



**Waweru v Kibathi & 2 others (Environment and Land Case  
E148 of 2024) [2025] KEELC 316 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 316 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E148 OF 2024**

**BM EBOSO, J  
JANUARY 30, 2025**

**BETWEEN**

**JENNIFER NGENDO WAWERU ..... PLAINTIFF**

**AND**

**SCHOLASTICA WAMBUI KIBATHI ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL BANK OF KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**FAMILY BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff initiated this suit through a plaint dated 1/9/2024. Her case is that she is the registered proprietor of land parcel number Ruiru/Township/383 (the suit land). She contends that the 1st defendant has trespassed onto the suit land and has erected on it a building comprising of rental apartments. It is her case that the certificate of lease which the 1st defendant holds, relating to the suit land, is fraudulent and invalid.
2. Through the plaint, she seeks, among other reliefs:
  - (i) a declaration that she is the lawful registered proprietor of the suit property;
  - (ii) a declaration that the certificate of lease held by the 1st defendant, relating to the suit land, is invalid;
  - (iii) permanent injunction against the defendants;
  - (iv) general damages for trespass;
  - (v) special damages;
  - (vi) mesne profits; and



- (vii) an order decreeing the 1st defendant to vacate the suit property.
3. Alongside the plaint, the plaintiff brought a notice of motion dated 1/9/2024 seeking:
- (i) an interlocutory injunctive order restraining the defendants against constructing on, selling, or charging the suit property;
  - (ii) an interlocutory order directing the 1st defendant to provide a full account, through a sworn affidavit, of all rental income and other benefits received from the buildings erected on the suit property from beginning of occupation;
  - (iii) an interlocutory order directing the 1st defendant to deposit all rental income received from the suit property into a joint interest-earning account to be opened in the joint names of the parties' advocates; and
  - (iv) an order directing the OCS of Ruiru Police Station to ensure compliance with the above orders.
- The said application is one of the two applications that fall for determination in this ruling.
4. The other application is a chamber summons dated 29/10/2024 by M/s Family Bank Limited, through which they seek an order striking their name from this suit. Because the application by Family Bank Ltd touches on the question of joinder, it will be disposed first.

#### **Application by M/s Family Bank Limited (3rd Defendant) dated 29/10/2024**

5. Through the chamber summons dated 29/10/2024, the 3rd defendant seeks an order striking their name from this suit. The application is accompanied with an affidavit sworn by Joan Gachomba. Their case is that the 1st defendant requested them for a financial facility of Kshs. 5,000,000/= and offered his title relating to Ruiru Township/383 as security. They (the 3rd defendant) advanced the 1st defendant the facility which the 1st defendant subsequently repaid in full. They subsequently executed a discharge of charge dated 26/9/2024. It is their case that they do not have any interest in the suit land, hence they should be removed from this suit.
6. The plaintiff opposed the application through an affidavit sworn on 29/10/2024. She deposed that the 3rd defendant should not be removed from the suit because she (the plaintiff) has raised a critical issue relating to the identity of the 1st defendant. She contends that the 1st defendant's Kenyan identity card number entered in the Bank's records (62xxxxxx) differs significantly with the identity card number captured in her (the 1st defendant's) certificate of lease (18xxxxx). She adds that "the role of the 2nd and 3rd defendants in facilitating the fraudulent transaction must be fully investigated and determined by this Honourable Court", stating that their removal from the proceedings would deny her the opportunity to seek redress for the harm caused by their actions.
7. The court has considered the application, the response to the application, and the parties' submissions. The single issue to be determined in the application dated 29/10/2024 is whether the 3rd defendant is a necessary party for the effectual and complete adjudication and settlement of the key questions in this suit.
8. This court's jurisdiction on questions relating to joinder and misjoinder is guided by the legislative framework in Order 1 rule 10 (2) of the [Civil Procedure Rules](#) which provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that



