



Momposhi (Suing as the Legal Representative of the Estate of the Late Simintei Momposhi) v Ronko & 2 others (Environment & Land Case E018 of 2024) [2024] KEELC 13618 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13618 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E018 OF 2024
CG MBOGO, J
DECEMBER 5, 2024**

BETWEEN

**TETO OLE MOMPOSHI PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE
SIMINTEI MOMPOSHI**

AND

**JOHN LEITATO RONKO 1ST DEFENDANT
DANIEL KIPAILOI MOMPOSHI 2ND DEFENDANT
CAPEFIELD LIMITED AKA CAPEFILED LIMITED 3RD DEFENDANT**

RULING

1. Before this court for determination is the notice of motion dated 30th July, 2024 filed by the plaintiff/ applicant and it is expressed to be brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules and Sections 3A and 63 (c) of the [Civil Procedure Act](#) seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the substantive suit herein, this honourable court be pleased to issue interim orders directed at the 3rd and 5th defendants/ respondents for the preservation of the suit property Cis-Mara/ Olkinyei/ 815 by restraining disposal or encumbering the suit property.



4. The District Land Registrar-Narok be restrained/ restricted from making any entries on Cis-Mara/ Olkinyei/ 815 affecting proprietorship pending the hearing and determination of the substantive suit.
5. Costs of this application be provided for.
2. The application is premised on the grounds inter alia that the plaintiff/ applicant is the heir to the estate of the late Simintei Ole Momposhi who was the lawful owner of the suit land.
3. The application is further supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that his late father was allocated the suit land by virtue of his membership with Olkinyei Group Ranch, and that as a family, they did not pursue succession proceedings for the said estate. He deposed that sometime in the year 2023, he saw an individual using their land and upon enquiry, he found that the suit land had been acquired by the 1st and 2nd defendants/ respondents who transferred to the 3rd defendant/ respondent. He deposed that the purported registration of the 1st defendant/ respondent as proprietor was illegal, null and void.
4. The plaintiff/ applicant further deposed that it is vital that this court stays any further dealings on the suit land as it interrogates the circumstances under which the defendants/ respondents assumed ownership.
5. The 3rd respondent vide the replying affidavit of Jacob Oitayu Nkadayo sworn on 5th September, 2024 opposed the application. The 3rd defendant/ respondent deposed that they acquired the suit land from the rightful owners who were the 1st and 2nd defendants/ respondents, and that prior to the acquisition, they were shown the original title which was in the name of the 1st and 2nd defendants/ respondents. Further, it was deposed that the 3rd defendant/ respondent conducted due diligence including carrying out a search at the lands' registry, engaging the services of a surveyor, executing the necessary transfer documents, appearing before the Narok Land Control Board and receiving the consent and paying the required stamp duty.
6. The 3rd defendant/ respondent further deposed that they paid the full purchase price, and since the registration of the title has been in its name more than 12 years, they have been in peaceable and uninterrupted occupation of the suit land. He deposed that the 3rd defendant/ respondent has made substantial improvements to the property and there has been no resolutions by the directors of the company to dispose off the property. Further, that the document relied on by the plaintiff/ applicant as TOM-2 is incomplete, not authenticated, has alterations, is not proof of ownership, and does not show any connection or relevance to the suit land.
7. Further, it was deposed that the plaintiff/ applicant has not met the threshold for the grant of interim injunction, and that they acquired the property in good faith, unaware of any defect to the title and in exchange for valuable consideration. He deposed that having been in peaceful possession for more than 12 years, the test for irreparable harm has not been met by the plaintiff/ applicant.
8. The application was canvassed by way of written submissions. The plaintiff/ applicant filed his written submissions dated 31st October, 2024 where he raised two issues for determination as listed below: -
 1. Whether the applicant has attained the prerequisite threshold for obtaining an injunction against the respondents.
 2. Who should bear the costs of this application.



9. On the first issue, the plaintiff/ applicant submitted that by inviting the court to interrogate the weighty violations of the law, he has met the first test of a prima facie case with a likely hood of success, and although such evidence of impropriety shall be adduced and tested in the substantive suit, it is critical that the substratum of the main suit be safeguarded pending the hearing and determination of the suit. He submitted that he has supplied an area list for the members of the Olkinyei Group Ranch, and the same bears the stamp of the Narok Land Adjudication and Settlement officer.
10. The plaintiff/ applicant further submitted that he would suffer loss that cannot be compensated since the land is ancestral, and sentimental attachment is present which is invaluable and damages cannot be an adequate remedy in this instance. On a balance of convenience, the plaintiff/ applicant submitted that they use a portion of the suit land as pasture for their livestock and that since the 3rd defendant/ respondent claims it does not intend to sell or dispose the suit land, consequently, they will suffer no prejudice if restrained from disposing or encumbering the suit land pending the determination of the suit.
11. He submitted that in the interest of substantive justice, it is most desirable that the substratum of the main suit be preserved as he has demonstrated that he has a legal and equitable right which requires protection by injunction. The plaintiff/ applicant relied on the cases of *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR, and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
12. The 3rd defendant/ respondent filed his written submissions dated 26th November, 2024 where it submitted that it had no obligations to verify such historical compliance including confirming whether succession proceedings were undertaken prior to the registration of the suit land to the 1st and 2nd defendants/ respondents.
13. On whether the plaintiff/ applicant has met the threshold for the grant of an injunction, the 3rd defendant/ respondent while relying on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR submitted that a prima facie case requires the plaintiff/ applicant to provide clear evidence indicating fraud or illegality directly involving the 3rd defendant/ respondent which has not been done. It was also submitted that as noted in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, an applicant must show that damages would not suffice which the plaintiff/ applicant has not convincingly done. That in the unlikely event that this court finds merit in the plaintiff's case, it is possible for the plaintiff/ applicant to remedy such loss through mesne profits or compensation of a monetary value.
14. On the limb of balance of probabilities, the 3rd defendant/ respondent submitted that it has been in peaceful possession of the suit land for over 12 years and all this time the plaintiff/ applicant was alive and well and not bothered by a sentimental lack of land, and until he stumbled upon some documents did he develop wanton yearning for the suit land. Further, it was submitted that the 3rd defendant/ respondent has used significant time and resources to develop the land and, in this period, the prospects of the suit land has increased because of these developments. For this reason, they stand to lose the most should the injunction be issued and the suit is found at the tail end to lack merit.
15. The 3rd defendant/ respondent submitted that the preservation of status quo is crucial and it tilts in its favour due to the substantial and ongoing operations which would adversely be affected by an injunction.
16. Lastly, the 3rd defendant/ respondent submitted that given the lack of a prima facie case and the premature application for injunctive relief without compelling evidence, the plaintiff/ applicant should bear the costs of this application.



