



**Ndolo v Musyoka & 2 others (Environment & Land Case  
214 of 2009) [2023] KEELC 17065 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17065 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 214 OF 2009  
CA OCHIENG, J  
APRIL 26, 2023**

**BETWEEN**

**MUTWIWA NDOLO ..... PLAINTIFF**

**AND**

**MARY MUSYOKA ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL MUSYOKA ..... 2<sup>ND</sup> DEFENDANT**

**KENNEDY KIOKO MUSYOKA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Defendants' Notice of Motion Application dated the 31<sup>st</sup> May, 2022 where they seek the following orders:-
  - a. Spent.
  - b. That this Honourable Court be pleased to grant a temporary injunction against the Plaintiff, his servants, agents, representative or any other person authorized by him, the officer Commanding Station (OCS) and officers from Malaa Police Station, the local administration and their employees, servants and or Agents from effecting eviction against the Defendants and their tenants and interfering with the Defendants quiet occupation, possession and use of the suit properties being Matungulu/Sengani/3116 and Matungulu/Sengani/3463 pending the hearing and determination of this application.
  - c. That this Honourable Court be pleased to grant a temporary injunction against the Plaintiff, his servants, agents, representative or any other person authorized by him, the officer Commanding Station (OCS) and officers from Malaa Police Station, the local administration and their employees, servants



and or Agents from effecting eviction against the Defendants and their tenants and interfering with the Defendants quiet occupation, possession and use of the suit properties being Matungulu/Sengani/3116 and Matungulu/Sengani/3463 pending the hearing and determination of this matter.

- d. That this Honourable Court be pleased to issue an order of inhibition on the suit properties being Matungulu/Sengani/3116 and Matungulu/Sengani/3463 barring any transfer, subdivisions, charge, mortgage, sale and or in any way dealing with the suit property pending the hearing and determination of this matter.

2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Kennedy Kioko Musyoka where he deposes that the Plaintiff has proceeded and intends to unlawfully as well as unprocedurally evict them as well as their tenants from the suit property. He explains that the actions of the Plaintiff commenced on 27<sup>th</sup> May, 2022 immediately after he had withdrawn his Application seeking to have the property surveyed. Further, that on 27<sup>th</sup> May, 2022, the Plaintiff dumped three lorries of soil at the entrance of their business premises at the suit property and effectively blocked the road of access to the said property hence hindering the tenants from accessing their businesses. He claims the Plaintiff with the assistance of one of his sons who is a former Police Officer including one Janniter Ndila Daudi claiming to be an advocate and the OCS Malaa Police Station are frustrating the Defendants as well as their tenants with unlawful arrests plus forcing them to record statements at the said Police Station. Further, that the actions of the Plaintiff are intended to compromise as well as prejudice this matter. He confirms that the Plaintiff has issued eviction orders to their tenants and demanded that if they want to continue operating in the building constructed by the Defendants' deceased parents, they will have to pay rent directly to him. Further, that the Plaintiff is using falsified orders to do so. He insists that the suit property is ancestral land. He reiterates that this matter is yet to be determined and it is hence important for court to grant orders of status quo on the suit property and an injunction against eviction of the Defendants. Further, that an inhibition order should issue against any registration of title being done. He explains that one of the properties being Matungulu/Sengani/3463 has since been sub divided without the knowledge of the 1<sup>st</sup> Defendant who had placed a caution on the said property on 17<sup>th</sup> February, 2016.
3. In opposition to the instant Application, the Plaintiff filed a Replying Affidavit where he deposes that the said Application is frivolous, vexatious, an abuse of the court process, lacks merit and the same ought to be dismissed. He avers that the allegations by the Applicants herein that he used the local Police to intimidate them is untrue. He challenges the Applicants' to disclose the particulars of his son and the respective Police Officers that were purportedly used to intimidate them. He contends that an individual cannot be compelled to go to a Police Station to record a statement as alleged unless he or she is arrested. He states that the allegations of the Applicants that he falsified Court Orders to evict them is untrue. He denies that the suit property is ancestral land and states that he is the sole registered proprietor of the same. He explains that the Defendants have their own property registered in their name being Matungulu/Sengani/3321 which they inherited from his late mother and thus they should not claim the suit property. He confirms that the Defendants have proceeded to subdivide the aforementioned parcel of land into Matungulu/Sengani/4126, 4127 4128 and 4129 respectively. He reaffirms that the purported eviction notices have not been attached to the instant Application. He claims interim orders of injunction were issued as against the Defendants on 15<sup>th</sup> July, 2009 and thus the said Defendants cannot seek similar injunctive orders as against him. He denies existence of any heap of soil on the suit property. He reiterates that Matungulu/Sengani/3463 does not have any encumbrances or caution registered against it. He reaffirms that the Defendants have trespassed on his



land and destroyed a perimeter fence that he had put up. Further, that he subsequently reported the matter at KBC Police Station. He contends that he instructed a Surveyor to determine the boundary between his property and Matungulu/Sengani/4129 belonging to the Defendants, and the Surveyor confirmed that the Defendants encroached on his land. Further, that he has paid taxes and land rates including rent for the suit property since 1982.

The Application was canvassed by way of written submissions.