the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

9. Is the 3rd defendant a necessary party for the effectual and complete adjudication and settlement of all the key questions in this suit? The plaintiff’s claim is contained in the plaint dated 1/9/2024. The key issues in the suit revolve around the question of ownership of the suit land and the question relating to the authenticity of the parallel titles that the plaintiff and the 1st defendant are holding.
10. The 3rd defendant is a banking institution. Part of its business is to lend money at an interest. Through the supporting affidavit of Joan Gachomba, the 3rd defendant has demonstrated that their involvement with the 1st defendant was that of borrower and lender. They have demonstrated that the 1st defendant approached them for a loan facility and offered her title relating to the suit land as security for the facility. A charge was registered against the title and the loan facility was advanced to the 1st defendant. The 1st defendant subsequently serviced the loan in full and the 3rd defendant executed a discharge of charge discharging the title. It is the case of the 3rd defendant that they do not have any interest in the suit land or in the title which the 1st defendant holds.
11. The only reason why the plaintiff wants the 3rd defendant retained as a defendant is that there is disparity between the identity card number captured in the charge and the identity card number captured in the defendant’s title.
12. In their lending business, the 3rd defendant accepts land titles as security. Given that the plaintiff seeks to invalidate the title held by the 1st defendant, the 3rd defendant would be a necessary party if they still held the 1st defendant’s title as security. They have unequivocally indicated that the loan which was secured by the 1st defendant’s title was repaid in full and they executed a discharge of charge discharging the title.
13. It is clear from the totality of the evidence presented to the court that the plaintiff has not demonstrated that he will be completely unable to ventilate the issue relating to the alleged disparity in identity card numbers if the 3rd defendant is removed from the suit. Secondly, it is not lost on the court that if the plaintiff wants an officer of the 3rd defendant to attend court as a witness and produce specific documents, the court has powers to issue summons to the witness and compel the witness to produce the documents.
14. Further, the court has examined the plaint in this suit. Neither fraud nor negligence has been pleaded and particularized against the 3rd defendant. No plea of any other tort has been pleaded and particularized against the 3rd defendant. There is therefore no proper basis for retaining the 3rd defendant as a party to this dispute.
15. For the above reasons, the court comes to the finding that the key questions in this dispute can be effectually adjudicated upon and settled without retaining the 3rd defendant as a party to this suit.
16. Given the nature of the dispute in this suit, and taking into account the facts that:
  - (i) there was no evidence that the discharge of charge had been registered at the time the plaintiff initiated this suit; and
  - (ii) that the key questions are still under adjudication, there shall be no award of costs at this point.
17. Having made the above findings and order, it does emerge from the materials presented to the court at this point that the plaintiff and the 1st defendant are waving parallel titles relating to the same piece of land. They both contend that their parallel titles were issued by the Department of Lands. In



Kenya's current land registration regime, the law does not permit creation of two land registers and issuance of parallel titles relating to the same piece of land. For this reason, the court finds that the Land Registrar and the Attorney General are necessary parties and does exercise its jurisdiction under Order 1 rule 10 (2) of the Civil Procedure Rules and does order joinder of the relevant Land Registrar and the Hon Attorney General as the 4th and 5th defendants respectively. The plaint shall be amended appropriately.