17. I do note that the 1st and 2nd defendants/ respondents did not file their response to the application. Instead, they filed a statement of defence. As it is and from the record, this court takes the position that the 1st and 2nd defendants/ respondents are not opposed to the application.
18. I have carefully analysed and considered the application, the replying affidavit filed by the 3rd defendant/ respondent as well as the written submissions filed by the respective parties. In my view, the issue for determination is whether the plaintiff has met the threshold for grant of injunction orders.
19. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella versus Cassman Brown* (1973) EA 358. This position has been largely pronounced in numerous decisions and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) [2014] eKLR where the Court of Appeal held that;
- “in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.
20. As a result, the plaintiff/ applicant ought to first establish a prima facie case. In *Mrao Limited versus First American Bank of Kenya Limited* [2003] eKLR, the court stated as follows: -
- “... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
21. Also, in the case of *Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani)* HCCC No. 360 of 2001: it was held,
- “The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”
22. The plaintiff/ applicant contended that he is a son and the legal representative of the estate of his late father who was the owner of the suit land. He stated that upon the demise of his father, they have never initiated succession proceedings for the said estate and that in the year 2023, they observed an individual utilizing their land for grazing. He deposed that upon enquiry, they realized that the 1st and 2nd defendants/ respondents had acquired title to the suit land and further sold the same to the 3rd defendant/ respondent. In support thereof, the plaintiff/ applicant annexed a copy of the grant of



letters of administration ad litem, a certified copy of the area list for Olkinyei Group Ranch, and a copy of the green card for parcel no. 815, the suit land. In response thereto, the 3rd defendant contended that it acquired the suit land through lawful means as bona fide purchaser for valuable consideration. In support its averments, the 3rd defendant/ respondent annexed a copy of the sale agreement dated 14th August 2012, a copy of the search, a copy of the title, payment receipts including the stamp duty.

23. On whether there is a prima facie case, I do note that the 3rd defendant/ respondent does not dispute that the late Simintei Momposhi was the owner of the suit land, except to state that they purchased the land from the 1st and 2nd defendants/ respondents. Upon analysis of the annexed documents filed by the plaintiff/ applicant, the area list of Olkinyei Group Ranch indicates that the deceased was the owner of the suit land. The area list is certified by the District Land Adjudication and Settlement Officer which appears to indicate sometime in the year 2009. From the face of it, I am satisfied that there is a prima facie case.
24. The 3rd defendant/ respondent provided a copy of title deed indicating its ownership of the suit land. Whereas the legality or otherwise of the said title is not an issue to be determined at this stage, I am mindful of the nature of the injunctive orders sought by the plaintiff/ applicant as drafted in his application. The plaintiff/ applicant is not seeking an injunction against actual use of the land except to the extent of disposal or encumbering of the suit land.
25. Secondly, the plaintiff/ applicant needed to demonstrate irreparable harm that cannot be compensated by damages. In the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eKLR, irreparable injury was described as follows: -

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

26. On this issue, the plaintiff/ applicant submitted the land is ancestral and its value is sentimental which damages cannot be an adequate remedy. On the other hand, the 3rd defendant/ respondent argued that it has been in possession of the suit land for more than 12 years and it has used time and resources to develop the land. The 3rd defendant/respondent did not provide evidence to ascertain this fact, and in the absence of such evidence, this court is unable to determine the damages to be suffered by the 3rd defendant/ respondent.
27. In sum, the balance of convenience lies in favour of the plaintiff/ applicant as the inconvenience caused will be greater if the orders are not granted in its favour as opposed to the defendants/ respondents.
28. In the interest of justice, it is fair that the suit land is preserved for the court to effectively determine the issues raised by the parties. For this reason, I find merit in the notice of motion dated 30th July, 2024 and I proceed to grant the following orders: -
- i. That pending the hearing and determination of the substantive suit herein, this court hereby issues a temporary injunction against the 3rd and 5th defendants/ respondents by restraining the disposal or encumbering the suit property known as Cis-Mara/ Olkinyei/ 815.
 - ii. For the avoidance of doubt, the order does not bar the 3rd defendant/respondent from making use of the suit property save for disposal or encumbering the same pending the hearing and determination of the substantive suit.



iii. 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

