



**Habib & 3 others v Hussein (Environment & Land Case
E300 of 2022) [2023] KEELC 478 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 478 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E300 OF 2022
LN MBUGUA, J
JANUARY 26, 2023**

BETWEEN

**SADAFF SHOKATALI HABIB 1ST PLAINTIFF
SABAHATT SHOKATALI HABIB 2ND PLAINTIFF
PARAGON PROPERTY CONSULTANTS LIMITED 3RD PLAINTIFF
THE STATE OF SHOKAT ALI GULAM HUSSEIN HABIB ALIAS SHOKATALI
GULAM HUSSEIN HABIB 4TH PLAINTIFF**

AND

ABDISALAN ADAN HUSSEIN DEFENDANT

RULING

1. Before me is a notice of motion dated September 20, 2022 where the plaintiffs seeks the following orders:
 - i. That this application be certified as urgent and service thereof be dispensed with in the first instance.
 - ii. That this honourable court do grant a temporary injunction against the defendant/respondent, his officers, agents, employees, servants, assignees and or any other person authorized by him, restraining them from entry, occupation, possession, ownership and/or access to the property pending the hearing and determination of the application.
 - iii. That this honourable court do grant a temporary injunction against the defendant/respondent, his officers, agents, employees, servants, assignees and or any other person authorized by him, restraining them from entry, occupation, possession ownership and/or access to the property pending the hearing and determination of the main suit herein.



- iv. That the honourable court be pleased to issue a prohibitory injunction order prohibiting the defendant/respondent, his officers, agents, employees, servants, assignees and or any other person authorized by him, prohibiting them from entry, occupation, possession, ownership and/or access to the property pending the hearing and determination of the application.
 - v. That the honourable court be pleased to issue a prohibitory injunction order prohibiting the defendant/respondent, his officers, agents, employees, servants, assignees and or any other person authorized by him, restraining them from entry, occupation, possession, ownership and/or access to the property pending the hearing and determination of the main suit.
 - vi. That the honourable court be pleased to issue such further Orders as it may deem fit and expedient in the circumstances.
 - vii. That this honourable court do grant an Order compelling the Officer Commanding Station (OCS) Spring Valley Police Station, to enforce the said Court Orders and maintain Law and Order pending hearing and determination of this Application and the main suit.
 - viii. That Upon hearing and conclusion of the suit the Honourable Court be pleased to issue a mandatory prohibitory Order prohibiting the defendant/respondent, his officers, agents, employees, servants, assignees and or any other person authorized by him, restraining them from entry, occupation, possession, ownership and/or access to the said property.
 - ix. That Costs of this application
2. The application is premised on the grounds set out on the face of the application and on the supporting affidavit of one Faith Mutie, the property Manager of the 3rd plaintiff.
 3. The plaintiffs contend that the suit property was once owned by Shokatali Gulamhussein Habib (Deceased) who had purchased the land on December 2, 2009. That on May 27, 2013, the deceased had transferred the suit property as a gift to his children namely the 1st and 2nd plaintiffs and the latter had then appointed the 3rd plaintiff to manage the property on their behalf.
 4. The plaintiff's contend that on the 12th of September 2022 they learnt that the defendant had on several occasions attempted to trespass and illegally force his way into the aforementioned property without any lawful justification or reasonable cause. The plaintiffs moved with speed, acquired police assistance and managed to repel the trespass. But now their guards are apprehensive and scared of their lives.
 5. The plaintiffs contend that the defendant is neither a tenant nor an owner and hence has no proprietary rights to the suit property. That damages would not be an adequate alternative remedy to granting the injunction sought and the balance of convenience weighs heavily in their favour.
 6. The defendant has opposed the application vide his Replying Affidavit dated October 31, 2022 where he avers that he is the registered owner of the suit premises having bought the same from the deceased in March 2019. That he has since moved into the suit premises and that the orders sought are meant to evict him from the said premises.
 7. I have considered all the issues raised herein including the rival submissions. The issue falling for determination is whether the plaintiffs have satisfied the criteria for grant of temporary injunction as laid down in the case of *Gieva v Cassman Brown & Co Ltd* [1973] EA 358. Thus the plaintiffs have a duty to establish a prima facie case with a probability of success and demonstrate that they stand to suffer irreparable injury which cannot adequately be compensated by an award of damages.



8. This is a case whereby each of the protagonist is waving their ownership documents to buttress their claim over the suit property and again each one is claiming to be in control of the suit property.
9. For the plaintiffs, their claim is that they were given the suit property as a gift by their parent, the deceased. To this end, they have availed various documents including the transfer and the title of which at entry No. 5, it reflects that the 1st and 2nd plaintiffs were registered as owners of the said land on May 29, 2015 as tenants in common in equal shares. That happens to be the last entry in the registration history of the title the plaintiffs hold.
10. The plaintiffs also have a certificate of confirmed grant issued to them in respect of their deceased father dated March 23, 2021.
11. The defendant too has a title document similar to that of the plaintiffs save that at entry No. 5, the registration of the land to 1st and 2nd plaintiffs is cancelled and instead, another entry No 5 is generated to reflect the defendant as the owner of the suit land. That again is the last entry in the title document. The defendant also has a search showing that he is the current registered owner of the land.
12. Much as the court should not dwell on the contested issues of ownership and occupation at this stage, the situation at hand necessitates the court to interrogate the documents availed by the parties in order to arrive at a reasonable decision on how the suit property should be preserved during the trial.
13. This court's attention has been drawn to a document availed by the defendant as annexure "AAH3", a letter dated June 4, 2018 allegedly authored by the deceased, addressed to Mwaniki Gachoka advocates where the deceased states that:

"The transfer to Sadaff and Sabahatt Habib (Read 1st and 2nd plaintiff) has been canceled and withdrawn forth with"
14. That appears to be the basis of defendant's averments set out at paragraph 11 of his replying affidavit where he contends that the registration of 1st and 2nd plaintiffs as owners of the suit property was cancelled because of fraud. However, cancellation of title is manifested in a legal process. Such is not the case at hand. There is no tangible evidence as at now as to how entry No 5 in the title document reflecting 1st and 2nd plaintiffs as the registered owners thereof was cancelled. Further, the defendant has not proffered any material evidence to show how the suit property came into his hands. He has not availed any agreement of sale, nor a transfer from the deceased to himself.
15. On the other hand, the 1st and 2nd plaintiff are the legal representatives of the deceased, having acquired a grant thereof. They have given a plausible explanation as to how the deceased gifted the land to them in year 2013. This is consistent with the contents of the confirmed grant whereby the deceased had apparently made his will in the same year of 2013.
16. I find that the plaintiffs have established a legal right over the suit premises and they deserve protection from this court.
17. In the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR, the court held that:

"An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration."



18. I find that the plaintiffs have given a plausible account of how the defendant commenced invasion upon the suit premises on September 12, 2022. On the other hand, the defendant simply gave a general statement that he has since moved into the suit premises with no specifications on when and how he made his entry into the suit land.
19. All in all, the application partially succeeds and I proceed to give the following orders;
1. The orders of injunction sought in prayer no 3 in the application are hereby allowed; In the event that the defendant has entered the suit property, he is to leave forth with failure to which, eviction to take place.
 2. The orders of injunction shall remain in force for a period of One Year.
 3. The suit property shall not be alienated.
 - 4) The costs of the application shall abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Alukoye holding brief for Macharia for plaintiffs

Nyaribo for Defendant

Court assistant: Eddel

