



**Igiria v Mbatia & 3 others (Environment & Land Case
E116 of 2013) [2023] KEELC 18505 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18505 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E116 OF 2013**

**LN MBUGUA, J
JUNE 29, 2023**

BETWEEN

PATRICK KANIARU IGIRIA PLAINTIFF

AND

GLADYS NJERI MBATIA 1ST DEFENDANT

SIMON THAIRU MBATIA 2ND DEFENDANT

MARGARET WANJIKU MBATIA 3RD DEFENDANT

PETER KABUI MBATIA 4TH DEFENDANT

RULING

1. The Plaintiff's Notice of Motion application dated March 13, 2016 (it should be March 13, 2023) is for determination. He seeks orders that the Defendants, their agents, servants or any persons acting through them be restrained by an injunction from selling, constructing structures thereon, entering, remaining on, trespassing or in any manner whatsoever from dealing with or interfering with any portion of the parcel of land known as LR Dagoretti/Riruta 6342 and 6343.
2. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on March 13, 2023. He avers that he is the registered owner of the parcel of land known as Dagoretti/Riruta 4655 which was originally owned and registered to his late father, Peter Mutungi Kaniaru and is now subdivided into 6 parcels known as Dagoretti/Riruta 5443 to 5446 and 2 other unregistered portions.
3. The Plaintiff also avers that prior to the registration of the subject property to his late father's name, the parcel of land comprised of a larger parcel originally known as Dagoretti/Riruta/199 which was subdivided into 2 portions known as Dagoretti/Riruta 4654 & 4655 respectively between his late father and the late Jonathan Mbatia Keiya, the Defendants' late father. The said subdivision was done



vide a court order issued in High Court Civil Case No 1002 of 1977. The plaintiff is challenging the said subdivision, contending that defendant's father obtained a larger share of the aforementioned land resulting in encroachment and trespass by the defendants upon plaintiff's land.

4. The application is not opposed, as the Defendants failed to enter appearance and file responses.
5. The issue for determination is whether the Plaintiff has made a case for grant of a temporary injunction restraining the Defendants from interfering with the parcel of land known as LR Dagoretti/Riruta 6342 and 6343 as set out in the case of *Giella v Cassman Brown* (1973) EA 358 and reiterated in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* [2014] eKLR.
6. Even though the application is not defended, the court is duty bound to determine the merits of the said application. To this end, I make reference to the Supreme Court of Kenya case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, where the court stated that;

“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

7. From the pleadings and the application placed before this court, I discern that the crux of the dispute is whether the Defendants encroached on the property of the applicant during subdivision of the mother parcel Dagoretti/Riruta/199. The alleged subdivision was sanctioned by a court case filed 46 years ago, that is HCCCC NO 1002 of 1977!. It is not clear from the pleadings as to when the cause of action arose; hence this court will have to delve into the question of limitation of time at some point in the lifespan of this suit.
8. Further, I discern that the long history of the suit property concerns family members. There is need to unravel the truth surrounding the suit parcel, and in the circumstances, the appropriate orders to give are the preservative ones.
9. In that regard, I decline to grant the orders as framed in the application dated March 13, 2023. Instead, I grant the following orders;
 1. The suit parcels known as LR Dagoretti/Riruta 6342 and 6343 or any other portion forming part of land called LR Dagoretti/Riruta 6342 and 6343 shall not be alienated.
 2. The buildings of the plaintiff shall not be demolished.
 3. The orders above (1 & 2) shall remain in force for a period on One Year.
 4. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Court assistant: June

