



REPUBLIC OF KENYA



**Ndiangui & another v Kagika & 2 others (Environment & Land Case
681 of 2017) [2023] KEELC 17586 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17586 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 681 OF 2017**

MN GICHERU, J

MAY 18, 2023

BETWEEN

JOSHUA MAITHO NDIANGUI 1ST PLAINTIFF

GRACE NYAWIRA MAITHO 2ND PLAINTIFF

AND

JOSEPH G KAGIKA 1ST DEFENDANT

ADRIAN MURIITHI 2ND DEFENDANT

ELIZABETH WAMBUI GITAU 3RD DEFENDANT

RULING

1. This ruling is on the notice of motion dated 25/11/2022. The motion which is brought under order 40, rules 1 and 2 of the *Civil Procedure Rules*, sections 1A, 1B and 63(e) of the *Civil Procedure Act* and all enabling provisions of law seeks to restrain the first and third Respondents together with Elizabeth Wambui Gitau from trespassing into, encroaching, entering, remaining therein, fencing and or in any other manner interfering with the Plaintiffs' occupation of L.R. Ngong/59348 and 59340.
2. The motion is supported by two affidavits sworn by the first Plaintiff dated 25/11/2022 and 14/2/2022 respectively and five grounds.

In summary, the Applicant is saying that she and her co-plaintiff are in occupation of the suit land and have a title thereto. The Respondents came to the land on 17/11/2022 and attempted to take possession of the same pursuant to the judgment in ELC 743 of 2017 yet that judgment did not allow for such an unlawful action.
3. The motion is opposed by the Respondents who have sworn replying affidavits dated 10/11/2023 and 13/1/2023 respectively.



In summary, the Respondents reply is to the effect that the Plaintiffs do not occupy the suit land and all they may have are title deeds issued in disobedience to lawful tribunal orders.

Secondly, the Plaintiffs claim the suit land through Jane Waithira Lesaloi who has been found in ELC No. 743 of 2017 to have subdivided and transferred L.R. 8801 unlawfully yet the suit parcels are resultant from such unlawful subdivision and transfer.

4. Counsel for parties filed written submissions on 9th, 15th and February 24, 2023 respectively.
5. I have carefully considered the notice of motion dated 25/11/2022 including the affidavits, annexures, grounds, written submissions and the case law cited by all the parties.

I find that the notice of motion by the applicants have no merit for the following reasons.

6. Firstly, the applicants have not established a prima facie with a probability of success. Apart from having copies of title deeds in their names, they have nothing else especially possession. Possession seems to be with the Respondents.
7. Secondly, the Applicants have not proved that they stand to suffer irreparable loss that cannot be adequately compensated with an award of damages if the application were not allowed. Since they have no property on the suit land, they do not have anything to lose.
8. Thirdly, the balance of convenience favours the parties in possession. Let them remain in possession until the end of litigation rather than to be disposed at this interlocutory stage.
9. Finally and more importantly, it was a finding in ELC No. 743 of 2017 that Jane Waithera Lesaloi unlawfully subdivided L.R. Ngong/Ngong/8801 when she had been forbidden by a court order. It is not in doubt that the suit parcels in this case resulted from the unlawful subdivision of L.R. 8801.

The Plaintiffs in this case are claiming through a party, Jane Waithira Lesaloi, who has lost in ELC 743 of 2017. Unless the judgment in ELC No. 743 of 2017 is reviewed or set aside on appeal, there is no way that the Plaintiffs in this case can succeed in their claim against the Defendants.

I find that the decision in ELC 743 of 2017 applies to this case in as long as the Plaintiffs claim land that was found in that case to belong to the three Defendants.

10. For the above stated reasons, I dismiss the notice of motion dated 25/11/2022 with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