#### **Plaintiff's Application dated 1/9/2024**

18. The plaintiff's case was summarized in the opening paragraphs of this ruling. Suffice it to add that, the plaintiff contends that, unless restrained by this court, the 1st defendant "may alienate, dispose of, or continue to unlawfully occupy the property, causing irreparable harm" to her. The plaintiff also contends that the 1st defendant's continued receipt of rental income from the suit property is causing her substantial financial loss and damage.
19. The 1st defendant opposed the application through her replying affidavit dated 28/10/2024. Her case is that she is the legitimate owner of the suit land. She contends that she purchased the suit land in 2009 from the previous registered proprietor, Peninah Wanjiku Munyua, at Kshs. 900,000/= . She adds that using the title as security, she obtained loans which she used to fully develop the suit land by erecting a five storey residential block of apartments.
20. The 1st defendant adds that in 2019, she approached Family Bank Limited for a top up loan. When the Bank's valuers applied for a search, they were given a search reflecting the plaintiff as the registered proprietor. This prompted her to visit the Ruiru Land Registry. The Land Registry subsequently invited the plaintiff and herself for a meeting but the plaintiff did not attend the meeting.
21. Subsequent to that, her and the plaintiff litigated over the question of ownership of the suit land in Ruiru CMC E&L Case No. 129 of 2019. She adds that the said case was terminated in February 2021 on account of pecuniary jurisdiction and she did not hear from the plaintiff until August 2024 when she was summoned by the Ruiru DCI Officers who preferred trumped up charges against her relating to her registration as proprietor of the suit land. Subsequent to that, in September 2024, the Plaintiff brought this suit together with the application under consideration.
22. The 2nd defendant filed a replying affidavit sworn on 18/10/2024 by Chrispus N. Maithya. The case of the 2nd defendant is that they advanced a credit facility of Kshs. 9,600,000 to the 1st defendant against a charge registered on the 1st defendant's title relating to the suit land. The 1st defendant subsequently repaid the credit facility in full. They executed a discharge of charge and gave the 1st defendant the discharge of charge together with the title. It is the case of the 2nd defendant that they do not have any interest in the suit property.
23. The court has considered the application, the response to the application and the parties' respective submissions. The key question to be determined in the application is whether the criteria for grant of an interlocutory injunctive relief has been satisfied by the applicant.
24. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. First the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is required to demonstrate that if the interlocutory injunctive relief is not granted, she would stand to suffer damage that may not be adequately indemnifiable through an award of damages. Thirdly, should the court have doubt on either or both of the above, the application should be disposed based on the balance of convenience.



25. In addition, our courts have developed the principle that at the point of disposing an interlocutory application of this nature, the court does not make definitive or conclusive pronouncements on the key issues in the dispute. Definitive or conclusive pronouncements are reserved to be made after trial or during the final disposal of the case.
26. Both the plaintiff and the 1st defendant are waving what they call legitimate registered titles relating to the suit land. After trial and submissions, this court will be expected to determine which of the two parallel titles is legitimate. At this point, the court does not know which of the two titles is legitimate.
27. Secondly, there is evidence that the suit land has been fully developed by the 1st defendant. The 1st defendant built residential rental apartments on the land and has been in possession of the land. The rental income which the plaintiff seeks to be deposited in an interest earning account is rent from the 1st defendant's investment on the land.
28. Given the above circumstances, the court takes the view that the application dated 1/9/2024 merits determination on the basis of the balance of convenience. The balance of convenience calls for preservation of the two parallel titles. The balance of convenience also calls for maintenance of the status quo in terms of possession and rental income accruing from the 1st defendant's investments. Those are the findings of the court on the application dated 1/9/2024.

### **Disposal Orders**

29. In light of the above findings, the plaintiff's application dated 1/9/2024 and the 3rd defendant's Application dated 29/10/2024 are disposed as follows:
  - a. The 3rd defendant, M/s Family Bank Limited, are removed from this suit with no order as to costs.
  - b. Pending the hearing and disposal of this suit, no dealings shall be registered in any land register relating to the two parallel titles held in the names of Jennifer Ngendo Waweru [the plaintiff] and Scholastica Wambui Kibathu [the 1st defendant], respectively, in relation to land parcel number Ruiru Township/383.
  - c. The obtaining status quo relating to rental income from the apartments erected on the said land shall be maintained, meaning that the plaintiff's interlocutory plea on rental income is declined.
  - d. The Land Registrar - Ruiru and the Hon Attorney General are hereby joined as the 4th and 5th defendants in this suit. The plaint shall be amended appropriately.
  - e. Costs of the two applications shall be in the cause
30. Lastly, it is clarified that the date for delivery of this ruling was reserved while the Presiding Judge was still stationed at Thika ELC. Effective from 13th January, 2025, the Judge was transferred to Meru ELC and Chuka ELC. It is for this reason that this ruling is being rendered virtually at Meru ELC. The relevant original court file shall be returned to Thika ELC forthwith and the Court Registry at Thika ELC shall upload the ruling onto the CTS immediately.

**DATED SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 30<sup>TH</sup> DAY OF JANUARY, 2025.**

**B M EBOSO [MR]**

**JUDGE**



In the presence of:-

Mr. Muhuta for the Plaintiff

Mr. Ngeru for the 1st Defendant

Ms Yala for the 2nd Defendant

Mr. Odiyo for the 3rd Defendant

Court Assistant - Tupet

