



**Mureithi & another (Suing as administrators of the Estate of Evanson Mureithi Kiboi) & another v Maina & 4 others (Environment & Land Case 105 of 2022) [2023] KEELC 18440 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18440 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT & LAND CASE 105 OF 2022**  
**LC KOMINGOI, J**  
**JUNE 29, 2023**

**BETWEEN**

**AMOS NJAU MUREITHI & RACHEL WANJIKU MUREITHI (SUING AS ADMINISTRATORS OF THE ESTATE OF EVANSON MUREITHI KIBOI) ..... 1<sup>ST</sup> APPLICANT**

**GEORGE GITONGA KANYI & CYRUS PETER KANYI (SUING AS ADMINISTRATORS OF THE ESTATE OF STEPHEN KANYI MUCHIRI) ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STEPHEN MWANGI MAINA ..... 1<sup>ST</sup> RESPONDENT**

**WILSON IRUNGU NDIRANGU ..... 2<sup>ND</sup> RESPONDENT**

**THE AIR TRAVEL AND RELATED STUDIES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**HOUSE AND HOMES LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR NGONG ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 14<sup>th</sup> December 2022 brought under;

(Under order 40 rules 1, 2 and 4 of the *Civil Procedure Rules* (2010), section 3A of the *Civil Procedure Act* (Cap 21, Laws of Kenya) section 26 (1) of the *Land Registration Act*, article 40, 48 and 159 (2) of *the Constitution* of Kenya and all other enabling provisions of Law).

2. It seeks orders;



1. Spent.
2. Spent.
3. Spent.
4. That pending the hearing and determination of the suit the Honourable Court be pleased to issue an order restricting and /or inhibiting any registration, dealings with all that property known as Title Number Ngong/Ngong/23839 and the sub-plots ensuing from its subdivision being Title numbers:
  - 1.. Ngong/Ngong/94875;
  2. Ngong/Ngong/94876;
  3. Ngong/Ngong/94858;
  4. Ngong/Ngong/99163;
  5. Ngong/Ngong/99164;
  6. Ngong/Ngong/99165;
  7. Ngong/Ngong/99166;
  8. Ngong/Ngong/99167;
  9. Ngong/Ngong/99168;
  10. Ngong/Ngong/99169;
  11. Ngong/Ngong/99170;
  12. Ngong/Ngong/99171;
  13. Ngong/Ngong/99172;
  14. Ngong/Ngong/99173;
  15. Ngong/Ngong/99174;
  16. Ngong/Ngong/99175;
  17. Ngong/Ngong/99176;
  18. Ngong/Ngong/99177;
  19. Ngong/Ngong/99178;
  20. Ngong/Ngong/99179;
  21. Ngong/Ngong/99180;
  22. Ngong/Ngong/99181;
  23. Ngong/Ngong/99182;
  24. Ngong/Ngong/99183;
  25. Ngong/Ngong/99184;



26. Ngong/Ngong/99185;
27. Ngong/Ngong/99186;
28. Ngong/Ngong/99187;
29. Ngong/Ngong/99188;
30. Ngong/Ngong/99189;
31. Ngong/Ngong/99190;
32. Ngong/Ngong/99191;
33. Ngong/Ngong/99192;
34. Ngong/Ngong/99193;
35. Ngong/Ngong/99194;
36. Ngong/Ngong/99195;
37. Ngong/Ngong/99196;
38. Ngong/Ngong/99197;
39. Ngong/Ngong/99198;
40. Ngong/Ngong/99199;
41. Ngong/Ngong/99200;
42. Ngong/Ngong/99201;
43. Ngong/Ngong/99202;
44. Ngong/Ngong/99203;
45. Ngong/Ngong/99204;
46. Ngong/Ngong/99205;
47. Ngong/Ngong/99206;
48. Ngong/Ngong/99207; and
49. Ngong/Ngong/99208;

5. That pending the hearing and determination of this suit the Honourable Court be pleased to issue a temporary Injunction restraining the Respondents by themselves or their agents, servants, employees, or any other person claiming under them from selling, transferring, disposing, entering or constructing thereon or in any manner interfering and/or dealing with all that property known as Title Number Ngong/Ngong/23839 and the sub-plots ensuing from its subdivisions being Title Numbers;

- 1.. Ngong/Ngong/94875;
2. Ngong/Ngong/94876;
3. Ngong/Ngong/94858;
4. Ngong/Ngong/99163;



