



Mara North Holdings Limited v Narok District Land Registrar & 6 others (Land Case E017 of 2024) [2024] KEELC 13607 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
LAND CASE E017 OF 2024
CG MBOGO, J
DECEMBER 5, 2024**

BETWEEN

MARA NORTH HOLDINGS LIMITED PLAINTIFF

AND

NAROK DISTRICT LAND REGISTRAR 1ST DEFENDANT

HAYSEL IHSEN KIOK 2ND DEFENDANT

KIOK HENRY LEKISHON 3RD DEFENDANT

TEVIN TONKEI 4TH DEFENDANT

TT MINOR (SUED THROUGH THE MOTHER AND NEXT FRIEND HAYSEL IHSEN KIOK) 5TH DEFENDANT

HKKA MINOR (SUED THROUGH THE MOTHER AND NEXT FRIEND HAYSEL IHSEN KIOK) 6TH DEFENDANT

IHSEN KIOK & KIOK HENRY LEKISHON (SUED AS THE ADMINISTRATORS OF THE ESTATE OF TIMOTHY KINYAMAL KIOK) 7TH DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 25th July 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Sections 1A, 1B, and 3A of the Civil Procedure Rules, Order 32 Rules 3 and 4, Order 40 Rules 1,2,3 & 4 of the Civil Procedure Rules, Sections 13 and 18 of the Environment and Land Court Act, Section 76 of the Land Act and Section 26 of the Land Registration Act. The plaintiff/ applicant is seeking the following orders: -

1. Spent.



2. That the honourable court be pleased to order the appointment of Haysel Ihsen Kiok as the guardian ad litem for Trevor Tumpea (a minor) and Haley Kuresia Kiok (a minor).
 3. That the honourable court be pleased to issue an order of injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants whether by themselves, agents, servants or otherwise howsoever from taking possession of and/ or evicting the plaintiff from parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 situate in Narok County pending the hearing and determination of this application inter parties.
 4. That the honourable court be pleased to issue an order of injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants whether by themselves, agents, servants or otherwise howsoever from selling, leasing, charging, licensing, encumbering or in any manner whatsoever from disposing of any legal interests in parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 situate in Narok County pending the hearing and determination of this application inter parties.
 5. That the honourable court be pleased to issue an order of injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants whether by themselves, agents, servants or otherwise howsoever from taking possession of and/ or evicting the plaintiff from parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 situate in Narok County pending the hearing and determination of this suit.
 6. That the honourable court be pleased to issue an order of injunction restraining the 2nd, 3rd, 4th, 5th and 6th defendants whether by themselves, agents, servants or otherwise howsoever from selling, leasing, charging, licensing, encumbering or in any manner whatsoever from disposing of any legal interests in parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 situate in Narok County pending the hearing and determination of this suit.
 7. That the honourable court be pleased to issue an order of inhibition inhibiting the registration of any disposition in the register of the land parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681.
 8. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face and further as contained in the affidavit. The application is supported by the affidavit of Daniel Ole Muli, the director of the plaintiff/ applicant which was sworn on even date. The plaintiff/ applicant deposed that it is the registered lessee of parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 (the suit property) for a term of 25 years from 1st July 2019 from Timothy Kinyamal Kiok who is deceased. It was further deposed that the lease dated 1st July 2019 was duly registered on 8th August and the plaintiff/ applicant carries on the business of eco-tourism in its conservancy for game drives and other tourist activities. It was deposed that the plaintiff/ applicant has been in peaceful and quiet enjoyment of the suit property for the last 5 years and on 14th September, 2023 the 1st defendant/ respondent illegally registered the transfer of the suit property from the deceased lessor to the 2nd to 6th defendants without its knowledge, approval or consent.
 3. The plaintiff/ applicant further deposed the transfer was registered despite the fact its lease was registered as an encumbrance against the title. The plaintiff/ applicant went on to depose that it was later learnt that the deceased lessor's family had commenced succession proceedings and had applied for the registration of the transmission of the suit property without seeking its consent. It was also deposed that the plaintiff/ applicant did not execute any document permitting the transmission of the suit property or removal of its lease so as to allow the registration of the transmission.



