



**Muthoni v Muriithi (Environment & Land Case E005 of 2024)
[2025] KEELC 3034 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E005 OF 2024**

**AK BOR, J
MARCH 20, 2025**

BETWEEN

JUSTUS MUGAMBI MUTHONI PLAINTIFF

AND

ROSALINE WANJIRU MURIITHI DEFENDANT

RULING

1. Through the application dated 23/2/2024, the Plaintiff seeks a temporary injunction to restrain the Defendant from entering, leasing, selling evicting or interfering with the land known as Ngandori/ Ngovio/5623 (suit property). He also sought to have the court issue a prohibitory order on the suit land and the assistance of the OCS Kibugu Police Station in enforcing compliance with the orders.
2. The application was made on the grounds that the Plaintiff is the registered owner of the suit land which was excised from parcel Ngandori/Ngovio/5623 which the Defendant owns jointly with three other persons. He claimed that the Defendant subdivided Ngandori/Ngovio/5623 into two portions being 6823 and 6824 and that he entered into a sale agreement with the Defendant on 9/4/2012 for the purchase of parcel no. 6823 at the agreed consideration of Kshs. 1,325,000/=. Further, that a title was issued to the Plaintiff.
3. He claimed that he entered the land and took possession immediately and started cultivating and developing the land but the Defendant had started interfering with the land.
4. He stated that there was a case filed in the Magistrates Court challenging the subdivision of the mother title and his title over parcel number 6823 on the basis of fraud. The suit succeeded. He was apprehensive that should the orders sought not be granted, he would suffer irreparable loss and damage causing him to remain landless. He sought to have his right of ownership protected and for the Defendant to be ordered to transfer a portion measuring 0.10 Ha out of land parcel Ngandori/ Ngovio/5623 to him.



5. The Plaintiff swore the affidavit in support of the application and attached a copy of a mutation form for Ngandori/Ngovio/5623. He also exhibited copies of the sale agreement dated 9/4/2021, receipt from Co-operative Bank, the title deed for land parcel 6823, an acknowledgement deed dated 30/4/2021, statement from Daima Sacco Ltd and the decree issued in Embu CM ELC Case No. E035 of 2021- Mary Wambugu (Suing as the legal representative of Jane Kori Muriithi v Rosaline Wanjiru Muriithi & 2 others).
6. The Defendant, Rosaline Wanjiru Muriithi, swore the replying affidavit opposing the application and averred that the Plaintiff's title over the suit land was cancelled for fraud in Embu CM ELC Case No. E035 of 2021 and his counterclaim alleging trespass and seeking a permanent injunction was dismissed. She pointed out that the Plaintiff had not appealed against that judgment. She denied that the Plaintiff was in occupation of the suit land or that he has any interest there. She deposed that it is her and her siblings who are in occupation of the suit land where they reside and cultivate and they stand to suffer great loss and prejudice if restrained from occupying or utilising the land.
7. She was emphatic that the Plaintiff had not demonstrated that he will suffer any irreparable loss and added that the Plaintiff's prayer for a prohibitory order was misplaced as a prohibitory order cannot be granted at this stage of the proceedings. She added that the Plaintiff is not entitled to an order of injunction since he had failed to give an undertaking to pay damages. She sought to have the application dismissed with costs to her and annexed a copy of the judgment from the Magistrates' Court case to her affidavit.
8. The court directed the parties to file and exchange written submissions which it has considered. The Plaintiff in his submissions mainly re-stated the background to his case and submitted that unless the orders sought are granted, he stands to suffer irreparable loss and damage thus causing him to remain landless and yet he had been paying for a loan for 3 years now for land which has been taken away.
9. Rosaline Wanjiru Muriithi in her submissions set out the principles for granting an order of injunction as set out in the case of *Giella v Cassman Brown & Co. Limited* [1973] EA 358. These are, that the applicant has to demonstrate that he has a prima facie case with a probability of success, that they will suffer irreparable loss which cannot be adequately compensated by an award of damages and when the court is in doubt, it will decide the case on a balance of inconvenience. She submitted that the Defendant had not established a prima facie case as he did not appeal against the judgment and decree in Embu CM ELC Case No. E 035 of 2021. Further, that the Defendant was not the registered owner of Ngandori/Ngovio/6823 after his title was cancelled. She contended that Ngandori/Ngovio/6823 does not exist on account of revocation of the resultant subdivisions of the mother title and therefore the Plaintiff does not hold any proprietary rights over the suit land.
10. She further submitted that the Plaintiff had not furnished photographs or any other evidence of the alleged cultivation and developments on the suit land. That the Plaintiff did not demonstrate that the suit land is in danger of being sold or leased or being interfered with. It was her position that the Defendant has not demonstrated the loss he stands to suffer if an injunction is not issued. She urged that the other joint owners who were not parties to this suit would suffer irreparably if an injunction or prohibition were to be registered against the suit land without hearing them first. She also argued that it would amount to gross injustice if an injunction or prohibition were registered against the entire title to Ngandori/Ngovio/5623 when the Plaintiff only claims a portion of 0.1 Ha out of the that land.
11. She maintained that the prejudice the Defendant and the other joint owners of Ngandori/Ngovio/5623 would suffer if the orders sought were granted was greater than the prejudice the Plaintiff would suffer, if any and so the balance of convenience tilted in favour of the Defendant. She emphasised that the Plaintiff was not the registered owner of the suit land hence he should have issued



an undertaking to pay damages in the event the court ultimately decides that a restraining order was not merited. She argued that a prohibitory order is a post judgment order made at the execution stage in terms of Order 22 rule 48 of the Civil Procedure Rules and is not grantable at this stage of the proceedings. Ultimately it was urged that the application should be dismissed.

12. The issue for determination is whether the Plaintiff is entitled to the orders sought. It is not in dispute that the Plaintiff purchased Ngandori/Ngovio/6823 which was resulted from the subdivision of Ngandori/Ngovio/5623, from the Defendant. It is also not in dispute that that title was revoked in Embu CM ELC Case No. E035 of 2021 Mary Wambugi (Suing as the administrator of Jane Kori Muriithi (deceased) v Rosaline Wanjiru Muriithi & Others on allegations of fraud. The court in that case directed that the Plaintiff's title be revoked and for it to revert to the Plaintiff together with the three other joint owners. The Plaintiff now seeks a temporary injunction to restrain the Defendant from selling, evicting or interfering with land parcel Ngandori/Ngovio/5623.
13. In this court's view, granting such an order would affect the rights of the other registered proprietors who are not parties to this suit. The Plaintiff has not demonstrated any imminent risk of the suit land being disposed of or otherwise interfered with in a manner that would prejudice his claim. He merely accuses the Defendant of interfering with the suit land without stating in what manner. He has equally not demonstrated that he is in occupation of the land or that he has made developments on the suit land.
14. The court declines to grant the orders sought in the application dated 23/2/2024. Costs shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 20TH DAY OF MARCH 2025.

K. BOR

JUDGE

In the presence of: -

Ms. Mukami Boore for the Defendant

Diana Kemboi- Court Assistant

No appearance for the Plaintiff

