



**Kinyanjui & 2 others v Kamau & 2 others; Javisapa Enterprises Limited (Interested Party)  
(Environment & Land Case E060 of 2022) [2023] KEELC 743 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 743 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E060 OF 2022  
CA OCHIENG, J  
FEBRUARY 14, 2023**

**BETWEEN**

**DANSON NJOROGE KINYANJUI ..... 1<sup>ST</sup> PLAINTIFF  
JOSEPH MUGUCIA KERU ..... 2<sup>ND</sup> PLAINTIFF  
PATRICK KARIUKI KABUBI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**JACKSON WAINAINA KAMAU ..... 1<sup>ST</sup> DEFENDANT  
NEEMA TRUST COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT  
LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**JAVISAPA ENTERPRISES LIMITED ..... INTERESTED PARTY**

**RULING**

1. What is before court for determination is the Plaintiffs’ Notice of Motion Application dated the 3<sup>rd</sup> August, 2022 where they seek the following orders:
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to grant an order by way of injunction barring the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves or through their agents, servants or otherwise howsoever from trespassing over Mavoko Town Block 3/2104 pending the hearing and determination of this suit.
  4. That costs of this Application be provided for.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of DAnson Njoroge Kinyanjui where he deposes that he has requisite authority from the other members to swear it. He avers that he is one of the bona fide purchasers for value of land reference number Mavoko Town Block 3/2104 hereinafter referred to as the 'suit land'. He explains that the suit land was acquired by a welfare group founded by residents of Muranga County known as Neema Welfare Association hereinafter referred to as the 'association' and it was duly subdivided among members of the said association. He contends that the association was headed by three officials being Chair, Secretary and Treasurer who were entrusted with the affairs of the said association. Further, that the 1<sup>st</sup> Defendant was the Treasurer and presently the sole survivor of the said group of officials with the other two having passed away. He states that the association issued receipts to members, duly signed by the officials for every contribution made towards the payment for their allocated plots and once a member completed payment, they were issued with a Plot Certificate. Further, that once the members completed their payment(s), for the suit land, the association was to eventually transfer the plots forming the suit land and thereafter issue the respective Certificates of Title to them. He explains that in obvious scheme to defraud the unsuspecting members, the 1<sup>st</sup> Defendant registered the 2<sup>nd</sup> Defendant Company and unlawfully and irregularly registered the company as the proprietor of the suit land without knowledge or consent of members of the association who were the lawful owners of the said suit land. Further, that the said scheme was exposed and the 1<sup>st</sup> Defendant has since been charged with the offence of obtaining registration of land by false pretences contrary to Section 320 of the Penal Code vide Machakos MCCR/470/2019 Republic vs Jackson Wainaina Kamau. He states that the 1<sup>st</sup> Defendant has since taken out a loan facility of Kshs. 780,000 with Equity Bank Limited and used the suit land as security without knowledge or consent of the members of the association. He reiterates that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants continue to be in possession of the suit land while secretly subdividing the same with the clear intent of disposing it, to the Plaintiffs' detriment and loss. Further, that the Plaintiffs and other members of the association are unable to enjoy their right to own property and continue to suffer loss. He reaffirms that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have no lawful interest whatsoever on the suit land through which they can justify their continued trespass on the Plaintiffs' property.
3. The 1<sup>st</sup> Defendant opposed the application and filed a Replying Affidavit sworn by Jackson Wainaina Kamau where he deposes that he is one of the Directors of Neema Trust Company Limited, which was incorporated in the year 1999 and the other surviving Directors are Jackson Kimani Muiruri, Felix Njihia Mutuohoro and Peter Mberere Njoroge. He avers that the suit land was and is still registered in the name of Neema Trust Company Limited since the year 2004 and at no time has the same even been the property of and/or registered in the name of Neema Welfare Association and/or the Plaintiffs herein. He claims that they have been in court for several cases concerning the suit land as confirmed by the above green card and the Plaintiffs' case might as well be overtaken by events pursuant to the court orders issued in Machakos High Court Civil Case No. 5 of 2018 and Misc. No. E055 Of 2022. He states that a perimeter wall and a sample house was constructed on the suit land in the year 2011 and they are at a loss as to where the Plaintiffs have been since then. He denies that the Plaintiffs are bona fide purchasers for value of the suit land. He further denies that the suit land was acquired by Neema Welfare Association founded by residents of Muranga and that the same was to be subdivided amongst members of the said welfare. He states that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants maintain that the suit land was purchased by the 2<sup>nd</sup> Defendant from Lukenya Ranching and Co-operative Society, when the property was still under the Government of Kenya and from the proceeds and for the benefit of the said company. He confirms having been charged in Machakos MCCR/470/2019 and explain that the case was concluded on 5<sup>th</sup> July, 2022 where he was acquitted of all the charges. He denies that he took a loan facility with the suit land but insists it is the 2<sup>nd</sup> Defendant who charged the said suit land. He reiterates that the Plaintiffs acts of among others levelling unfounded accusations against him and suing him in



person while leaving out the other Directors is a manifestation of witch hunting against him. He avers that the Plaintiffs have no legal and/or equitable interest over the suit land and thus he has no legal or moral obligation to inform, seek consent or permission from them, before they can undertake any dealings with the suit land. He maintains that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are lawfully in possession of the suit land which has been registered in their name for 18 years and thus they cannot be termed as trespassers in their own property.