### Analysis and Determination

4. Upon consideration of the instant Notice of Motion Application including the respective Affidavit as well as rivalling submissions, the only issue for determination is whether the Defendants are entitled to orders of injunction restraining the Plaintiff from interfering with land parcel number Matungulu/Sengani/3116 and 3463 pending the determination of this suit.
5. The Defendants in their submissions reiterated their averments as per their Supporting Affidavit and insist they have satisfied the test of granting an injunction. They insist that the suit properties are ancestral land containing graves of grandparents including parents. Further, that they have invested heavily thereon. They insist that an inhibition order should be registered to preserve the suit properties. To buttress their averments, they have relied on the following decisions: *Giella Vs Cassman Brown & Company Limited* (1973) EA 358; *John Nzomo Wambua v Joseph Taiti Wambua* (2021) eKLR; *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others*; *Central Bank of Kenya & Another v Uhuru Highway Development Ltd & 4 Others*; *Hutchings Biemer Ltd v Barclays Bank of Kenya Ltd & Another*; *Tritex Industries Limited & 3 Others v National Housing Corporation & Another* (2014) eKLR and *Dorcas Muthoni & 2 Others v Michael Ireri Ngari* (2016) eKLR.
6. The Plaintiff in his submissions insists that his Application for injunction was heard and orders issued by Justice Lenaola SCJ in open court on 15<sup>th</sup> July, 2009. He avers that he moved the court on 1<sup>st</sup> July, 2009 and obtained injunctive orders. He argues that the Defendants have not established a prima facie case to warrant the orders as sought. Further, that they lack locus standi herein. He reiterates that the Defendants will not suffer any irreparable injury which cannot be adequately compensated by way of damages. They further argue that the Court cannot replicate on its own orders. To support his averments, he has relied on the following decisions: *Giella v Cassman Brown & Company Ltd* (1973) EA 358; *Teresia Waitihira K. Njuguna v John Otieno Nyandew & Another* (2015) eKLR; *Law Society of Kenya vs Commissioner of Lands & Others* Nakuru High Court Civil Case No. 464 of 2000; *Kennedy Mokua Ongiri vs John Nyasende Mosioma & Florence Nyamoita Nyasende* (2022) eKLR and *Republic vs Attorney General & Another Ex parte James Alfred Koroso*.
7. The Defendants have sought orders of injunction to restrain the Plaintiff from interfering with their occupation of land parcel number Matungulu/ Sengani/3116 and Matungulu/Sengani/3463 as well as evicting their tenants therefrom, pending the outcome of this suit, which fact is opposed by the Plaintiff. The principles for granting of interlocutory injunction is well established in the case of *Giella V Cassman Brown & Co Ltd* (1973) E.A. 356. While, in the case of *Mrao Ltd v First American Bank Ltd & 2 Others* (2003) KLR 125 it gave a definition of a *prima facie* case. The Defendants seek to restrain the Plaintiff from interfering with their occupation of the suit property claiming that it is ancestral land, as their parents as well as grandparents graves are therein and they are in occupation thereon. The Plaintiff insists that the suit property is not ancestral land as he holds titles to it. Further, that he has been paying land rent and rates. The Plaintiff argues that the Court had granted him an order of injunction on 15<sup>th</sup> July, 2009 restraining the Defendants from interfering with the suit property. I have had a chance to peruse the said Court Order which is annexure 'MN 4' and note the orders of injunction were only issued for two weeks and the Plaintiff directed to set the Application dated the 1<sup>st</sup> July, 2009 for



hearing on 29<sup>th</sup> July, 2009. The Plaintiff has not demonstrated if the aforementioned Application was determined nor even annexed an order indicating the injunction was to subsist during the pendency of the suit. I note the Plaintiff admitted that he had brought in a surveyor who confirmed the Defendants had encroached on the suit property but not indicated if Defendants participated in the survey process. The Plaintiff has further not denied that the Defendants have tenants on the suit property and that there are graves thereon. From a further perusal of the Court record, I note that the Defendants and the Plaintiff are actually related. It is my considered view that since the Defendants including their tenants are on the suit property and in the interest of justice, it would be pertinent for their rights to be protected until the dispute herein is determined. Based on the facts as presented including the annexures herein, while relying on the two decisions I have cited, I find that the Defendants have established a *prima facie* case to warrant the orders of injunction as sought. However, since the Plaintiff is the registered proprietor of the suit property, I opine that an order of status quo would suffice so that no party will interfere with the other parties' occupation of the suit property until this suit is determined. I further direct that an inhibition order be registered against the suit property to protect the substratum of the suit.

8. It is against the foregoing that I find the instant Notice of Motion Application merited. However, I will allow it by making the following orders:-
  - a. Obtaining of status quo be maintained where no party is allowed to interfere with the opposing parties occupation of the suit property, pending the outcome of this suit.
  - b. The Land Registrar Machakos be and is hereby directed to register an inhibition Order on land parcel numbers Matungulu/Sengani/3116 and Matungulu/Sengani/3463 pending the hearing and determination of this suit.
9. Parties are urged to comply with Order 11 of the [Civil Procedure Rules](#) within thirty (30) days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 26<sup>TH</sup> DAY OF APRIL, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

