



Leawin Limited & another v Rono & 3 others (Environment & Land Case E022 of 2023) [2024] KEELC 7426 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7426 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E022 OF 2023
LC KOMINGOI, J
NOVEMBER 7, 2024**

BETWEEN

LEAWIN LIMITED 1ST PLAINTIFF

LEAH CHELAGAT SAWE 2ND PLAINTIFF

AND

EDWIN KIPNGENO RONO 1ST DEFENDANT

JENGO MALL LIMITED 2ND DEFENDANT

COUNTY LAND REGISTRAR, KAJIADO COUNTY 3RD DEFENDANT

KAJIADO COUNTY GOVERNMENT 4TH DEFENDANT

RULING

1. This is the Notice of Motion dated 26th April 2024 brought under; (Section 1A, 1B, 3, 3A and 63 of the *Civil Procedure Act*, 2010, Order 40 Rule 7, Order 51 Rule 1 of the Civil Procedure Rules, 2020 and all other enabling provisions of the law).
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. That the mandatory injunction order issued as order (c) in the ruling delivered on the 14th March, 2024 by the honourable court be varied, discharged and set aside.
 4. That the injunctive order issued as against the 1st Defendant/Applicant as prayer (A) in the ruling delivered on the 14th March, 2024 be varied, discharged and set aside.



5. That upon grant of prayers (4) and (5) herein above, an order be issued reverting the properties known Plot Nos.LR403b (Now A719), Plot 276 (Now A728), Plot 832A (Now A738) to their original allottees being the 1st Defendant and the 2nd Plaintiff as per the Kajiado County Land Record.
6. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs i to xi.
4. The application is supported by the Affidavit of Dr. Edwin Kipngeno Rono, the 1st Defendant/Applicant sworn on the 26th April 2024.
5. In response the plaintiffs file a Preliminary Objection dated 6th June 2024.
6. There is a Replying Affidavit sworn by Nancy Sintoyia Shinini, Legal counsel of the 4th Defendant, on the 18th June 2024.
7. I have considered the Notice of Motion, the affidavit in support, the responses thereto, the written submissions and the authorities cited. The issues for determination are;
 - i. Whether the Preliminary Objection dated 6th June 2024 is merited.
 - ii. Whether the Notice of Motion dated 26th April 2024 is merited.
 - iii. Who should bear costs of the Application?
8. The Preliminary Objection dated 6th June 2024, does not raise pure point of law. The fact that the mandatory injunction has already been executed is a fact that can be contested. It must be proved by way of evidence. I agree with the submissions of the 1st Defendant that such evidence must be tested through cross-examination.
9. I rely on the case of Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Limited (1969) E.A 696 in finding that the Preliminary Objection herein is misplaced and without merit. The same is therefore dismissed.
10. The 1st and 2nd Defendants, seek that the mandatory injunction issued on 14th March 2024 be discharged and/or varied.
11. Order 40 rule 7 of the *Civil Procedure Act* provides;

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”
12. It is the 1st and 2nd Defendants/Applicants contention that the Plaintiffs obtained the orders of 14th March 2024 through non-disclosure of material facts Reliance is placed on the case of Leah Nyambura Mburu Vs. Barclays Bank of Kenya Limited (2012) eKLR where it was held;

“Again the court may be justified where there is evidence that the orders of injunction were obtained without disclosure of material facts or distortion or deliberate misrepresentation of fact. To obtain equitable orders of injunction by misleading court would justify the court in setting aside the orders.”
13. I find that the facts, claimed by the 1st Defendant to be distorted by the Plaintiff are facts which have to be confirmed during the hearing where evidence will be tendered and be tested on cross-examination.



14. This court maintains that by granting the orders of 14th March 2024, it exercised its discretion judiciously upon considering the material facts and pleadings before it. The court was satisfied that the required threshold for a mandatory injunction was met.
15. The upshot of the matter is that I find no merit in the Notice of Motion dated 26th April 2024 and the same is dismissed.
16. The suit properties ought to be preserved pending the hearing and determination of the suit herein. This applies to the Plaintiff who should not sell, dispose of or waste the suit properties.

The costs of the Application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF NOVEMBER 2024.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. K. Omondi for the Plaintiff.

Mr. Ochieng for the 1st, 2nd Defendants.

N/A for the 3rd Defendant.

Mr. Meso for the 4th Defendant.

Court Assistant – Mutisya.

