



**Mwangi v County Council of Nairobi (Formerly City Council of Nairobi) & 2 others
(Environment & Land Case 980 of 2015) [2023] KEELC 84 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 84 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 980 OF 2015**

**JA MOGENI, J
JANUARY 18, 2023**

BETWEEN

PAUL MWAURA MWANGI PLAINTIFF

AND

**COUNTY COUNCIL OF NAIROBI (FORMERLY CITY COUNCIL OF
NAIROBI) 1ST DEFENDANT**

CHIEF LAND REGISTRAR 2ND DEFENDANT

SINOHYDRO TIANJIN ENGINEERING COMPANY LTD 3RD DEFENDANT

RULING

1. Before this Court for determination is a Notice of Motion application dated July 4, 2022 filed under Sections 1A, 1B, 3A, 63 (e) of the *Civil Procedure Act*, Order 40 Rules 1, 2, and 4, Order 51 Rule 1 of the *Civil Procedure Rules 2010*. The Applicant is seeking for the following Orders:
 1. Spent
 2. That there be no development, construction or interference of whatsoever manner and by whomsoever on the parcel numbers LR NO 209/21314 to LR NO 209/21334 formerly LR NO 209/14311 pending the hearing and determination of this application inter partes.
 3. That the Defendants either by themselves, their servants, agents, employees or whomsoever be restrained by way of a temporary injunction directed at them restraining them from in whatsoever way interfering with the properties known as LR Nos 209/2134 to LR NO 209/21334 by refraining from subdivision, partitioning allocating and issuing any licenses or approvals to any persons to construct, develop or in any way interfere with parcel numbers LR NO 209/2134 to LR NO 209/21334 pending the hearing and determination of this application inter partes.



4. That the Dandora Police Station Officer in Charge (OCS) in liaison with the OCPD Buruburu Police Station ensure that the orders issued herein are complied with; and
 5. Costs of this application be borne by the Defendants.
2. The Application is not opposed. On September 28, 2022, the 3rd Defendant was granted leave of 7 days to file their response. No response to the instant application was filed.
 3. The Court gave directions on filing of written submissions and a Ruling date was reserved. By the time of writing this Ruling, no party had filed written submissions.
 4. I in turn have had time to analyze the emerging issues therein. The instant Application relates to the grant of temporary injunctive relief pending the hearing and determination of this application.
 5. The substantive law on this matter is Order 40 Rule 1(a) of the Civil Procedure Rules 2010 which provides:

' Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree the court may 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.'

6. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the Applicants have established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicants stood to suffer irreparable loss that the Respondents would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who's favour the balance of convenience tilted. These principles were established in *Giella vs Cassman Brown & Co Ltd supra*.
7. In the *Siskina (Owners of the Cargo Lately on Board) vs Distos Compania Naviera SA: HL 1979 [1979] AC 210*, Lord Diplock said:

' A right to obtain an interlocutory judgment is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment of the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.'

8. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in *Nguruman Ltd v Jan Bonde Nielsen & 2 Others, [2014] eKLR* observed that:

' In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

- a. Establish his case only at a prima facie level,
- b. Demonstrate 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.
9. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co Ltd V Afraha Education Society supra*. The court was clear that:-
- ' The existence of a prima facie case does not permit 'leap-frogging' by the applicant to injunction directly without crossing the other hurdles in between.'
10. Drawing positive inspiration from the *Nguruman v Jan Bonde Neilsen & 2 others [2019] eKLR*, the Court of Appeal in *Total Kenya Limited v David Njane t/a Argwings Twin Service Station & 2 others [2018] eKLR* restated the requirement that the three conditions for granting an injunction ought to be considered sequentially. In essence, the Court reasoned that the conditions for irreparable damage and balance of convenience ought not to be considered if a prima facie case had not been established.
11. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Applicant has established a prima facie case. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR*, where Bosire, JA stated as follows:
- ' So what is a prima facie case? I would say that 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 right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.'
12. The Court of Appeal deliberating what amounted to a prima facie case in *Nguruman (Supra)* made the following comments:
- ' We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.'
13. Having established the school of judicial thought I ought to abide, I shall now fix my gaze upon this instant application all the while cautioning myself not to delve into the intricacies of the case as that is a preserve of the substantive suit.
14. In my considered view, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the case, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.
15. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit, the Plaintiff is making a claim to the suit land which he claims that his late mother was allocated the



same by the 1st Defendant and thereby paid all the necessary stand premiums for the said plot. He alleges that the 1st Defendant issued his late mother with a beacon certificate to the plot on May 6, 2001. Following the allotment rough sketches of the subdivision were drawn and issued to his mother which showed approximate measurement of persons allotted portions. It is contended that the 1st Defendant failed to list the Plaintiff's deceased mother amongst persons entitled to the plot she had been allotted. The Court also notes that the Defendants have not filed any response despite being served with the Application.

16. It is alleged that the suit property was subject to sub-division by the 1st Defendant and that the Plaintiff's deceased mother's plot LR No 209/14311 was to be amongst the sub-divisions to be curved out from properties known as LR No 209/2134 to LR No 209/21334. Further, that the 1st Defendant failed to list her amongst persons entitled to the plot she had been allotted despite having paid its premium. The Plaintiff also alleges that the situation on the ground is so hostile that the Court needs to order the police as sought to ensure compliance with the orders to maintain the status on the ground pending the determination of the suit. I am inclined to believe that there is need to preserve it as it is until the issues in contention are deliberated and settled.
17. The nature of the dispute is one which cannot be adjudicated over at this interlocutory stage. The general principle is such that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided in trial. This was deliberated in the case of *Ougo & Another vs Otieno Civil Appeal No 3 of 1987 (1987) KLR*.
18. Preservation of status quo is simply a case management strategy that will assist the court in preserving the subject of the suit as it is. It is important that as Lord Diplock (supra) states 'it is prudent to take such measures as are calculated to preserve the status quo' Only until the matters are litigated, evidence adduced and finalized.
19. It is the view of the court that the applicant has established a prima facie case with a probability of success against the Respondents. At this point the court cannot tell the ownership of the suit property and this can only be adduced at the main trial. As regards irreparable damage, I take the view that should the injunction not be granted the substratum of this case will be destroyed and the applicant will suffer irreparable loss which may not be quantified in damages and finally, if I had any doubts, I am clear in thought and action that the balance of convenience does tilt in favour of the applicant purely for purposes of safeguarding the current status quo of the application pending hearing and determination.
20. Arising from all the above, I find merit in the Application. Accordingly, I allow the Notice of Motion dated July 4, 2022 in terms of prayers 2, 3 and 4. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JANUARY 2023.

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MOGENI J

JUDGE

In the virtual presence of:

Mr Kuloba for the Plaintiff/Applicant

Mr Ochieng for the 3rd Defendant

No appearance for 1st and 2nd Defendants



Caroline Sagina : Court Assistant

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MOGENI J

JUDGE

