



REPUBLIC OF KENYA



Muntet & another v Muntet & another (Environment & Land Case E004 of 2024) [2024] KEELC 13799 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E004 OF 2024
CG MBOGO, J
DECEMBER 17, 2024**

BETWEEN

NEMUTA ENE MUNTET 1ST PLAINTIFF

KINYIKITA MUNTET 2ND PLAINTIFF

AND

TAATAI OLE MUNTET 1ST DEFENDANT

ENFORCE LIMITED 2ND DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 21st March, 2024 filed by the plaintiffs/applicants, and it is expressed to be brought under Article 40 of the Constitution of Kenya, Sections 1A,1B and 3A of the Civil Procedure Act, Sections 3 & 13 of the Environment and Land Court Act, and Order 40 Rule (1) of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. A declaratory order that the sale of matrimonial property comprised in Cis-Mara/ Oldonyo-Rasha/ 527 by the 2nd respondent to the 1st respondent is null and void ab initio lacking spousal consent contrary to the provisions of the Matrimonial Property Act.
 5. An order of injunction do issue directed at the defendants/ respondents or any persons claiming under them to stop threatening to evict and or interfering with the plaintiffs/ applicants peaceful use and possession of the property comprised in Cis-Mara/ Oldonyo-Rasha/ 527.



6. The officer in charge of Ololulunga Police Station do supervise the compliance with the orders pursuant to prayers 3 and 5 above.
 7. An order of permanent injunction do issue restraining the 2nd defendant/ respondent whether by itself, its agents, employees or otherwise howsoever or any other person from entering, being upon, possessing or in any way interfering with the plaintiffs' quiet enjoyment and use of the property comprised in Cis-Mara/ Oldonyo-Rasha/ 527.
 8. An order of permanent injunction do issue restraining the 1st defendant/ respondent from selling, transferring, charging, leasing, or entering into any disposition over property comprised in Cis-Mara/ Oldonyo-Rasha/ 527 without the consent of the plaintiffs/ applicants.
 9. This court be pleased to make any further orders it deems mete and just in the circumstances.
 10. The cost of the application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the 1st plaintiff/ applicant also sworn on behalf of the 2nd plaintiff/ applicant on even date. The 1st plaintiff/ applicant deposed that together with the 2nd plaintiff/ applicant, they are married to the 1st defendant/ respondent customarily as his wives, and that together with their children, they have been living on the property comprised in Cis-Mara/ Oldonyo-Rasha/ 527, the suit property as their matrimonial home before the title was registered in the name of the 1st defendant/ respondent.
 3. The 1st plaintiff/ applicant further deposed the 1st defendant/ respondent was issued with a title deed on 8th April, 2013, and that when they learnt of the purported transaction between the defendants/ respondents, they placed a caution on the said title. She went on to depose that the 2nd defendant/ respondent is a complete stranger to them, and that they have never consented to any transaction involving the sale of the suit property. She deposed that strangers claiming to act for the 2nd defendant/ respondents have been visiting her home claiming to have bought it, and shown them a copy of the agreement.
 4. The 1st plaintiff/ applicant deposed that together with the 2nd plaintiff/ applicant, they have heavily contributed to the development of their matrimonial home, and that the defendants/ respondents should have sought their consent before engaging with the transaction as they have developed several homes. She deposed that the 2nd defendant/ respondent in concert with the 1st defendant/ respondent might forcefully evict them from the suit property owing to the threats.
 5. She deposed that the series of events have subjected them to untold suffering, and in the special circumstance of the case where the evidence of wrong doing is irrefutable, this court can grant the orders sought at this interlocutory stage.
 6. The application was opposed vide the replying affidavit of Peter Leshao Tunai, the director of the 2nd defendant/ respondent sworn on 25th September, 2024. The 2nd defendant/ respondent deposed that he is aware of an order of injunction issued by this court against the 1st defendant/ respondent in Narok ELCC No. E008 of 2023 on 31st October, 2023. He agreed that vide an agreement of sale dated 30th July, 2014, the 1st defendant/ respondent sold 25 acres out of the suit property to the 2nd defendant/ respondent at Kshs. 10,000,000/-. He deposed that the 2nd defendant/ respondent paid the full purchase price, and that there has never been any dispute by the 1st defendant/ respondent.
 7. The 2nd defendant/ respondent further deposed that it was a term of the agreement that the spousal consent was one of the completion documents which the 1st defendant/ respondent was to avail on



