



REPUBLIC OF KENYA



**KENYA LAW**  
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**Raymark Limited v Ouma & 10 others (Environment & Land Case E45 of 2021) [2023] KEELC 17491 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17491 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E45 OF 2021  
FM NJOROGE, J  
MAY 23, 2023**

**BETWEEN**

**RAYMARK LIMITED ..... PLAINTIFF**

**AND**

**RAYMOND OCHIENG OUMA ..... 1<sup>ST</sup> DEFENDANT**

**EVANRAY COMMERCIAL AGENCIES ..... 2<sup>ND</sup> DEFENDANT**

**NAKURU DISTRICT LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**JAMES MWANGI GATITU ..... 4<sup>TH</sup> DEFENDANT**

**GEORGE KINUTHIA NJUGUNA ..... 5<sup>TH</sup> DEFENDANT**

**ALEX WAINAINA HINGA ..... 6<sup>TH</sup> DEFENDANT**

**DAVID NJENGA IYAI ..... 7<sup>TH</sup> DEFENDANT**

**FREDRICK MWANGI MBUTHIA ..... 8<sup>TH</sup> DEFENDANT**

**SIMON NJUGUNA MWANGI ..... 9<sup>TH</sup> DEFENDANT**

**ALEX WAINAINA HINGA ..... 10<sup>TH</sup> DEFENDANT**

**GEORGE KINUTHIA NJUGUNA ..... 11<sup>TH</sup> DEFENDANT**

**RULING**

1. The 4<sup>th</sup> and 5<sup>th</sup> defendants filed a Notice of Motion dated 19/4/2023 seeking the following orders:
  - a. ...spent.
  - b. That pending the hearing and determination of the application inter-partes this Honourable court be pleased to grant temporary injunction against the respondent by themselves, their



agents, servants, employees from entering, remaining, cultivating, trespassing, selling, buying, dealing and/or in any way interfering with the parcel number Solai/ndunguri Block 10/80.

- c. That pending the hearing and determination of this suit herein, this Honourable court be pleased to grant temporary injunction against the plaintiff/1<sup>st</sup> respondent by itself, their agent, servants, employees from entering, remaining, cultivating, trespassing, selling, buying, dealing and/or in any way interfering with the parcel number Solai/ndunguri Block 10/80.
  - d. That this Honourable court be pleased to issue conservatory Orders restraining the plaintiff/1<sup>st</sup> respondent from wasting the land and further trespass onto the suit parcel of land pending the hearing and determination of this application inter-partes.
  - e. That costs of this application be provided for.
2. The application is premised on the grounds that the defendants claim to be the lawful bona fide purchasers of part of the suit land from the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the latter who had purchased the suit property from the 3<sup>rd</sup> respondent; that the 1<sup>st</sup> and 2<sup>nd</sup> applicants have an interest in the suit land; that the plaintiff has commenced cultivation of the suit land and thus interfered with the applicants' ownership thereof; that the same amounts to the respondent taking advantage of the court process to interfere with the suit land hence infringing upon the rights of the applicants.
  3. In response to the motion the plaintiff filed a replying affidavit dated 24/4/2023 in which it is stated that the issue of injunction is *res judicata*, and this court is *functus officio*, orders of *status quo* having been issued in its favour on 22/9/2022. The respondent denies that the applicants are *bona fide* purchasers and further states that their claim is solely dependent on the 1<sup>st</sup> and 2<sup>nd</sup> defendant's title to the suit land and that the applicants were justifiably restrained from fencing off portions of the suit land as it does not belong to them or to the 1<sup>st</sup> and 2<sup>nd</sup> respondents; besides that, the plaintiff is actually cultivating a different parcel of land registered in its name and is not working the one in dispute in the present suit. It is averred that the applicants are therefore not entitled to the prayers sought.
  4. The order that *status quo* be maintained in respect of the suit land is exhibited in the replying affidavit. I have perused the court record and found that such *status quo* order was by consent of parties present issued on 28/6/2021 and extended on 22/9/2021 to last till the hearing and determination of the present suit.
  5. It is futile therefore in the circumstances adumbrated herein above for this court to proceed further and address the merits of the instant application in detail beyond the description of the prayers and grounds as well as the response as analyzed above save to state that the issue of injunction is *res judicata*. The doctrine of *res judicata* applies whether against any party who was present as at the time the order was made, just as the present applicants were, or who joined the suit afterwards. Holding otherwise would lead to interlocutory stagnation of proceedings where every fresh party would file their own motion seeking injunctive orders and thus lead to loss of much valuable judicial time that should be better spent hearing the main suit. Consequently, I find that the motion dated 19/4/2023 lacks merit and the same is dismissed with costs to the plaintiff and the 3<sup>rd</sup> defendant only. I also order that no further application shall be brought or any fresh documents filed without prior leave of court formally applied for with justification given after this ruling and the parties shall attend a mention online by way of Microsoft Teams on 31/5/2023 at 8:30 am for the issuance of a hearing date.
  6. Finally, this court notes that the 5<sup>th</sup> and 11<sup>th</sup> defendants have similar names (George Kinuthia Njuguna) as well as the 6<sup>th</sup> and the 10<sup>th</sup> defendants (Alex Wainaina Hinga). This court therefore directs counsel for the said defendants to formally clarify if they are one and the same persons during the next mention of the suit on 31/5/2023.



**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 23<sup>RD</sup>  
DAY OF MAY, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

