



Erinpet Enterprises Limited v Equity Bank Limited & 2 others (Environment & Land Case 21 of 2022) [2024] KEELC 14026 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14026 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 21 OF 2022
JO OLOLA, J
DECEMBER 20, 2024**

BETWEEN

ERINPET ENTERPRISES LIMITED PLAINTIFF

AND

EQUITY BANK LIMITED 1ST DEFENDANT

PHILLIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT

PETER NGOCHI MWANGI 3RD DEFENDANT

RULING

1. By the Notice of Motion dated 7th March 2024, Peter Ngochi Mwangi (the 3rd Defendant) prays for the following:-
2. That pending the hearing and determination of this application and the suit, the court be pleased to issue an order of injunction restraining the Plaintiff through its directors, servants or agents from interfering with the 3rd Defendant's peaceful and quiet possession of LR. No. Karatina Township Block 1/420 and in particular from issuing the tenants thereof with any notices and/or demands or from collecting rent from them;
3. That for avoidance of doubt, pending the determination of this application and the suit, the court be pleased to declare that the 3rd Defendant is entitled to continue collecting rent from the suit property which he owns;
4. That the costs of the application be provided for; and
5. That the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.



2. The application is supported by an Affidavit sworn by the 3rd Defendant and is premised on the grounds:
 - a). That the suit property is owned by the 3rd Defendant following his purchase of the same from the 1st and 2nd Defendants through a Public Auction conducted on 14th December 2022;
 - b). That on the said property stands a building that contains 22 rental units occupied by the 3rd Defendant's tenants who pay approximately Kshs. 150,000/= per month as rent to the 3rd Defendant;
 - c). That on 6th March 2024, the Plaintiff circulated leaflets in the suit property giving the said tenants a month's notice to vacate and demanding that the said tenants cease paying rent to the 3rd Defendant;
 - d). That as a consequence of the said notice, the tenants have refused to pay rent for March 2024 to the 3rd Defendant and there is a likelihood that they have started remitting rent to the Plaintiff; and
 - e). That the 3rd Defendant purchased the suit property through a loan facility of Kshs. 17,500,000/= and he continues to service the said facility and he stands to suffer huge unmitigated losses unless the court intervenes and restrains the Plaintiff and its directors from interfering with his quiet and peaceful possession of the said premises.
3. In opposition to the application, Messrs. Erinpet Enterprises Ltd (the Plaintiff) avers that it was the registered owner of the suit property. In a Replying Affidavit sworn by its director Peter Muraguri Njogu on 9th April 2024, the Plaintiff asserts that on 19th October 2022, it did file a suit to stop the sale of the suit property.
4. The Plaintiff accuses the 1st and 2nd Defendants of irregularly and fraudulently selling the suit property to the 3rd Defendant while the suit was pending in court. It is the Plaintiff's case that the 1st and 2nd Defendants failed to carry out a current valuation of the suit property to find out its market price before offering it for sale to the 3rd Defendant.
5. The Plaintiff avers further that on 6th June 2023, the Rent Restriction Tribunal at Nyeri made an order inter alia restraining the 3rd Defendant from interfering with the Plaintiff's tenants in the suit property. It is the Plaintiff's case that the alleged circulation of leaflets to the tenants was meant to safeguard the property since the tenants had failed to pay their monthly rents.
6. I have carefully perused and considered the 3rd Defendant's application as well as the response thereto by the Plaintiff. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
7. By his application before the court, the 3rd Defendant urges the court to issue a temporary order of injunction restraining the Plaintiff, its directors, servants and/or agents from interfering with the 3rd Defendant's peaceful and quiet possession of the parcel of land known as LR. No. Karatina Township Block 1/420. In particular, the 3rd Defendant urges the court to restrain the Plaintiff from issuing notices of demand to the tenants resident on the said parcel of land and or from collecting any rent from the said tenants.
8. In addition, the 3rd Defendant prays for an order declaring that pending the determination of this suit, he is entitled to continue collecting rent from the suit premises.



9. Those prayers arise from the 3rd Defendant's contention that he did purchase the suit property at a public auction on 14th December 2022 and that he has since been collecting rental income therefrom in the tune of Kshs. 150,000/= per month.
10. The 3rd Defendant asserts that in violation of his rights as the proprietor of the suit property, one Peter Muraguri Njogu, a director of the Plaintiff did proceed to the premises on 6th March 2024 whereupon the said director circulated leaflets directing all tenants to pay rent to the Plaintiff and not to the 3rd Defendant. It is the 3rd Defendant's case that as a result of the Plaintiff's actions, the tenants had refused to pay rent for the month of March 2024 to himself.
11. The Plaintiff does not deny circulating the said leaflets. On the contrary, the Plaintiff asserts that it was previously the registered proprietor of the suit property. The Plaintiff avers that sometime in October 2022, it did file this suit to stop the 1st and 2nd Defendants from selling the suit property in order to afford the Plaintiff time to redeem the same. The Plaintiff accuses the said Defendants of fraudulently selling the property to the 3rd Defendant whilst the matter herein was still pending.
12. In respect of temporary injunctions, Order 40 Rule 1 of the Civil Procedure Rules provides as follows:-
 1. Where in any suit it is proved by affidavit or otherwise-
 - a). That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - b). That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may be by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."
13. The principles for consideration in granting an interlocutory injunction were set out in *Giella –vs- Cassman Brown & CO.(1973) EA 358* where the court stated as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
14. As to what would amount to a prima facie case, the Court of Appeal in *Mrao –vs- First American Bank of Kenya Limited & 2 Others (2003) KLR 125*, held as follow:-