4. The plaintiff/ applicant deposed that being an agricultural land, the 7th defendant/ respondent could not be granted the land control board consent to transfer an encumbered parcel of land. He deposed that the 1st defendant/ respondent proceeded to register the transmission of the suit property and purported to note in the register of the suit property that the plaintiff/ applicant still has a lease. It was further deposed that after acquiring the title to the suit property, the 2nd to 6th defendants/ respondents have taken the position to evict the plaintiff/ applicant since there is no lease between them, and which included the email dated 30th December, 2023 directing the plaintiff/ applicant to stop making payments. It was deposed that the 2nd to 6th defendants have verbally demanded that the plaintiff/ applicant vacates the suit property, and that they have also threatened to disrupt their business in the suit property.
5. The plaintiff/ applicant deposed that there is real and imminent threat of being evicted, and the suit property being disposed of by the defendants/ respondents to defeat its claim. That if the orders are not granted, the plaintiff's/ applicant's conservation work are likely to be disrupted, and that there is likelihood that the defendants/ respondents may dispose of other legal interest in the suit property. It was deposed that there would be a great miscarriage of justice if the 2nd to 6th defendants/ respondents are allowed to take possession and evict the plaintiff/ applicant from the suit property.
6. In opposition to the application, the 2nd defendant/respondent and on behalf of the 3rd to 7th defendants/ respondents filed the replying affidavit sworn on 3rd October, 2024. The 2nd defendant/ respondent deposed that together with the 3rd defendant/ respondent, they are the legal administrators of the estate of Timothy Kinyamal Kiok who died on 6th August, 2021. She deposed that before filing succession proceedings, they conducted a search which confirmed that the deceased was the registered proprietor of the suit property and on 22nd March, 2023, they were issued with a certificate of confirmation of grant. She also deposed that they were issued with a title deed for the suit property on 14th September, 2023, and that thereafter undertook an official search on 15th September, 2023.
7. The 2nd defendant/ respondent further deposed that as the surviving spouse of the late Timothy Kinyamal Kiok, she has never been aware of the lease agreement by the plaintiff/ applicant, and that neither has she signed a spousal consent. She deposed that the plaintiff/ applicant has failed to explain how as the spouse, she consented to the lease which call into question the validity of the lease itself. She deposed that as the administrators of the estate with a confirmed grant, they did not need the land control board consent to have the suit property transferred into their names.
8. The 2nd defendant/ respondent further questioned the validity of the lease and how the plaintiff/ applicant obtained her bank account details and made rent payments. She went on to depose that it is the plaintiff/ applicant who fraudulently presented a lease agreement to the 1st defendant/ respondent who registered the same and back dated it to the year 2019. She deposed that since the certificate of grant indicated that the beneficiaries shall have equal shares on the suit property, there is a continuing trust and all the names were to be included in the title.
9. Further, she deposed that the plaintiff/ applicant does not reside on the suit property, and has not made any developments, and the false allegations of being evicted are calculated to gain sympathy to get the orders. She also deposed at no time have they entered into any discussions with the intention to sell the property to any other third party. That if the court allows the application, then it would have enabled the plaintiff/ applicant to forcefully hold them into a lease agreement which they have never executed nor consented.
10. The plaintiff/ applicant filed a supplementary affidavit in response thereto sworn on 14th October, 2024. While reiterating the contents of its supporting affidavit, the plaintiff/ applicant deposed



- that the allegations of backdating constitute a criminal offence which the 1st defendant/ respondent would have reported to the police. The plaintiff/applicant further deposed that they are strangers to the succession proceedings as it was not a party, and that it is inconceivable that the defendants/ respondents conducted a search which showed that the property had no encumbrance registered against it.
11. The plaintiff/ applicant deposed that the defendants/ respondents illegally removed the lease from the register of the suit property with the intention of undertaking a transmission from the deceased, and thus, the titled acquired by the 2nd to 6th defendants/ respondents is defective, null and void. It was deposed that the 2nd defendant/ respondent has not provided evidence to prove that she was the lawful spouse of the deceased on 1st July, 2019 when the lease was executed. Also, that at the time of the execution of the lease, the deceased lessor did not inform the plaintiff/ applicant about any spouse, and there was no need to execute a spousal consent.
 12. The plaintiff/ applicant further deposed that since it acquired the lease, it has invested heavily in making the suit property suitable for wildlife conservation and tourism business, and that an eviction will impact its business and wildlife conservation in a negative manner.
 13. The application was canvassed by way of written submissions. The plaintiff/ applicant filed its written submissions dated 14th October, 2024. The plaintiff/ applicant submitted that it has demonstrated that it has the legal, proprietary and contractual rights over the suit property which have been infringed by the defendants/ respondents. It went on to submit that it has provided a registered lease together with a certificate of official search where the lease was registered as an encumbrance on the suit property. They submitted that they have demonstrated prima facie that the title held by the 2nd to 6th defendants/ respondents is defective, null and void, and they do not have superior rights over the suit property.
 14. The plaintiff/ applicant further submitted that in considering whether to grant an order of inhibition, the court should always take the course that carries the lower risk of injustice and in this case, an order of inhibition would suffice to preserve the suit property, and to ensure that the suit is not rendered a mere academic exercise. It was submitted that there is a real risk that the defendants/ respondents will dispose of the suit property unless stopped by an order of this court. To buttress on this submission, the plaintiff/ applicant relied on the case of Dorcas Muthoni & 2 Others vs Michael Ireri Ngari [2016] eKLR.
 15. In conclusion, the plaintiff/ applicant submitted that it has demonstrated that it has clear legal rights over the suit property which have been breached or violated by the defendants/ respondents. Also, that it has demonstrated that it will suffer massive harm and loss which cannot be adequately compensated by damages.
 16. The 2nd to 7th defendants/respondents filed their written submissions dated 25th November 2024 where they raised four issues for determination as listed below: -
 - i. Whether there is a prima facie case with a probability of success.
 - ii. Whether the plaintiff/applicant shall suffer irreparable damage unless an injunction is issued.
 - iii. To who shall the balance of convenience tilt to.
 - iv. Who bears the cost of the suit.
 17. On the first issue, the 2nd to 7th defendants/respondents submitted that the plaintiff/applicant has failed to establish a prima facie case. They reiterated the averments in their replying affidavit and relied on the



cases of *Giella v Cassman Brown* [1973] EA 358, *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR and *American Cyanamid v Ethicon Limited* (1975) AC 396.

