



**Mburu & 3 others v Munene (Environment & Land Case
E014 of 2022) [2023] KEELC 16675 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E014 OF 2022
EC CHERONO, J
MARCH 21, 2023**

BETWEEN

**GABRIEL MUHIA MBURU 1ST APPLICANT
STEPHEN MAINA MURIMI 2ND APPLICANT
JOHN PETER KIGURU (SUING AS THE ADMINISTRATOR OF THE ESTATE
OF JANE NJAMBI NG'ANG'A) 3RD APPLICANT
MERCY WAMBUI MAINA 4TH APPLICANT

AND

MARTIN MWAI MUNENE RESPONDENT**

RULING

1. The applicants vide a Notice of Motion dated 1st April, 2022 are seeking the following orders;
 - a. (Spent)
 - b. That a temporary injunction do issue restraining the Respondent by himself, his agents, servants, heirs from entering, trespassing into, cultivating, using and/or in any way from continuing to interfere with L.R Kirinyaga/Gathigiriri/4630(formerly Kirinyaga/Gathigiriri/550) pending hearing and determination of this application
 - c. That a temporary injunction do issue restricting the Respondent by himself, his agents, servants, heirs from entering, trespassing into, cultivating, using and/or in any way from continuing to interfere with L.R Kirinyaga/Gathigiriri/4630(formerly Kirinyaga/Gathigiriri/550) pending hearing and determination of this suit.
 - d. That in the alternative the Honourable Court be pleased to maintain status quo on possession of the said property pending determination of this application and main suit



- e. That the costs of this application be provided for.
2. The application is premised on the grounds apparent on the face of the said motion and the supporting affidavit of Gabriel Muhia Mburu and numerous annexures thereto. In his supporting affidavit, the said Gabriel Muhia Mburu deposed that they are bonafide purchasers of their respective portions of land parcel No. Kirinyaga/Gathigiriri/550 from one Julieta Wanjiru Mbogo (deceased) as follows;
- i. Gabriel Muhia Mburu-----2 acres
 - ii. Mercy Wambui Maina----1/2 acre
 - iii. Jane Njambi Nganga(DCD)----1/4 acre
 - iv. Stephen Maina Murimi-----1/2 acre.
3. The deponent further deposed that they took possession of their respective parcels in the year 2002 and have developed and continue to cultivate the same for their livelihood. He stated that unfortunately, Julieta Wanjira Mbogo(deceased) passed on before they could finalize the transfer and obtain their respective Titles. The Applicants further content that before the seller passed on, Land parcel No. Kirinyaga/Gathigiriri/550 was subdivided into land parcel No. Kirinyaga/Gathigiriri/2043 without their knowledge and that they have continued occupying the suit land without any interruption from Julieta Wanjira Mbogo (deceased) or any other person whatsoever. The applicants further stated that they have been in open, continuous and peaceful occupation of the suit land from the year 2002 until recently when the Respondent forcefully entered into the suit land claiming that he is the registered owner and demolished the 2nd Applicant's house and destroyed the crops on the land. Thereafter, they conducted a search at the lands registry and to their surprise, the suit property had changed hands and the respondent is the registered proprietor of the new land parcel No. Kirinyaga/Gathigiriri/4630. That the Respondent caused the 2nd Applicant to be arrested and charged with the offence of forcible detainer and threatened the others saying that they were going to suffer similar fate unless they move out from the said land
4. In conclusion, the applicants stated that the respondent has never been in possession or occupation of land parcel No. Kirinyaga/Gathigiriri/4630 where they are currently living doing cultivation and that they seek protection from the threats by the respondent which protection if not granted will render the main suit nugatory considering that their cause of action is on adverse possession.
5. The application is opposed with a replying affidavit sworn by the Respondent on 26th May 2022. According to the Respondent, he is the registered proprietor of land parcel No. Kirinyaga/Gathigiriri/4630 which is a resultant parcel of land parcel No. Kirinyaga/Gathigiriri/2043 which was also registered in his name
6. The respondent avers that the applicants herein are also applicants in another suit pending at the Wang'uru Magistrate Court being PM-ELC NO. 3 of 2021(O.S) as 2nd, 5th, 6th, & 8th applicants. A copy of the Originating Summons is attached to the supporting affidavit. He further stated that in the alleged suit before the Magistrate's Court at Wang'uru, the 2nd, 5th, 6th, and 8th applicants claim is for a portion of land in land parcel No. Kirinyaga/Gathigiriri/2044 and not L.R No Kirinyaga/Gathigiriri/2043 which was registered in his name.
7. The Respondent further deposed that the applicants are misleading this Honourable court by stating that they have been in possession of L.R No. Kirinyaga/Gathigiriri/4639 which is a blatant lie and that they are not entitled to the equitable relief since they are using tricks and misinformation to



prevent him from quietly enjoying possession and occupation of his land parcel No. Kirinyaga/Gathigiriri/4630.

