



**M'Rwito & 4 others v Kobia (Sued as a legal representative and administrator of the Estate of the Late Chabari Manga (Deceased) (Environment & Land Case E013 of 2022) [2023] KEELC 16484 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16484 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E013 OF 2022  
CK YANO, J  
MARCH 22, 2023**

**BETWEEN**

**PATRICK MUTAI M'RWITO ..... 1<sup>ST</sup> PLAINTIFF  
CECILIA GAITI M'RWITO ..... 2<sup>ND</sup> PLAINTIFF  
JEDIEL MUTHURI CHABARI ..... 3<sup>RD</sup> PLAINTIFF  
KENNETH KIRIMI CHABARI ..... 4<sup>TH</sup> PLAINTIFF  
DAVID MUTWIRI M'RINGERA ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**PETERSON KOBIA (SUED AS A LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE LATE CHABARI MANGA (DECEASED) ..... DEFENDANT**

**RULING**

1. The application for determination is the notice of motion dated September 20, 2022 brought under section 1A, 1B, 3, 3A and 63 (3) of the *Civil Procedure Act*, Order 40 Rule 1 & 2 and Order 51 Rule 1 of the *Civil Procedure Rules*, Section 58 of the *Land Registration Act*, 2012 and any other enabling provisions of the law. In the application, the plaintiffs/applicants seek the following orders:
  1. Spent
  2. Spent
  3. That this Honourable court be pleased to issue orders of temporary injunction against the defendant, his family members and any other person claiming at the behest of the estate of the late M'rwito Mangaalias Chabari Mangarestraining them from interfering with the plaintiffs



occupation, utilization and user of 5.8 acres in land parcel LR Aboget/U-Chure/424 pending the hearing and determination of this suit.

4. That the Honourable court be pleased to issue orders of inhibition, inhibiting registration of any dealings with land parcel LR No Abogeta/U/Chure/424 pending the hearing and determination of this application, the hearing and determination of this suit and or further orders of this Honourable court.
  5. That costs for and incidental to this application be costs in the cause.
2. The application is supported by the affidavit of the applicants sworn on September 20, 2022 and is premised on the following grounds-;
- i. That the applicants occupy 5.8 acres in land parcel LR No Abogeta/U-U-Chure/424 where they have built their homes and planted perennial crops including tea among many other developments.
  - ii. That the applicants have occupied the said 5.8 acres in Land parcel LR No Abogeta/U-Chure/424 all their lives and the 2<sup>nd</sup> applicant as the youngest is aged almost 50 years old.
  - iii. That the plaintiff/applicants were born by their late mother Charity Njiru in land parcel LR No Abogeta/U-Chure/424 wherein they grew up knowing that they were the children of the late M'Rwito Manga alias Chabari Manga.
  - iv. That the applicants even assumed the identity of M'Rwito Manga alias Chabari Manga as their surname.
  - v. That the applicants occupation of 5.8 acres in land parcel LR No Abogeta/U-Chure/424 has been continuous, unhindered and uninterrupted wherein they conducted all their businesses.
  - vi. That the applicants buried their late mother Charity Njeru (deceased) within the 5.8 acres they occupy and utilize in land parcel LR NoAbogeta/U-Chure/424.
  - vii. That the respondent's grandmother Phillis Kajuju M'rwito ( Deceased)filed the deceased succession cause where she successfully managed to argue that the applicants were not children of the deceased.
  - viii. That the respondent, now as the administrator of the deceased's estate is moving with haste and trying to alienate the deceased's land to the detriment of the applicants.
  - ix. That the applicants have established a prima facie case with high chances of success warranting the issuance of the orders sought.
3. In their affidavit in support of the application, the applicants reiterated the above grounds and added that their occupation of the suit land is adverse to the registered owner and his successors in title or heirs. They have also annexed copies of the green card, their ID cards, bundle of photographs, a letter written by the area chief in 1994, copy of judgment in succession cause No 4 of 1994, High Court Meru, and a surveyor's sketch.
4. The application is opposed by the respondent who filed a replying affidavit sworn by himself on October 31, 2022. The respondents avers that the suit land forms part of the estate of his grandfather M'Rwito Manga who died in the year 1987 and upon his death, the deceased's widow who is the respondent's grandmother applied for grant of letters of administration in the High Court at Meru, Succession cause No 4 of 1994.



