



**Muguna v Karani & 3 others (Judicial Review Application  
E017 of 2022) [2023] KEELC 17664 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17664 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
JUDICIAL REVIEW APPLICATION E017 OF 2022**

**CK NZILI, J**

**MAY 24, 2023**

**BETWEEN**

**ERASTUS MUNG'ATIA MUGUNA ..... APPLICANT**

**AND**

**MBUI JOSEPH KARANI ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 3<sup>RD</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By an application dated March 27, 2023, the court is asked by the 1<sup>st</sup> defendant/applicant to grant a temporary injunction barring and restraining the respondents, their agents, servants or employees from entering, trespassing cultivating or in any way whatsoever interfering with the parcel No Ruiru/Rwarera Adjudication Section/4168, pending hearing and determination of these proceedings. The application is based on the grounds on the face of the application and an affidavit of Mbui Joseph Karani, sworn on March 27, 2023. The applicant averred that he is the owner and the person in actual occupation of the land but the exparte applicant now the respondent has invaded it and started grazing on it and was demanding that he vacates the land. He urged the court to find that it is in the interest of justice that his rights be protected.
2. The exparte applicant opposed the application through a replying affidavit sworn on April 12, 2023 entirely depending on the contents of the notice of motion. He deposed that he was the recorded owner of the land and that in the sale agreement, he entered with the applicant only Kshs 140,000/= was paid for 3 acres with a promise to clear the balance. That the applicant breached the agreement by failing to



pay the balance of Kshs 30,000/=, out of a total consideration of Kshs 240,000/= as per the annexed demand notices marked EMM 1 (a) – (c). That following the default the *ex parte* applicant averred that he filed an objection No 2145 before District Land Adjudication and Settlement Officer for leave to transfer the land to Ntinyari Doris Kimathi, which was allowed. He annexed the said proceedings as an annexure marked EMM – “2”.

3. That the applicant in 2017 filed an objection No 2376 seeking to have the land transferred which was dismissed as per annexure marked EMM “3”, leading to an appeal before the Minister No 110 of 2020, who ordered that the land be subdivided into two in ½ an acre and 3 acres which form part of these proceedings. He annexed the proceedings as an annexure marked EMM “4”. He denied any alleged threats since going by the proceedings attached, the applicant has never been in occupation of the land.
4. Additionally, the *ex parte* applicant averred that this court has already granted a stay order to last for 6 months and directed for parties to maintain peace and order. The respondent urged the court to dismiss the application with costs.
5. A party seeking for an injunction has to establish a *prima facie* case with a probability of success, show irreparable loss and damage, that the application is not allowed, and lastly, that the balance of convenience tilts in favour of granting the orders sought.
6. A *prima facie* case was held as established in *Nguruman Ltd v Jan Bonde Nielsen & 2 others* (2014) eKLR. If on the face of it, the person applying for an injunction has a right that has been infringed or is threatened with violation.
7. The court held that a person applying need not establish title but must show that he has a fair and bonafide question to raise to the existence of the right which he alleges. As to irreparable damage, the court in *Banis Africa Ventures Limited v National Land Commission* (2021) eKLR held that arises where the act in respect of which a relief is sought is likely to destroy the subject matter in question. See *Francis Murithi Ndirangu v Ruth Wanjiku Nderitu* (2016) eKLR.
8. In *Nguruman Ltd* (supra) the court further held the irreparable injury must be more than a mere speculation, must be real, actual and imminent, its nature and extent have to be demonstrated and be incapable of being measured with reasonable accuracy for it to be compensated monetarily.
9. Applying the foregoing case law to this application, has the 1<sup>st</sup> defendant met the threshold? I think not. The claim before the court is brought by the *ex parte* applicant’s notice of motion dated February 6, 2023. The applicant filed a replying affidavit dated March 27, 2023 following leave issued on February 24, 2023, which was to act as a stay of proceedings and the implementation of the decision. No application for review or setting aside of the said order has been filed or granted. The 1<sup>st</sup> respondent in his affidavit confirms that he was yet to clear the balance of Kshs 30,000/= and a transfer of the land was yet to be made in his favour. He also admitted that he has not been in occupation of the land since 2012 and that a third party had been sold the land by the time the Minister visited the locus in quo.
10. The applicant annexed a sale agreement dated October 17, 2005 whose clause No 6 quantified the damages payable as Kshs 480,000 for any breach of the sale.
11. To my mind, the applicant even though has a right or interest in the land, has not demonstrated any irreparable injury or loss since the same was quantified. The suit property is not occupied by him applicant. He has not filed a rival suit or counterclaim for his rights.
12. The applicant has not demonstrated how the land was in imminent danger of disposal, going by his earlier admission in his affidavits opposing the notice of motion.



13. In the circumstances, I find that the application lacks merits. The same is dismissed with costs. Parties to comply with order 11 of the Civil Procedure Rules and list the notice of motion for hearing on a priority basis.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 24<sup>TH</sup> DAY OF MAY 2023**

**In presence of**

C.A John Paul

Otieno for exparte applicant

Aketch for 1<sup>st</sup> respondent

Mbaikyatta for 2<sup>nd</sup> & 4<sup>th</sup> respondents

**HON. C.K. NZILI**

**ELC JUDGE**