4. The Plaintiffs filed a Further Affidavit sworn by Danson Njoroge Kinyanjui where he reiterates the averments in the Supporting Affidavit. He claims that the fulcrum of the dispute herein revolves around the registration of the 2<sup>nd</sup> Defendant's name on the suit land. He states that the 1<sup>st</sup> Defendant is conveniently omitting the fact that the order(s) of 23<sup>rd</sup> September, 2022 by Hon. Lady Justice Muigai were subsequently set aside by her orders of 27<sup>th</sup> September 2022. He insists that if at all the 1<sup>st</sup> Defendant believes that Neema Welfare Association is non-existent, one is left to wonder why did he undertake to be cooperative and of assistance to the said association on issues pertaining to the suit land. He maintains that the association is the bona fide purchaser of the suit land. He referred the court to the Plot Certificates where the 1<sup>st</sup> Defendant's signature is similar to the one signed by the Treasurer. Further, that during trial of Machakos MCCR/470/2019 Republic vs. Jackson Wainaina Kamau, the 1<sup>st</sup> Defendant confirmed that the suit land belongs to the Plaintiffs.
5. The Interested Party filed a Replying Affidavit sworn by Jacqueline Wambui Njeru its Managing Director where she deposes that pursuant to an order issued by Justice Odunga on 26<sup>th</sup> January, 2022 in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited Vs Neema Trust Company Limited, the Interested Party obtained orders against the 2<sup>nd</sup> Defendant to sell the suit land by way of public auction. She explains that the Interested Party applied to the County Land Registrar at Machakos to register the copy of the prohibitory order against the title to the suit land. Further, Justice Muigai later granted orders for supervision and provision of security during the eviction process. She explains that in the run to the execution process, the Interested Party was not served with a Notice of Appeal against the Judgment or Orders to set aside the Judgment and Decree in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited Vs Neema Trust Company Limited. She contends that the Interested Party has hitherto carried out execution in satisfaction of the Judgment and Decree in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited Vs Neema Trust Company Limited, hence the instant Application has been overtaken by events. Further, that the suit land is no longer at the disposal of the Plaintiffs.
6. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

7. Upon consideration of the Notice of Motion dated the 3<sup>rd</sup> August, 2022 including the respective affidavits and rivalling submissions, the only issue for determination is whether orders of interlocutory injunction should be issued against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants restraining them from interfering with land parcel number Mavoko Town Block 3/2104, pending the determination of this suit.
8. The Plaintiffs in their submissions contend that they have made out a case for the grant of the injunctive reliefs sought. They explained that they have adduced a plethora of evidence illustrating their interest in the suit land which include receipts and Plot certificates duly signed by the Association's officials. Further, that the 1<sup>st</sup> Defendant herein was the Treasurer of the Association and was in charge of receiving the members' contributions towards the purchase of the suit land and issuing of receipts duly signed to them. They insist that the 1<sup>st</sup> Defendant was well aware of the suit land's acquisition having been an official at the time and the particulars of the said transaction are well within his knowledge. Further, that the other two officials of the Association passed on before the transaction was complete



and the 1<sup>st</sup> Defendant was left as the sole custodian of the said transaction. They made reference to the similarity in the 1<sup>st</sup> Defendant's signature and the Treasurer's signature. Further, that the 1<sup>st</sup> Defendant admitted during the aforementioned criminal proceedings that the suit land belongs to the Plaintiffs. They reiterate that the Plaintiffs stand to suffer irreparable harm if the injunctive orders are not issued as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have interfered with the Plaintiffs' quiet enjoyment of the suit land in a bid to dispose of it to third parties. Further, that the members of the association took possession of plots in the early 2000 and some have constructed their homes and other structures on the said land which they have been enjoying for over a decade. To support their arguments, they relied on the following decisions: *Giella vs Cassman Brown* (1973) E.A 358; *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) eKLR ; *Pius Kipchirchir Kogo versus Frank Kimeli Tenai* (2018) eKLR and *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR.

