



**Murichu v Ngui & 2 others (Being sued as the Liquidator of the wound up Drumvale Farmers and Cooperative Society) (Environment & Land Case E077 of 2023) [2023] KEELC 16550 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16550 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E077 OF 2023  
MD MWANGI, J  
MARCH 21, 2023**

**BETWEEN**

**SAMMY MAKANGA MURICHU ..... PLAINTIFF**

**AND**

**FELIX MAINGI NGUI ..... 1<sup>ST</sup> DEFENDANT**

**JAMES WAKANENE ..... 2<sup>ND</sup> DEFENDANT**

**PETER WANJOHI KIAMA ..... 3<sup>RD</sup> DEFENDANT**

**BEING SUED AS THE LIQUIDATOR OF THE WOUND UP DRUMVALE FARMERS AND COOPERATIVE SOCIETY**

*(In respect of the Plaintiff's Notice of Motion Application dated 27th February, 2023 amended on 14th March, 2023)*

**RULING**

**Background**

1. This ruling is in respect of an application by way of Notice of Motion by the Plaintiff/Applicant dated the February 27, 2023 amended on March 14, 2023. The application is stated to have been brought under the provisions of Section 3A of the [Civil Procedure Act](#) and Order 51 of the [Civil Procedure Rules, 2010](#). The Applicant seeks for the following orders:
  - a. Spent
  - b. That pending interparty hearing there be an order for injunction against the Respondents by themselves their agents, servants and/or employees from trespassing, erecting bill boards, interfering with boundaries, constructing,



selling, transferring, disposing, alienating and/or in any way interfering with land parcel number Nairobi/ Block 118/1574 to the detriments of the applicant herein.

- c. That pending the hearing of the Originating Summons there be an order for injunction against the Respondents by themselves their agents, servants and/or employees from trespassing, erecting bill boards, interfering with boundaries, constructing, selling, transferring, disposing, alienating and/or in any way interfering with land parcel number Nairobi/Block 118/1574 to the detriments of the applicant herein.
- d. Costs of the application.'

- 2. The application is supported by the Supporting Affidavit of the Plaintiff/Applicant, Sammy Makanga Murichu deposed on the February 27, 2023. He avers that he is the registered owner of all that parcel of land known as Nairobi/Block 118/1574 (hereinafter referred to as 'the suit property' as per the Lease Certificate annexed to the affidavit.
- 3. The deponent deposes that on November 25, 2022, the 1st and 2nd Respondents erected billboards on the suit property indicating that the land belongs to the already wound up Drumvale Farmers and Cooperative Society. He states further that the 1st and 2nd Respondent have encroached on the suit property and they have started partitioning it for purposes of constructing on it to his detriment despite the fact that he holds a genuine title to the suit property. He therefore prays that he be granted the orders sought as he is apprehensive of losing his land to the Respondents.
- 4. The grounds upon which the application is grounded on have not been stated on the face of the application. Further, from the record of the court, though there is reference to an Originating Summons (OS), none was filed alongside the application.

### **Chronology of events**

- 5. Before delving further into the merit or otherwise of the application, it is important to note the chronology of events in this matter.
- 6. The application was brought under Certificate of Urgency on the February 27, 2023. The Plaintiff/Applicant filed the following documents alongside the Certificate: Supporting Affidavit, Plaintiff's List of Witnesses, Plaintiff's List of Documents, Witness Statement, A Bundle of Documents, Verifying Affidavit and The Notice of Motion, all dated the February 27, 2021.
- 7. This court certified the application as urgent and directed that the application be served for inter partes hearing on the March 14, 2023. The Respondents upon being served were to file and serve their responses within 7 days of service thereof.
- 8. On the March 14, 2023, Counsel for the Plaintiff/Applicant informed the Court that he had served the Respondents with the application and filed an Affidavit of Service. The court however noted that there was no return of service filed on the e-filing portal. The Application was then fixed for hearing on March 21, 2023 and the Plaintiff directed to serve the Respondents and file an affidavit of service confirming service.
- 9. On the very day of March 14, 2023, the Plaintiff/Applicant filed an Amended Notice of Motion without leave of court.



10. On the March 21, 2023, when the matter was scheduled for hearing, Counsel for the Plaintiff/Applicant informed the court that he had served the application upon the Respondents as directed by the court earlier. The Respondents had not filed any response therefore the application was unopposed. He prayed that the application be allowed as prayed.
11. Interestingly, after presenting the application before the court, and the ruling was set down for 2.30 pm, Counsel for the Plaintiff for his own reasons re-uploaded the Amended Notice of Motion on the e-filing portal.

### **Determination**

12. I have perused the Affidavit of Service filed on the e-filing Portal on the March 14, 2023 deposed by one Gabriel Osoma on the same day. The said Process Server avers that he was given the above stated documents for Service on the said day of March 14, 2023 at around 10.30 am to effect service upon the Respondents. He states that he effected service upon the 1st and 2nd Respondents at about 11.15 am and 11.50 am respectively at Kamulu Kipawa Shopping Centre. He was however not able to trace the 3rd Respondent. He therefore effected service upon him through his telephone number given to him by the Plaintiff/Applicant at 2.03 pm.
13. I note that the Affidavit of Service was filed on the same day, the March 14, 2023 at 11.51 am. It then follows that the Affidavit of Service was prepared and filed before the 3rd Respondent was served with the application.
14. This casts doubts on the credibility of the purported service. Surely, the affidavit is self contradictory and it is obvious that the 3<sup>rd</sup> Defendant was not served. It is against the rules of natural justice to grant any orders against a party to a suit without proper service having been effected upon him.
15. Secondly as I already pointed out earlier, the Originating Summons which is the pleading that was to originate the Plaintiff's suit was not filed together with the application herein. The prayer that the Plaintiff seeks is for a temporary or interlocutory injunction pending the hearing and determination of the suit. Obviously, without the Originating Summons, there is no suit pending before this court. The omission is fatal to the Plaintiff's application. I therefore have no choice but to strike out the Plaintiff's application dated February 27, 2023 but with no orders as to costs since the Respondents have not participated in the proceedings so far.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH 2023.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Ndichu for the Plaintiff/Applicant.

No appearance by the Respondents.

Court Assistant – Yvette

**M.D. MWANGI**

**JUDGE**