18. On whether the plaintiff/ applicant will suffer irreparable damage unless an injunction is issued, the 2nd to 7th defendants/ respondents submitted that they stand to suffer loss in that they possess no other land apart from the property that was lawfully allocated to their father. They relied on the case of *David Ngaari v Kenya Commercial Bank Limited* [2013] eKLR.
19. The 2nd to 7th defendants/ respondents further submitted that the balance of convenience tilts in their favour as they stand to suffer irreparable loss should the injunction be issued. In conclusion, they submitted that the court has the power and discretion to grant interlocutory injunctions, and that since the plaintiff/ applicant has failed to establish a prima facie case, the application ought to be dismissed with costs.
20. I have considered the application, replies thereof and the written submissions filed by the plaintiff/ applicant and the 2nd to 7th defendants/ respondents. I am of the considered opinion that the issue for determination is whether the application has merit.
21. 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.
22. 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.”
23. In this case, the plaintiff/ applicant contended that it entered into a lease agreement with Timothy Kinyamal Kiok (deceased) with respect to the suit property for a term of 30 years beginning 1st July, 2019. The plaintiff/ applicant annexed a copy of the lease dated 1st July, 2019 which was registered on 8th August, 2019. The plaintiff/ applicant stated that later they learnt that the 2nd to 7th defendants/ respondents had undertaken succession proceedings, and had the title registered in their names without its consent or approval. The plaintiff/ applicant also questioned how the 2nd to 7th defendants/ respondents could have obtained a title whereas an encumbrance had been registered against the title. The plaintiff/ applicant annexed a copy of the search dated 8th August, 2019 and another copy of search dated 11th January, 2024. The 2nd to 7th defendants/ respondents on the other hand opposed the application and that stated that they did not enter into any lease agreement with the plaintiff/ applicant and the 2nd defendant's/ respondent's consent as the spouse of the deceased was not obtained. Owing to lack of spousal consent, the 2nd to 7th defendants stated that the lease agreement is illegal, null and void. In support of their case, the 2nd to 7th defendants/ respondents annexed a copy of the certificate of confirmation of grant dated 22nd March, 2023, a copy of the title, and a copy of the official search dated 15th September, 2023.
24. Having analysed the pleadings and the documents in support thereof, it is my finding that the plaintiff/ applicant has established a prima facie case to the extent that no evidence has been provided to challenge the validity or the existence of the lease. Further, the 2nd to 7th defendants/ respondents argued that



they conducted a search as it is the norm before instituting succession proceedings which indicated no encumbrance on the title. However, no evidence of the said search was provided.

25. Whether the plaintiff/ applicant will suffer irreparable damages that cannot be compensated by an award of damages, the plaintiff/ applicant stated that it is in the eco-tourism business, and that if the orders are not granted, they risk eviction which will negatively impact on the conservation of the wildlife in its tourism business. On the other hand, the 2nd to 7th defendants/ respondents submitted that they have no other land except the suit property. On this issue, none of the respective parties sufficiently satisfied this limb.
26. The plaintiff/ applicant further sought for an order of inhibition on any registration with regard to the suit property. The plaintiff/ applicant contended that defendants/ respondents intend to sell the property to a third party, and that it risks being evicted thereby defeating its' claim. In the case of Dorcas Muthoni & 2 others versus Michael Ireri Ngari [2016] eKLR, the court held that: -

“An order of inhibition issued under section 68 of the Land Registration Act is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit in which the said property is a subject is disposed of. The court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial.”

27. I find it necessary and in the interest of the parties for this court to ensure protection of the suit property by ensuring that the status of the suit property remains the same pending determination on ownership. Having stated the above, I find merit in the notice of motion dated 25th July, 2024 and I proceed to grant the following orders: -

- i. An order of injunction is hereby issued restraining the 2nd, 3rd, 4th, 5th and 6th defendants whether by themselves, agents, servants or otherwise howsoever from taking possession of and/ or evicting the plaintiff from parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 pending the hearing and determination of this suit.
 - ii. An order of injunction is hereby issued restraining the 2nd, 3rd, 4th, 5th and 6th defendants/ respondents whether by themselves, agents, servants or otherwise howsoever from selling, leasing, charging, licensing, encumbering or in any manner whatsoever from disposing of any legal interests in parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681 pending the hearing and determination of this suit.
 - iii. An order of inhibition barring the Land Registrar from the registration of any disposition in the register of the land parcel number Cis-Mara/ Koiyaki-Dagurugurueti/ 2681.
 - iv. Costs in the cause.
- Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 5TH DAY OF DECEMBER, 2024.

HON. MBOGO C.G.

JUDGE

05/12/2024.

In the presence of: -



Mr. Meyoki Pere – C.A