ANALYSIS AND DECISION

8. I have carefully considered the Notice of Motion application dated 1st April 2022, the affidavit in support sworn by Gabriel Muhia Mburu and the annexures. I have also considered the replying affidavit by the respondent as well as the annexures thereto. I have further perused the pleadings in this suit and the applicable law. The applicants in this application are also claimants in this suit which is commenced by way of Originating Summons. According to the Applicants, the suit property land parcel No. Kirinyaga/gathigiriri/4630 is a resultant subdivision of the former land parcel No. Kirinyaga/gathigiriri/550. In paragraph 4 of his replying affidavit, the respondent denies the averments and contends that land parcel No. Kirinyaga/gathigiriri/4630 is a result of the subdivision of land parcel No. Kirinyaga/gathigiriri/2043 which he was also the registered proprietor and Not L.r No. Kirinyaga/gathigiriri/55. Those averments given on oath have not been controverted by way of a supplementary or further affidavit. An order for a temporary injunction is an equitable relief which this court can grant only after the applicant has satisfied the three conditions set out in the celebrated case of *Giella v Cassman Brown Co. Ltd*(1973) EA 358 as follows;
 1. The applicant must establish a prima facie case with a likelihood of success at the main trial
 2. The applicant must show that he/she will suffer irreparable injury that cannot be compensated by an award of damages; and
 3. Where the court is in doubt, it may decide the matter on a balance of convenience.
9. From the averments in the Originating Summons which is the substratum of this suit, the Applicants' claim is hinged on the doctrine of Adverse possession. For one to demonstrate prima facie evidence in a claim for adverse possession, he/she must show that he/she in continuous possession and occupation of the suit property for a period of more than twelve (12) years and that their possession and occupation is not by consent or permission of the owner. The applicants have deposed that they are in possession and actual occupation of the suit property and that they purchased their respective portions out of land parcel No. Kirinyaga/gathigiriri/4630 (formerly Kirinyaga/gathigiriri/550) from one Julieta Wanjira Mbogo(deceased)
10. In his replying affidavit, the respondent has denied that the applicants are in possession and occupation of his land parcel No. Kirinyaga/gathigiriri/4630. He also stated that land parcel No. Kirinyaga/gathigiriri/4630 is not a subdivision of land parcel No. Kirinyaga/gathigiriri/550 but a resultant subdivision of land parcel No. Kirinyaga/gathigiriri/2043 which was registered in his name before subdivision. Those averments given under oath which have not been controverted by a supplementary or a further affidavit and the fact that the admission by the applicants that they purchased the portions of land under dispute makes the applicants not establish a prima case for the grant of the orders sought. In my view, the applicants have not met the first condition for the grant of injunction orders.
11. On the second condition, the applicants have not stated anywhere in their supporting affidavit that they will suffer irreparable loss which cannot be compensated by damages. At paragraph 14 of the supporting affidavit, the applicants deposed that unless the orders sought are granted, the respondent will execute his illegal eviction plans thereby rendering them and their families homeless and destitute. The Respondent denies that the applicants are in possession and occupation of his land parcel No. Kirinyaga/gathigiriri/4630. The applicants have not controverted. I find and hold that the applicants have not also shown that they will suffer irreparable injury that cannot be compensated by an award of damages.



12. Deciding the application on the third condition, I find that the balance of convenience tilts in disallowing this application.
13. In view of my analysis hereinabove, I find the Notice of Motion application dated 1st April 2022 lacking merit and the same is hereby dismissed with costs.

Orders accordingly.

READ, SIGNED AND DELIVERED AT BUNGOMA VIRTUALLY THIS 21ST MARCH, 2023

HON. E C CHERONO

ELC JUDGE

In the presence of;

Mr. Kimata for the appellant

Respondent absent

C/A Joy