5. Ngong/Ngong/99164;
6. Ngong/Ngong/99165;
7. Ngong/Ngong/99166;
8. Ngong/Ngong/99167;
9. Ngong/Ngong/99168;
10. Ngong/Ngong/99169;
11. Ngong/Ngong/99170;
12. Ngong/Ngong/99171;
13. Ngong/Ngong/99172;
14. Ngong/Ngong/99173;
15. Ngong/Ngong/99174;
16. Ngong/Ngong/99175;
17. Ngong/Ngong/99176;
18. Ngong/Ngong/99177;
19. Ngong/Ngong/99178;
20. Ngong/Ngong/99179;
21. Ngong/Ngong/99180;
22. Ngong/Ngong/99181;
23. Ngong/Ngong/9918
24. Ngong/Ngong/99183;
25. Ngong/Ngong/99184;
26. Ngong/Ngong/99185;
27. Ngong/Ngong/99186;
28. Ngong/Ngong/99187;
29. Ngong/Ngong/99188;
30. Ngong/Ngong/99189;
31. Ngong/Ngong/99190;
32. Ngong/Ngong/99191;
33. Ngong/Ngong/99192;
34. Ngong/Ngong/99193;
35. Ngong/Ngong/99194;



36. Ngong/Ngong/99195;
  37. Ngong/Ngong/99196;
  38. Ngong/Ngong/99197;
  39. Ngong/Ngong/99198;
  40. Ngong/Ngong/99199;
  41. Ngong/Ngong/99200;
  42. Ngong/Ngong/99201;
  43. Ngong/Ngong/99202;
  44. Ngong/Ngong/99203;
  45. Ngong/Ngong/99204;
  46. Ngong/Ngong/99205;
  47. Ngong/Ngong/99206;
  48. Ngong/Ngong/99207; and
  49. Ngong/Ngong/99208;
  6. That costs of this application be provided.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.
  4. The application is supported by the affidavit of Amos Njau Mureithi the 1<sup>st</sup> plaintiff/applicant, sworn on the December 14, 2022 and a further Affidavit sworn on the February 22, 2023.
  5. The application is opposed.  
There is a replying affidavit sworn by Wilson Ndirangu Irungu, 2<sup>nd</sup> the defendant/respondent herein on the February 21, 2023.
  6. There is also a replying affidavit sworn by Charles Gakuu, the Managing Director of the 3<sup>rd</sup> defendant/respondent on the February 13, 2023.
  7. There is also a replying affidavit sworn by John M. Wambugu, Managing Director of the 4<sup>th</sup> defendant, on the February 13, 2023.
  8. The 5<sup>th</sup> defendant did not file any response to the Notice of Motion.
  9. On the February 23, 2023, the court with the consent of parties, directed that the notice of motion be canvassed by way of written submissions.
  10. The plaintiff's and the 3<sup>rd</sup> and 4<sup>th</sup> defendants filed their written submissions.

#### **The Plaintiffs/Applicants Submissions.**

11. They are dated March 1, 2023. It is submitted by the Administrators of the Estate of Evanson Mweithi Kiboi that the title Number Ngong/Ngong/23839 has not been challenged by the Defendants/ Respondents. They have put forward the case of *Nguruman Limited Vs. Jan Bonde Nielsen & 2 others* (2014) eKLR.



12. Counsel further submitted that the applicants are still in possession of the original Title deed. This has not been challenged by the defendants/respondents.
13. It is also submitted that the plaintiffs/applicants run high risk of being deprived of the suit property by the 3<sup>rd</sup> and 4<sup>th</sup> defendants who claim to hold titles. They have put forward the case of *Fatuma Ali and 3 others Vs. Nelson Waruinge Kimani & others* (2021) eKLR.
14. Counsel further submitted that the plaintiff/applicants will suffer irreparable injury that cannot be compensated by an award of damages. They have put forward the case of *Elizabeth Muthoni Hussein Vs. Vikesh Jinit Shah* (2018)eKLR .
15. It is submitted that the balance of convenience tilts in favour of the plaintiffs/applicants. They pray that the application be allowed.