5. That the 3<sup>rd</sup> applicant herein, acting on his own behalf, that of the other applicant and his mother, Charity Njiru, objected to the grant of letters of administration being issued to the respondent's grandmother, arguing that they were the children of M'Rwito Manga and that the respondent's mother Charity Njiru was a widow of the deceased. That the objection was heard viva voce wherein the 3<sup>rd</sup> applicant and his mother testified among other witnesses. That in its judgment delivered on June 16, 2011 the court found that the deceased had granted permission to the applicants mother to stay on the land pending resettlement elsewhere, that the applicant's mother was never married to the deceased and that the applicants were not the children of the deceased, that the applicants and their mother were not entitled to the estate of the deceased, and that the mode of distribution proposed by the petitioner was confirmed. A copy of the said judgment and certificate of confirmation of grant has been annexed.
6. The respondent avers that it is clear and there is specific finding in the said judgment of the court that the entry of the applicants into the land in question was with the consent and permission of the registered owner, M'Rwito Manga, and therefore cannot be adverse.
7. The respondent states that the succession cause is still active in court and has annexed an application seeking the applicant's eviction from the suit land and believes that this application is made to frustrate the determination and outcome of that application. Relying on legal advice, the respondent believes that the applicants who have deponed in their affidavit annexed that they are children of the deceased cannot claim adverse possession.
8. It is the respondent's contention that the applicants, having failed to establish their claim over the land in HC Succession cause No 4 of 1994 have filed this suit as a forum shopping, and argues that the same amounts to an abuse of court process. The respondent avers that the internment of a body on a parcel of land does not give rise or confer any rights of ownership of the land to the relatives of the dead, adding that the applicants buried their mother on the land against the wishes of the respondent's grandmother and when there was a judgment of court against her.
9. Both parties filed written submissions through their advocates on record which I have read and I need not reproduce their contents herein.
10. I have considered the application, affidavit in support and against and the rival submissions. The principles to be applied when considering an application for temporary injunction are well settled. In the famous case of *Giella v Cassman Brown & Co [1973]EA 358*, the conditions were laid and that is;
 

“First the applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”
11. Have the applicants made out a prima facie case with a probability of success? In the case of *Mrao Ltd v First American Bank of Kenya Limited & 2 others (2003) KLR 125*, a prima facie case was described as follows-;
 

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable’. It is a case 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”



12. The question that then arises is whether the applicants have met the threshold for temporary injunctions as enunciated in the above case.
13. In this case, there is no dispute that the suit land was the subject of litigation between the same parties in Meru High Court succession Cause No 4 of 1994. Both parties have tendered a copy of the judgment in the said succession cause which was delivered on June 16, 2011. The succession cause was decided against the applicants in favor of the respondent. There is no evidence to show that that judgment has been set aside, vacated and or reviewed.
14. From the material on record, and in particular the judgment in succession cause No 4 of 1994 which is still in force, I find that the applicants have not established a prima facie case with a probability of success. Secondly the applicants have not demonstrated that they stand to suffer irreparable harm not compensable in damages. The balance of convenience, if I had doubt, tilts in favour of the respondent who already has judgment and decree in his favour in the succession cause No 4 of 1994.
15. The upshot is that the notice of motion dated September 20, 2022 is without merit. The same is hereby dismissed with costs to the respondent.
16. It is so ordered.

**DATED SIGNED AND DELIVERED AT MERU THIS 22<sup>ND</sup> MARCH 2023**

**In the presence of**

**Murango Mwenda for respondent**

**Gichunge for applicant**

**Court Assistant - Kibagendi**

**C K YANO**

**JUDGE**

