



**Muguongo v Karombori (Environment & Land Case E008 of 2023)
[2023] KEELC 17508 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17508 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E008 OF 2023**

CK NZILI, J

MAY 24, 2023

BETWEEN

GEOFFREY MBAABU MUGUONGO PLAINTIFF

AND

GEDIEL MURERWA KAROMBORI DEFENDANT

RULING

1. The court is asked to issue a temporary injunction barring and restraining the defendant from selling, leasing, charging or disposing of in any way whatsoever with the applicant's right to ½ acre of LR No Abothuguchi/U-Kiongo/682 pending hearing and determination of this suit. The application is based on the ground on its face and a supporting affidavit sworn by Geoffrey Mbaabu Muguongo on April 15, 2022. The applicant averred that he bought the plot from Fredrick Mutwiri Muthamia, who died before transferring the land but had taken vacant possession since 1981 and had extensively developed it at the exclusion of everybody. He attached a copy of the sale agreement, photos showing subsistence farming, honey keeping, and a copy of an official search as annexures numbers GMM "1" – "3", respectively.
2. The plaintiff's case is based on the original summons dated April 5, 2023, claiming to be entitled to ½ of an acre of the suit land by adverse possession. He attached copies of the sale agreement and photos showing its developments.
3. In a supplementary affidavit sworn on April 24, 2023, the applicant admitted the existence of Githongo ELC E019 of 2021. Seeking to bar him from accessing or developing the land. He averred that a judgment was delivered on 3.3.2023, where the court voided the sale agreement due to a lack of land control board consent. He said he started living there as an advance possessor when the agreement became void.



4. For a party to be entitled to orders of the temporary injunction, he has to establish a prima facie case with a probability of success, demonstrate irreparable loss and damage if the orders are not granted, and lastly, show that the balance of convenience tilts in favor of granting an injunction.
5. *Mrao Ltd vs the First American Bank of Kenya & 2 others* (2003) eKLR, the court defined a prima facie case as established when looking at the material before the court, a right has been infringed, which demands a rebuttal from the opposite party. In the case of *Kenleb Cons Ltd vs New Gatitu Service Station Ltd & another* (1990) eKLR, the court said that to succeed in an application for an injunction, an applicant must not only make full and frank disclosure of all relevant facts to the just determination of the application but must also show he has a right, legal or equitable which needs protection by an injunction.
6. Order 40 Rule 1 of the *Civil Procedure Rules* provides that where any property in dispute is in danger of being wasted, damaged, or alienated by a party to a suit, the court may grant a temporary injunction to restrain such act.
7. Further, in *Munge vs Munge* Civil Appeal Application 36 of 2020 (2023) KECA 75 (KLR) February 3, 2023 (ruling), the court held that occupation as a licensee as opposed to as of right could not form a basis of adverse possession.
8. The court declined to grant an interim order of injunction since the occupation had been permissive entry with the permission of the owner. The court cited *Samuel Miki Waweru vs Jane Njeri Richu* (2007) eKLR, on the proposition that occupation on account of an agreement for sale, lease, or otherwise would not amount to adverse possession even if it was over 12 years.
9. As to what amounts to irreparable loss and damage, in *Ezra Odondi Opar vs Total Kenya Ltd* (1997) eKLR, the court held that damages for termination of the tenancy could be assessed.
10. Further, in *Faraj Maharus vs JB Martins Glass Industries & another* (1998) eKLR, the court held there was going to be prejudiced since the applicant and his family were likely to suffer grave hardship if evicted from the suit premises and rendered homeless without being heard.
11. As to the balance of convenience, in *Mureithi vs City Council of Nairobi* (1979) eKLR, the court, with approval to *American Cynamid vs Ethicon* (1975) 1 ALL ER 504 and *Abdul Salim & others vs Okong'o & others* Civil Appeal No 44 of 1975 (unreported) held that the object of an injunction was to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recovered in action and if in the uncertainty were to be resolved in his favor at the trial.
12. Applying the preceding principles, I believe the applicant has a right or interest in the property, given the sale agreements displayed before the court and the developments shown in the photographs.
13. The respondents are yet to respond to the originating summons, and this application is to counter the assertions firmly put by the applicants. If evicted before the suit is heard and finally determined, I still think the applicant would be exposed to injury. Lastly, I find the balance of convenience would tilt in favor of preserving the property on its current status. I grant orders of injunction to last for one year only. The applicant shall deposit security equivalent to Kshs.200,000/= within 30 days from the date hereof, otherwise, the orders shall lapse. Mention on July 13, 2023 for pre-trial directions.

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

ON THIS 24TH DAY OF MAY 2023

In presence of



C.A John Paul

Mungania for plaintiff

HON. C.K. NZILI

ELC JUDGE

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