



**Kubai v Kubai (Sued as the Legal Representative of the Estate of Kubai Baimpwi -Deceased)  
(Environment & Land Case E004 of 2023) [2023] KEELC 17505 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17505 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E004 OF 2023**

**CK NZILI, J**

**MAY 24, 2023**

**BETWEEN**

**SAMUEL KUBAI ..... PLAINTIFF**

**AND**

**MIRIAM KABIRIA KUBAI (SUED AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF KUBAI BAIMPWI -DECEASED) ..... DEFENDANT**

**RULING**

1. Before the court is the application dated March 3, 2023, seeking both an injunction and an inhibition order barring and restraining the defendants through her family members, agents, assignees, servants, or anywhere else from dealing with or in any way whatsoever interfering with the applicant's quiet possession, occupation and utilization of L.R No. Kiegoi/Kinyanka/1348 pending hearing and determination of this application.
2. Further, the court is asked to order the executive officer in the company of Igembe South Sub-County Surveyor to visit the suit land, prepare and file a report capturing its acreage, occupant, fencing, and boundaries.
3. The application is based on the grounds on its face and the facts in a supporting affidavit of Samuel Kubai dated March 3, 2023. The applicant deposed that she has been occupying the suit land for 39 years. It was averred that following a decision in Meru Succession Case No. 503 of 2012 delivered on December 15, 2002, the probate court held it had no jurisdiction over land disputes. On February 28, 2023, the respondent attempted to forcefully and illegally evict the applicant and threatened to demolish her homestead. That the entry into the suit premises was in 1983 out of a sale agreement of a portion measuring 0.90 acres which led to a subdivision of L.R No. Kiegoi/Kinyanka/950 into LR No. Kiegoi/Kinyanka/1348, the intended number to be transferred to the appellant. The applicant further averred that in March 1984, the seller, the late Kubai Baimpwi, the husband to the respondent- showed her the boundaries, after which a sale agreement dated March 17, 1984 was entered into. That



- efforts to acquire consent to transfer the portion was frustrated by the deceased's ill health until he passed on on March 10, 1985 before the transfers could be effected.
4. Similarly, the applicant averred that, nevertheless, he moved into the suit premises, established a permanent homestead, and has been co-existing with the defendant with a clear boundary until 2010, when she was summoned before the area provincial administration over a resolved boundary dispute. That the respondent secretly filed succession proceedings in Maua Law Courts and later transferred to Meru High Court, leaving out her interest in the land. Thereafter, she thus filed an objection only for the High Court to hold it had no jurisdiction to hear and determine a land claim. Following the dismissal of the objection, the applicant averred that she was threatened with eviction by the respondent using a gang of youths on February 28, 2023 and was now apprehensive that the respondent may make good the threats against her and a family of 23. She has attached the grant, copy of the green card, official search certificate, bundle of photographs, and a copy of the ruling as annexures marked S.K (1), (2), (3), (4) (a) – (f) and “5” respectively.
  5. The application was served upon the respondent and a return of service was filed on April 24, 2023.
  6. Order 40 of the *Civil Procedure Rules* grants this court powers to issue temporary injunctive orders where it is demonstrated that a suit land is in danger of being wasted, interfered with, and or disposed of in a manner likely to interfere with the rights or interests of an applicant. Further, sections 68-71 of the *Land Registration Act* grant the court power to issue inhibition or restriction orders until an occurrence of an event or until further orders of the court in order to preserve property in dispute. An inhibition order has been termed as in the nature of a prohibitory injunction.
  7. A party seeking such orders has to establish the three ingredients set out in *Giella vs Cassman Brown* (1973) E. A 358, relating to a *prima facie* case with a probability of success, irreparable loss, damage, and lastly a balance of convenience.
  8. A *prima facie* case was defined by the court in *Mrao Ltd v First American Bank of Kenya* (2003) eKLR as established where based on the material before the court, a right has been infringed, calling for a rebuttal from the opposite side. In *Hosea Kiplagat & 6 others v NEMA & others* (2015) eKLR, the court said that it would not venture into making definitive findings of fact or law at the interlocutory stage.
  9. In *Nguruman Ltd v Jan Bonde Nielsen & others* (2014) eKLR, the court held that a party must allay any doubts about irreparable injury if a temporary injunction is not granted by showing that the balance of convenience is in his favor.
  10. Further, the court said that all a court has to do to see that, on the face of it, the person applying for an injunction has a right that is threatened with a violation, that the applicant need not establish title so long as he has a fair and bona fide question to raise as to the existence of the land on a balance of preponderance of probabilities, which ideally in the court's view, was more likely than not to succeed at the main hearing ultimately.
  11. As to irreparable loss or injury, the same is that injury which is substantial and unable to be adequately remedied or atoned for by damages. In *Halsbury's Laws of England* 3<sup>rd</sup> Edition Vol. 21, paragraph 739, page 352, it is termed as one that cannot possibly be repaired.
  12. In *Nguruman* (*supra*), the court said that if damages recoverable in law were an adequate remedy and the respondent could pay them, no interlocutory order of injunction should normally be granted, however strong the appellant's claim may appear at that stage.



13. Further, the court held that an applicant must demonstrate the nature and extent of the injunctive and that speculative injury was not enough unless there was more than an unfounded fear or apprehension on the part of the applicant, which injury, therefore must be actual, substituted, and demonstratable.
14. Applying the foregoing case law and principles to this case, has the applicant surmounted the three hurdles? I think yes. The entry into the suit premises appears to have been permissive and consented to by the respondents. There are demonstrations of a right or interest to the land, which has been consistent to the extent that a caution was filed on April 8, 2009 by the plaintiffs, followed by an objection before the probate court.
15. The applicant is also in occupation of the suit land which the respondent is well aware of. I do not see where the respondent sought and obtained an eviction order. So, the fear or apprehension of danger of interference with the applicant's rights and or interest in the suit land is real, imminent, and demonstrated.
16. A prima facie case has been established as well as the likely loss or damage to which the applicant and her family are likely to be exposed. The balance of convenience also tilts in favour of granting injunctive orders to preserve the property till the originating summons is heard and determined.
17. The court, therefore, finds the application merited as to the prayers for a temporary order of injunction and inhibition to last for a period of six months only.
18. The applicant shall file an undertaking as to damages for Kshs.250,000/= within 14 days from the date hereof; otherwise, the orders shall lapse.
19. As to the request for a scene visit to the locus in quo, the applicant is at liberty to invoke the powers of a land registrar or surveyor as regards a boundary dispute which is not a dispute falling before this court.
20. Orders accordingly.

**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

Ondieki for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

