for determination is whether the plaintiffs/applicants have met the threshold for grant of temporary injunction in the terms sought in the application.
9. Order 40 Rule 1 of the Civil Procedure Rules grants this court the jurisdiction to grant a temporary injunction where an applicant demonstrates that the disputed property is in danger of being wasted, damaged, alienated, removed or disposed in circumstances that show the possibility of obstructing or delaying execution of a decree that may be passed in favour of the plaintiff.
10. Principles for grant of temporary injunction are well settled. For an applicant to obtain temporary injunction, they must demonstrate a prima facie case with chances of success; demonstrate that they will suffer irreparable injury that cannot be compensated in damages if the injunction is not granted and where the court is in doubt, to resolve the application on a balance of convenience. (See *Giella v. Cassman Brown* [1973] EA 158).
11. In this case, the plaintiffs' case is that the defendants hold the suit property in trust for the plaintiffs on the basis of an amended confirmed grant issued in regard to the estate of the late Daniel Nzioka Mutiso which demonstrate that the suit property was granted to Daniel's Ventures Co.
12. The defendants have denied existence of trust and stated that they are partners forming Daniel's Ventures, and that the suit property is in their name.
13. I have considered the amended confirmed grant and the same shows that the suit property was granted to an entity called Daniel's Venture Co. On the other hand, the titles produced by the defendants show that the suit property is registered in the names of the three defendants herein trading as Daniel's Venture. It is not clear whether Daniel's Venture and Daniel Venture Co. is one and the same entity. Besides, the legal character of this Daniel's Venture Co. has not been disclosed by the plaintiffs and the court cannot ascertain whether the same is a company or a business name or any other legal entity recognizable in law. But more importantly, the plaintiffs did not provide any evidence linking them with Daniel's Venture Co., and therefore there is no evidence to show that the plaintiffs are one and the same as Daniel's Venture Co. That being the case, there is no basis for the plaintiffs' claim of the suit property on the basis of trust when the suit property belong to Daniel's Venture Co. and not to them. Essentially, the plaintiffs have not demonstrated any interest whether legal, equitable or otherwise in the suit property and consequently, their claim based on trust is without justification and not demonstrated at a prima facie level.
14. In the premises, I find and hold that the plaintiffs have not demonstrated a prima facie case with chances of success wherefore, I find and hold that their application dated 20th September 2023 has no merit which I hereby dismiss with no order as to costs.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 13TH DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

No appearance for the plaintiffs



No appearance for the defendants

Court assistant – Josephine

