



**Gathinga v Registrar of Titles & 2 others (Environment & Land Case E082 of 2023) [2025] KEELC 2911 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2911 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E082 OF 2023  
NA MATHEKA, J  
MARCH 25, 2025**

**BETWEEN**

**GEOFFREY NJIHIA GATHINGA ..... PLAINTIFF**

**AND**

**THE REGISTRAR OF TITLES ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**EDDERMANN PROPERTY LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application is dated 7<sup>th</sup> May 2024 and is brought under Article 23(3) (b) Kenya Constitution (2010), Order 40 of the Civil Procedure Rules seeking the following orders;
  1. That this Application be certified urgent and be heard ex-parte in the first instance for reasons of urgency.
  2. That an order of mandatory injunction be issued compelling the 3<sup>rd</sup> Respondent's agents, servants, employees or any other persons whatsoever to vacate LR Number 12581/22 (Original number 12581/7/4) and 12581/23 (Originally number 12581/8) (the suit premises) pending the hearing and determination of this application inter partes.
  3. That an order of mandatory injunction be issued compelling the 3<sup>rd</sup> Respondent's agents, servants, employees or any other persons whatsoever to vacate LR. Number 12581/22 (Original number 12581/7/4) and 12581/23(Originally number 12581/8) (the suit premises) pending the hearing and determination of the suit.
  4. That an order of prohibitory injunction be and is hereby issued prohibiting the 3<sup>rd</sup> Respondent's agents, servants, employees or any other persons whatsoever from carrying out



any further developments on the suit property pending the hearing and determination of this Application inter partes.

5. That an order of prohibitory injunction be and is hereby issued prohibiting the 3<sup>rd</sup> Respondent's agents, servants, employees or any other persons whatsoever from carrying out any further developments on the suit property pending the hearing and determination of this suit.
  6. That the status quo of the suit property be hereby maintained pending hearing and determination of this suit.
  7. That the officer commanding Menengai Police Station to supervise and oversee the enforcement of this order.
2. It is based on the following grounds that on 6<sup>th</sup> April, 2024 the 1<sup>st</sup> Respondent in total disregard of the Plaintiff's right of ownership and the set out procedural requirements by law before revoking ones title, put out a Gazette Notice No. 4509 revoking the Plaintiff/Applicant's title. The 1<sup>st</sup> Respondent did not issue notice prior to revoking the suit property and/or grant audience to the Plaintiff/Applicant to defend his claim over the suit property. Soon after the title was revoked the 3<sup>rd</sup> Respondent vandalized the Plaintiff/Applicant's property and forcefully took physical possession of the land, built a permanent wall and prepared the suit property for construction of permanent residential units. The 3<sup>rd</sup> Respondent and its agents have committed and continue to commit acts of trespass on the suit property. The 3<sup>rd</sup> Respondent and their agents intend to remain in their wrongful possession unless removed by an order of this court. The Plaintiff/Applicant who's legitimate right to own property has been grossly violated will be greatly prejudiced unless the orders sought herein are granted. That it is in the interest of justice that the orders sought herein are granted.
3. This court has considered the application and the submissions therein. The Applicant seeks among other orders an order of mandatory injunction be issued compelling the 3<sup>rd</sup> Respondent's agents, servants, employees or any other persons whatsoever to vacate LR. Number 12581/22 (Original number 12581/7/4) and 12581/23(Originally number 12581/8) (the suit premises) pending the hearing and determination of the suit.
4. A mandatory/permanent injunction is ordinarily granted after a full hearing and when all the evidence has been adduced and all facts have been established. In the case of *Kenya Power & Lighting Co. Limited vs Sheriff Molana Habib* (2018) eKLR it was held inter alia as follows;

...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties..."



5. When it comes to mandatory injunctions, courts have been hesitant to grant the same particularly at the interlocutory stage, save in clear-cut cases. Such was the reasoning taken by the court in *Lucy Wangui Gachara vs Minudi Okemba Lore* (2015) eKLR when it rendered itself thus;

...the court will not grant a mandatory injunction if the damage feared by the plaintiff is trivial, or where the detriment that the mandatory injunction would inflict is disproportionate to the benefit it would confer. We would also add that, save in the clearest of cases, the right of the parties to a fair and proper hearing of their dispute, entailing calling and cross-examination of witnesses must not be sacrificed or substituted by a summary hearing.

Persuasive judicial pronouncements by Indian courts have also affirmed that great circumspection is called for before awarding a mandatory injunction at interlocutory stage. In *Bharat Petroleum Corp Ltd v. Haro Chand Sachdeva*, Air 2003, Gupta, J. of the Delhi High Court observed as follows:

“While Courts power to grant temporary mandatory injunction on interlocutory application cannot be disputed, but such temporary mandatory injunctions have to be issued only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship. If a mandatory injunction has to be granted at all on interlocutory application, it is granted only to restore status quo and not to establish a new state of things.”

6. For the foregoing reasons, I find that it would be premature for me to grant final orders at this interim stage in favour of the Applicant. The Applicant states that the suit property belongs to him and his title was unprocedurally revoked. That the 3<sup>rd</sup> Respondent has trespassed and taken possession. The 3<sup>rd</sup> Respondent submitted how they acquired the suit property LR No. 12581/7 and 12581/8 from one Joseph Kamuya Maitha and these properties were a subdivision from the mother title LR. No. 12581 which belonged to him. The 3<sup>rd</sup> Respondent has annexed the said copies of the title deed and sale agreement and transfer documents to show how they acquired the properties. That they have been various suits touching on the subject properties which were either compromised, dismissed or withdrawn. I find that this court needs to consider all the evidence in this matter before making any mandatory orders. I find this application is not merited and is dismissed. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF MARCH 2025.**

**N.A. MATHEKA**

**JUDGE**

