



**Muthui & 2 others v Karikam Investment Properties Co Ltd & 3 others (Environment and Land Case Civil Suit E100 of 2022) [2023] KEELC 16764 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16764 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E100 OF 2022**

**BM EBOSO, J  
MARCH 27, 2023**

**BETWEEN**

**PAUL MUTHUI ..... 1<sup>ST</sup> PLAINTIFF  
PATRICT MAINA GATERU ..... 2<sup>ND</sup> PLAINTIFF  
STEPHEN MWAURA KIBIRO ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KARIKAM INVESTMENT PROPERTIES CO LTD ..... 1<sup>ST</sup> DEFENDANT  
EUNICE NJAMBI KAMANGU ..... 2<sup>ND</sup> DEFENDANT  
BENJAMIN KAMANGU KARIUKI ..... 3<sup>RD</sup> DEFENDANT  
EDITH NJOKI KAMANGU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The three plaintiffs initiated this suit through a plaint dated August 24, 2022. Among other reliefs, they sought a declaration that they were entitled to Plot Nos 3, 9, 10 and 16, forming part of the land that is registered as parcel number Ruiru/Kiu Block 2 (Githunguri)/3755. They also sought an injunction restraining the estate of the late James Kamangu Kariuki against alienating, sub-dividing, transferring, offering for sale, selling or dealing with the four plots.
2. Together with the plaint, the plaintiffs filed a notice of motion dated August 24, 2022, seeking an interlocutory injunctive order restraining the estate against offering for sale, selling, alienating or dealing with land parcel number Ruiru/Kiu Block 2 (Githunguri)/3755, pending the hearing and determination of the application and the suit. The said application is what falls for determination in this ruling. The application was premised on the grounds set out in the motion and supported by the affidavit of Paul Muthui, sworn on August 24, 2022. It was canvassed through written submissions dated January 19, 2023, filed by M/s Makuno Gacoya & Associates.



3. The case of the applicants is that they purchased the four plots from the late James Kamangu Kariuki who was a director of the 1st defendant and who issued them with certificates of ownership bearing the name of the 1st defendant and put them in possession of the four plots. They further contend that they have been in occupation of the said plots from the time the deceased sold to them the plots and they have developed the plots. They urge the court to grant the interlocutory relief pending the hearing and determination of the suit.
4. The 2nd, 3rd and 4th defendants opposed the application through a replying affidavit sworn on December 6, 2022 by Eunice Njambi Kamangu and written submissions dated January 19, 2022, filed by M/s Marai Mwaura & Company Advocates. The case of the three defendants is that there was no land sale contracts between the deceased and the applicants. They contend that the applicants were not among the people who purchased plots from the deceased. They add that it is evident from the sale agreements exhibited by the applicants that there were no land sale contracts between the deceased and the applicants. They urge the court to reject the application.
5. The 1st defendant did not respond to the application. Neither did it file written submissions on the application.
6. I have considered the application, the response to the application, and the parties' respective submissions on the application. The single question falling for determination in the application is whether the applicants have met the criteria upon which our trial courts exercise jurisdiction to grant interlocutory injunctive reliefs.
7. The relevant criteria was outlined in the case of *Giella v Cassman Brown*(973) EA 358. First, the applicant is expected to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate that if the injunctive relief is not granted, he would stand to suffer injury that may not be indemnified through an award of damages. Third, if the court has doubts on the applicant's satisfaction of either or both of the above two requirements, the application is to be determined based on the balance of convenience. Lastly, at the stage of disposing an interlocutory application of this nature, the courts do not make conclusive or definitive findings on the key issues in the suit.
8. I have looked at the plaint, the motion and the supporting affidavit. I have also looked at the exhibits annexed to the supporting affidavit. It is clear from the plaint and from the supporting affidavit that the applicants have not appreciated the need to specifically set out the claim of each of the three plaintiffs. The court cannot tell from the plaint whether the three plaintiffs purchased the four plots jointly and whether they are laying joint claims to each of the four plots. The court cannot tell from the plaint when the plaintiffs allegedly purchased the four plots and at what price. The plaint is the foundation upon which the interlocutory relief is supposed to be anchored.
9. Without proper pleadings clearly setting out the interest of each of the three plaintiffs in each of the four plots, I do not think there are proper pleadings that can guide the court in exercising the jurisdiction that the court is invited to exercise. The relief of an interlocutory injunction serves the purpose of protecting a right which is threatened with infringement. For this reason, the plaint ought to clearly spell out the interest of each of the three plaintiffs in the four plots.
10. The court will, in the circumstances, strike out the notice of motion dated August 24, 2022 without venturing into its merits. Further, the court will direct the plaintiffs to amend their plaint within 14 days to clearly spell out their individual or joint claims over the four plots and the specific plots they are claiming either individually or jointly. In default, the plaint dated August 24, 2022 shall stand struck out with costs to the defendants. The plaintiffs will bear costs of the application dated August 24,



2022. For the avoidance of doubt, once the plaint is amended, the plaintiffs will be at liberty to bring a fresh application for interlocutory reliefs. These are the orders of the court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 27TH DAY OF MARCH 2023**

**B M EBOSO**

**JUDGE**

In the presence of:

Ms Gacoya advocate for the Applicants

Ms Chacha advocate for the Respondents