- completion, but due to the 1st defendant's/ respondent's intention to sell more portions of the suit property, the 2nd defendant/ respondent agreed to enter into several other agreements for sale between the years 2016 and 2018. He went on to depose that the 1st defendant/ respondent conducted himself as a straight forward man, and kept on receiving the purchase price in the presence of the advocate who conducted the conveyance. It was further deposed that the plaintiffs/ applicants' claims is an excuse and a tactic by the 1st defendant/ respondent to evade his obligations under the agreements and to enrich themselves at its expense.
8. The 2nd defendant/ respondent further deposed that the plaintiffs/ applicants have not evinced that the suit property was indeed matrimonial property such that spousal consent was required. It was deposed that the threats of violence are false as no agent or representative of the 2nd defendant /respondent has been charged or convicted with the said offence.
 9. The 1st plaintiff/ applicant filed a further affidavit in response thereto sworn on 6th November, 2024. While reiterating the contents of her supporting affidavit, the 1st plaintiff/ applicant deposed that as the spouses of the 1st defendant/ respondent, they were not privy to the conduct of their husband while receiving the purchase price, as neither of them or any family member witnessed the execution of the sale agreements. Further, she deposed that the agreements do not measure up to the standards contemplated under Section 3(3) of the Law of Contract Act, as there was no witness present during signing.
 10. The 1st plaintiff/ applicant deposed that the whole transaction was marred with secrecy, and that if at all they were aware, she questioned why they were never made part of the agreement. Further, she deposed that the fact that they are married to the 1st defendant/ respondent cannot be side stepped by the 2nd defendant/ respondent to unilaterally trample on their right to property as the wives of the 1st defendant/ respondent whom they connived to obtain their matrimonial property.
 11. The 1st plaintiff/ applicant further deposed that the defendants/ respondents' action was unlawful as they were not involved at all and together with their children, they are bound to be squatters in a land they have always known to be their home and source of livelihood with a legitimate expectation that the same would pass to their children for the benefit of the family. She also deposed that no amount of claim by the 2nd defendant/ respondent at the instance of the 1st defendant/ respondent would vindicate or sanction the flouting of procedure and process carried out by the defendants/ respondents. That in view of the depositions made, they have a prima facie case against the defendants/ respondents, and that it is in the interest of justice that the application be granted ex-debitio justitiae.
 12. The application was canvassed by way of written submissions. The plaintiffs/ applicants filed their written submissions dated 29th November, 2024. They raised four issues for determination as follows: -
 - a. Whether the property forms part of matrimonial property.
 - b. Whether the plaintiff/applicant has a prima facie case against the defendants/respondents.
 - c. Whether the plaintiff/applicant is bound to suffer irreparable loss.
 - d. Whether the circumstances exist to warrant temporary injunction.
 13. On the first issue, the plaintiffs/ applicants submitted that the defendants/ respondents have not laid out any basis that the suit property is not matrimonial property, and that together with their children, they are at a point where they are likely to be disinherited of the land that they have always known as their only home. To buttress on this issue, the plaintiffs/applicants relied on the cases of T.M.V vs F.M.C [2018] eKLR, Paul Kagwa vs Jackline Muteteri(Matrimonial Cause-2005/23) [2006] UGHC



