



REPUBLIC OF KENYA



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**Titus & 36 others v Mutunkei (Environment & Land Case
E037 of 2022) [2023] KEELC 16914 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E037 OF 2022**

**MN GICHERU, J
APRIL 19, 2023**

BETWEEN

JACINTA KANINI TITUS & 36 OTHERS PLAINTIFF

AND

LENGISA OLE SHANKA MUTUNKEI DEFENDANT

RULING

1. This Ruling is on the Notice of Motion dated 25/4/2022. The Motion which is brought under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), Orders 40 rules 2, 3 and 4, Order 51 rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law seeks for the following order.
 - c. That a temporary injunction do issue restraining the Defendant whether by himself, his agents, employees, servants from evicting the Plaintiffs, interfering with their water connections, trespassing on their plot, destroying the fence that demarcates the boundary of each of the plaintiff's part of the land, evicting, dividing, constructing, interfering, residing, subletting, transferring ,charging, alienating in any way dealing with the plaintiffs' plots or portions of land in the land parcel know as Kajiado/kaputiel Central/2724 pending the hearing and determination of the suit.
 - d. That the area OCPD or OCS and his team of police officers to ensure compliance with this order.
 - e. That the costs of this Application be borne by the Defendant.
2. The Motion is supported by ten grounds, two affidavits and thirty-two annexures.

The gist of the above material is that the Plaintiffs are in occupation of various portions of LR Kajiado/kaputiel Central/2724, suit land. The parcels range from one acre to twenty acres per Plaintiff. The Plaintiffs bought the parcels from the Defendant for value, paid the entire purchase price, occupied



their respective parcels, developed then by building permanent residences, planted trees and food crops among other improvement activities.

3. Recently, the Defendant together with his agents have started interfering with the Plaintiffs' quiet possession of their land. They have also threatened to evict them, trespassed on the land, interfered with the water pipes and exposed the Plaintiffs to substantive loss and damage due to their unlawful activities. It is for these and other reasons that the Plaintiffs pray for the order of injunction.
4. The Notice of Motion is opposed by the Defendant who has sworn a Replying Affidavit dated 4/11/2022 in which he deposes that the Plaintiffs are not only strangers to him but also trespassers who unlawfully invaded his land. He adds that there was no sale of land to the Plaintiffs. Neither was there any consent of the land control board. It is his case that he has never sold his land to any person except Eva Nairisho Leipe and that the Plaintiffs are not deserving of the equitable remedy of injunction that they seek because they have not come to court with clean hands. Just like I said in the ruling in the Preliminary Objections, the Defendants counsel did not file written submissions within the given timelines or even later. Only the Plaintiff's counsel filed written dated December 20, 2022.
5. I have carefully considered the Notice of Motion dated 25/4/2022 in its entirety including the affidavits by both sides, the annexures, the grounds, the written submission and the case law cited therein.

I find that the Applicants/Plaintiffs have established a prima facie case with a probability of success, that they are likely to suffer irreparable loss if this Application is not allowed and that the balance of convenience tilts in their favor for the following reasons.

Firstly, the Plaintiffs are in occupation of the suit land. This is clear from the photographs that they have annexed to the supplementary affidavit dated December 20, 2022. Even the Defendant does not dispute that some of the Plaintiffs, if not all, are in occupation of the land.

6. Secondly, the Defendant has not explained why he let the Plaintiffs occupy his land, build permanent homes and develop the land generally without him seeking some redress.

For the above stated reasons, I that the Application dated 25/4/2022 meets the threshold in the case of *Mrao –versus- First American Bank Limited and other* (2003) eKLR 123 of a prima facie case. Secondly, it also meets the threshold in *Giella –versus- Cassman Brown* (1973) EA 358 as regards the granting of the order of injunction. Consequently, I allow Motion dated 25/4/2022 in terms of prayers (c) and (d). Costs in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