“.....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 explanation or rebuttal from the latter.”
15. In the matter herein, the Plaintiff had initially by the suit filed herein on 19th October 2022 sought orders inter alia restraining the 1st and 2nd Defendants from disposing off the suit property which it



had then charged to the 1st Defendant Bank. By a Notice of Motion dated the same day and filed contemporaneously with the suit, the Plaintiff had sought an urgent order of injunction to stop the Bank and the 2nd Defendant Auctioneer from disposing the property pending the hearing and determination of the application on account that it was making arrangements to sell the property to enable it offset loan arrears owed to the 1st Defendant. In addition, the Plaintiff sought an order that the status quo be maintained pending the determination of the suit herein.

16. As it turned out, the temporary orders were not granted and the Motion dated 19th October 2022 was dismissed in a Ruling delivered herein on 4th July 2023 after it became clear that the suit property was sold to the 3rd Defendant (who was then not a party to these proceedings) at a public auction conducted on 14th December 2022.
17. Subsequently and pursuant to leave granted by this court, the Plaintiff filed a Further Amended Plaintiff dated 6th October 2023 wherein it enjoined the 3rd Defendant and sought the following prayers:
 - a). A declaration that the sale of the suit property is unlawful, illegal, invalid, null and void;
 - b). An order directing the defendants to return the suit property to the Plaintiff and the Land Registrar Nyeri County be directed to register back the Plaintiff as the owner of the suit property;
 - c). In the alternative the defendants be directed to pay the Plaintiffs damages for the loss of the suit property; and
 - d). Costs and interest of the suit.
18. The basis of those prayers can be discerned from paragraphs 8 to 12 of the Further Amended Plaintiff wherein the Plaintiff asserts as follows:-
 8. The 1st Defendant instructed the 2nd Defendant to advertise and put the suit property for sale through a public auction and on 12th August 2022 the 2nd Defendant issued the Plaintiff with a 45 days redemption notice calling upon the Plaintiff to redeem the suit property and also issued the Plaintiff with a notification of sale of the suit property on 21st October 2022;
 9. On 19th October 2022, the Plaintiff filed this suit together with an injunction application to stop the sale scheduled on 21st October 2022 so as to give the Plaintiff some time to redeem the suit property;
 10. Although no order was given by the court to stop the sale, no sale took place on 21st October 2022 as scheduled;
 11. The Plaintiff has now become aware that while this suit is still pending in court the suit property has been fraudulently sold by the 1st and 2nd Defendants to the 3rd Defendant without the Plaintiff's knowledge; and
 12. The sale of the suit property to the 3rd Defendant was allegedly conducted on 14th December 2022 while there was no fresh advertisement for sale of the property on 14th December 2022 after the sale scheduled for 21st October 2022 flopped.”
19. I have perused the documents filed by both the Plaintiff and the 3rd Defendant herein. While the Plaintiff purports that the sale was scheduled for 21st October 2022 and that the suit property was fraudulently sold to the 3rd Defendant on 14th December 2022 without any fresh advertisements, I was unable to find any evidence in support of that contention.



20. From the annexures exhibited by the 3rd Defendant, it was apparent that the suit property was on Monday 21st November 2022 advertised for sale in the Daily Nation Newspaper. The said advert clearly indicated that the sale would take place on Wednesday 14th December 2022 at Karatina Town outside the main Post Office starting at 11:00am.
21. Arising from the foregoing, I was unable to put much reliance on the Plaintiff's contention that the 3rd Defendant has acquired the property through a fraudulent process.
22. The 3rd Defendant having demonstrated that he acquired the property through the said auction was clearly entitled to quiet possession and occupation of the suit premises as the Plaintiff's only recourse after the fall of the hammer at the auction would be a claim for damages against the 1st Defendant.
23. Given the admission by the Plaintiff that it had circulated a letter to the tenants on the suit premises not to remit rent to the 3rd Defendant, I was persuaded that the 3rd Defendant required the protection of this court to avoid a situation where the suit premises would go to waste.
24. It follows that I am persuaded that the Motion dated 7th March 2024 has merit. I allow the same in terms of Prayers No. 3 and 4 thereof.
25. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20TH DAY OF DECEMBER, 2024.

In the presence of:

Mr. Mwiti for the Plaintiff.

Ms. Wangari holding brief for Mr. Mahinda for the 1st and 2nd Defendants.

No appearance for the 3rd Defendant.

Court Assistant: Kendi.

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J. O. OLOLA

JUDGE