- 17 (18 May 2006), *Joseph Gitau Githongo vs Victoria Mwaniki* [2014] eKLR and *BCC v JMG*, Civil Appeal No. 10 of 2018.
14. On the second and third issues, and while relying on the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 Others* [2014] eKLR, *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR, the plaintiffs/ applicants submitted that that they have demonstrated that this is the property they reside in and call home and that it has been disposed by the defendants/ respondents and they are at the danger of being evicted despite their consent not being taken. Further, they submitted that purchase of land is a process, and that it does not only involve official search but also a physical search to determine where there is an occupation of the land and that if any, in what capacity, which fact the defendants/ respondents failed to establish.
 15. The plaintiffs/ applicants further submitted that they have received threats of eviction and if the eviction is allowed, they will be squatters in a place they call home without being given an alternative. They submitted that the balance of convenience tilts in their favour because they are in actual possession of the suit property which is their matrimonial home. They relied on the cases of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Lts & 2 Others* [2016] eKLR and *Amir Suleiman vs Amboseli Resort Limited* [2004] eKLR.
 16. On the fourth issue, the plaintiffs/ applicants submitted that there is a feasible and tenable loss that they may suffer if the orders are not granted. They also submitted that the defendants/ respondents in entering into the transaction from the beginning had no intention of revealing the material facts to them had it not been for the case that made them become aware of the happenings. In conclusion, the plaintiffs/ applicants submitted that they have established a case for an injunction, in particular a permanent injunction and the application ought to be allowed.
 17. The 2nd defendant/ respondent filed its written submissions dated 20th November, 2024 where it raised two issues for determination as listed below: -
 - a. Whether the applicants are entitled to declaratory orders sought.
 - b. Whether the applicants have met the threshold for grant of an injunction.
 18. On the first issue, the 2nd defendant/ respondent submitted that they are not entitled to the declaratory orders sought as the suit property does not form part of matrimonial property and thus, the spousal consent by the 1st defendant/ respondent was not a requirement in the agreements for sale. The 2nd defendant/ respondent relied on the cases of *Julius Rwabinumi vs Babimbisomwe SCCA* No. 10 of 2009 and *EMW v MOM; ANM & another (Interested Parties)* (Civil Appeal 261 of 2019) [2022] KECA 796 (KLR) (24 June 2022) Judgment and submitted that the plaintiffs/ applicants have not evinced existence of marriage between themselves and the 1st defendant/ respondent.
 19. The 2nd defendant/ respondent submitted that the law under Section 59(1) of the *Marriage Act* requires that the nature of marriage alluded to by the plaintiffs/ applicants be registered by the registrar, and the parties be issued with a marriage certificate under Section 55 of the *Marriage Act* but none has been presented.
 20. On the second issue, the 2nd defendant/ respondent submitted that it has purchased 70 acres out of the suit property, and 70 acres remain, therefore the applicants cannot claim that they will suffer irreparably if the orders sought are denied. The 2nd defendant/ respondent urged the court to consider the party that stands to suffer greater harm with the outcome of this motion. The 2nd defendant/ respondent further submitted that this court has previously held that an order of injunction is an equitable one, and they urged the court not to grant the orders as the 1st defendant/ respondent unjustly benefited at



its expense. Reliance was placed in the case of *Abu Chiaba Mohammed v Mohammed Bwana Bakari & 2 Others* [2005] eKLR.

21. I have considered the application, replies thereof and the written submissions filed by the plaintiffs/ applicants and the 2nd defendant/ respondent. In my view, the issue for determination is whether the plaintiffs/ applicants are entitled to the orders sought in the application.
22. The grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 that the applicant must establish 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 probabilities.
23. 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.”
24. In this case, the plaintiffs contended that the suit property is their matrimonial home, and that their consent was not sought during the signing of the various sale agreements. They contended that they risk being evicted if the orders sought are not granted leaving them as squatters in a place they once called home. On the other hand, the 2nd defendant/respondent contended that the 1st defendant/ respondent presented himself as a straightforward man, and whereas consent was required, they entered into other various sale agreements with the 1st defendant/ respondent as he continued to receive the purchase price. They denied that the suit property is matrimonial owing to the absence of proof of marriage by the plaintiffs/ applicants. Further, they argued that it has only acquired 70 acres out of the suit property with another 70 acres remaining which will not leave the plaintiffs/ applicants homeless.
25. Upon careful consideration of the pleadings filed herein, I do note that the nature of the prayers sought at this stage are final in nature. This is evidenced by the fact that it was so admitted by the plaintiffs/ applicants in their submissions as they termed it as straightforward. If say the court is to grant the orders, there is nothing that will be left to be litigated upon. The effect of this is that the evidence will not be put to test to ascertain its veracity. Equally, the 2nd defendant/ respondent pointed out that there is an order of injunction issued against the 1st defendant/ respondent in ELCC No. E008 of 2023. I have perused the file and indeed, the matter revolves on the same subject matter, and whereas the plaintiffs/ applicants are not parties in that suit, the subject matter is similar.
26. The said matter is pending judgment before this court, and to avoid a situation where the court embarrasses itself, it would not be proper for this court to pronounce itself on the issues raised herein.
27. In conclusion, this court declines to grant the orders sought as they are final in nature, and secondly for the very reason that there is a pending matter in ELCC No. E008 of 2023. The notice of motion dated 21st March, 2024, is thus dismissed. I make no orders as to costs. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 17TH DAY OF DECEMBER, 2024.

HON. MBOGO C.G.

JUDGE



17/12/2024.

In the presence of: -

Mr. Meyoki Pere – C.A