9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their submissions insist that the Plaintiffs have not met the threshold set for injunctions and hence not entitled to the orders sought. They insist that the Plaintiffs claim has been overtaken by events pursuant to the orders of the court issued in Machakos High Court Civil Case No. 5 of 2018 and Misc. No. E055 of 2022 which sanctioned the sale of the suit land to a third party. Further, that issuing the orders of injunction as sought, at this stage would prejudice the existing court orders without granting the other party named in the said court case a right to be heard. They insist that the suit land was purchased by Neema Trust Company Limited from Lukenya Ranching and Cooperative Society. The 1<sup>st</sup> Defendant insists he was acquitted of the criminal charges on 5<sup>th</sup> July, 2022. Further, that they have demonstrated entitlement to the suit land since 2004. They reiterate that the Plaintiffs have not demonstrated any legal and or/equitable interest over the suit land as at no time was the same ever registered in the name of Neema Welfare Association. They reaffirm that issuing orders of injunction would amount to evicting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from the suit land. Further, that the Plaintiffs do not have a prima facie case with a probability of success. They aver that the Plaintiffs will not suffer from any irreparable injury which would not be adequately compensated by the award of damages as they have never taken possession of the suit land. Further, that their claim is based on a non-existent entity and on payment receipts dated more than twenty (20) years ago.
10. To support their averments, they relied on the following decisions: *Giella vs Cassman Brown* (1973) E.A 358; *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR (Civil Appeal No. 77 of 2012) and *Geoffrey Kilosa Mulwa v Mutinda Mutisya & another* [2017] eKLR.
11. The principles for granting of interlocutory injunctions are well established in the case of *Giella v Cassman Brown & Co Ltd* (1973) E.A. 356. Further, in the case of *Mrao Ltd v First American Bank Ltd & 2 Others*, (2003) KLR 125 the Court provided a definition of a prima facie case.
12. The Plaintiffs allege that they are the bona fide purchasers for value of the suit land. They provided a history of Neema Welfare Association and allege that they acquired the suit land through the said welfare group and the land was subdivided amongst its members. In their annexures, they produced bundle of receipts which are in the said name of Neema Welfare Association and aver that they were to be issued with Certificate of Titles. The Plaintiffs blame the 1<sup>st</sup> Defendant whom they allege defrauded them by registering the 2<sup>nd</sup> Defendant as the proprietor of the suit land and that the 1<sup>st</sup> Defendant's scheme was exposed since he was charged with the offence of obtaining registration of land by false pretence contrary to Section 320 of the Penal Code. The 1<sup>st</sup> and the 2<sup>nd</sup> Defendants aver that the suit land was registered in the name of the 2<sup>nd</sup> Defendant since the year 2004 and at no time has the same been registered in the name of Neema Welfare Association and/or the Plaintiffs herein. To prove this, they provided an extract of the green card for the said title. The 1<sup>st</sup> Defendant further contends that he was acquitted of the criminal charges in respect to the suit land.



13. The Interested Party explains that pursuant to an order issued by Justice Odunga on 26<sup>th</sup> January, 2022 in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited Vs Neema Trust Company Limited, it obtained orders against the 2<sup>nd</sup> Defendant to sell the suit land by way of public auction. Further, that the execution has been carried out in satisfaction of the Judgment and Decree in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited Vs Neema Trust Company Limited, hence the instant Application has been overtaken by events.
14. Looking at the documents presented by the respective parties, I note the 1<sup>st</sup> Defendant's signature is actually similar to the signature of the Treasurer of the Neema Welfare Association. Further, that the 1<sup>st</sup> Defendant never denied signing the receipts of the members of the said association who were purchasing some land. I further note that the 1<sup>st</sup> Defendant in aforementioned Machakos Criminal Case actually admitted that the suit land belongs to the Plaintiffs. As per annexure 'DNK2' the 1st Defendant actually committed to cooperate and assist the Association in respect to the suit land. As per annexure 'JEP 1' I note on the 26<sup>th</sup> January, 2022, Justice Odunga granted the Interested Party orders in Machakos High Court Civil Suit No. 5 of 2018 Javisapa Enterprises Limited vs Neema Trust Company Limited to dispose of suit land by way of public auction. Further, as per annexure 'JEP 3', Justice Muigai on 20<sup>th</sup> September, 2022, granted orders for supervision and provision of security by KBC Police Station during the eviction exercise. Further, the Interested Party confirms in their Replying Affidavit that the suit land has already been disposed of, hence the Application has been overtaken by events. I note no appeal has been filed in respect to the aforementioned civil case hence the Decree and Judgment therein is valid. It is trite that injunctive reliefs are equitable remedies and equity demands that court orders cannot be issued in vain. In this instance, I note this suit was filed on 3<sup>rd</sup> August, 2022, after Justice Odunga had already issued orders on 26<sup>th</sup> January, 2022 in Civil Suit No. 5 of 2018 Javisapa Enterprises Limited vs Neema Trust Company Limited, for sale of suit land in satisfaction of the Decree therein.
15. It is worth noting that the Plaintiffs herein have not explained why since 2004, they failed to take any action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to claim the suit land.
16. Based on the facts as presented by the parties herein, I find that this Application has indeed been overtaken by events since the suit land has been disposed to a third party as per a Decree of a Court of competent jurisdiction. In the circumstances, I hold that the Plaintiffs have not established a prima facie case to warrant the orders of injunction as sought.
17. In further associating myself with the decision *Nguruman Ltd. Vs. Jan Bonde Nielsen* CA No. 77 of 2012, where the Court of Appeal held that in instances when a party has failed to establish a prima facie case, the court need not proceed to make a determination of the other two limbs on injunction and I will hence decline to do so.
18. In the foregoing, I will proceed to disallow the instant Notice of Motion.  
Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