### **The 3rd and 4th Defendants/Respondents Submissions.**

16. They are dated March 6, 2023. Counsel submitted that the 3<sup>rd</sup> and 4<sup>th</sup> defendants are bona fide purchasers for value without notice and are entitled to protection of their interests in the said properties. Reliance is placed on section 26 and 80 (1) of the *Land Registration Act* and section 120 of the *Evidence Act*. They have also put forward the case of *Arthi Highway Developers Ltd vs. West End Butchery Ltd & 60 others* (2015) eKLR .
17. They have also put forward the case of *Katende vs. Haridar & Company Ltd* (2008) 2 E.A. 173 counsel also submitted that the party alleging fraud against the purchaser for value, must specifically plead particularize and prove the fraudulent conduct.
18. They have put forward the cases of *Giella v Cassman Brown & Co Ltd* (1973) EA 358; *David Peterson Kiengo & 2 others v Kariuki Thuo* (2012)eKLR . The plaintiffs/applicants do not dispute that the 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents are registered proprietors of their respective properties in possession, occupied and developed.
19. It is also submitted that the plaintiffs/applicants failed to transmit the suit property to themselves for a period of over 20 years.
20. The plaintiffs/applicants have not denied that the 3<sup>rd</sup> defendant's bank is currently holding valid encumbrances upon its properties yet it has not been made a party to the suit herein.
21. They pray that the application be found to be without merit and be dismissed with costs.
22. I have considered the notice of motion and the affidavits in support. I have also considered the responses thereto, the written submissions and the authorities cited.

The issues for determination are;

- i. Whether the plaintiffs/applicants application has met the threshold for grant of temporary injunction.
  - ii. Who should bear costs of this application?
23. The Principles guiding the grant of temporary injunctions were set down in the case of *Giella Vs. Cassman Brown & Co Ltd* (1973) EA 358 The Court of Appeal in *Mrao Ltd Vs. First American Bank of Kenya Ltd & 2 others* (2003) eKLR stated what amounts to a prima facie case.
  24. It is the plaintiffs/applicants case that they hold the original title document to LR No Ngong/ Ngong/23839. They also contend that the 1<sup>st</sup> defendant/respondent has not come to this court to



explain how he acquired the suit property. It is also their case that the 5<sup>th</sup> defendant/respondent did not file any response to the notice of motion.

25. The 3<sup>rd</sup> and 4<sup>th</sup> defendant/respondents on the other hand contend that they are the registered proprietors of their respective parcels and are in occupation and/or possession. It is their case that the plaintiffs/applicants did not particularize the fraud against them.
26. It is also their case that by the time they acquired the suit properties and developed it had been twenty (20) years since the original title changed its character.
27. It is not in dispute that the 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents are the registered proprietors of their respective suit properties.
28. The 2<sup>nd</sup> defendant/respondent in his replying affidavit explained how he acquired the suit property from the 1<sup>st</sup> Defendant/Respondent and sold to the 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents.
29. Section 26 (1) of the *Land Registration Act*, 2012 provides that;
  1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, 19 cap. 300 Land Registration [Rev. 2020] restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

I find that the plaintiffs/applicants have failed to put before court evidence to show that the 3<sup>rd</sup> and 4<sup>th</sup> defendants obtained titles through fraud and or unprocedurally.
30. There is no material placed before this court to show that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants/plaintiffs were parties to the alleged fraud.
31. In the case of *Kenleb Cons. Limited Vs. New Gatitu Services Station Limited & another* (1990)eKLR Bosire J (as he then was) stated thus;

“to succeed in an application for injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination but must show he has a right legal or equitable, which requires protection by injunction”.

I am not satisfied that the plaintiffs/applicants deserve this kind of protection”.
32. The plaintiffs/applicants were granted Letters of Administration way back in 2002. The same were confirmed. No explanation has been given as to why they failed to transmit LR No. Ngong/Ngong/23839 to the beneficiaries for all these years.
33. They also stated that they discovered the fraud in November 2021. It has taken them this long to bring this application.
34. It is not in dispute that the original title has changed its character.



35. I find that the plaintiffs/applicants have failed to demonstrate that they have a prima facie case with a probability of success at the trial.
36. The 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents have particularized the developments on the suit properties. The 3<sup>rd</sup> defendants property is charged to a bank and yet the bank has not been enjoined in these proceedings.
- I find the balance of convenience tilts in favour of the 3<sup>rd</sup> and 4<sup>th</sup> defendants/respondents.
37. I also find that the plaintiffs/applicants have failed to demonstrate that they are likely to suffer irreparable harm that cannot be compensated by an award of damages.
38. In conclusion, I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29<sup>TH</sup> DAY OF JUNE 2023.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF;**

Mrs. Njoki Gachihi for the Plaintiffs/Applicants.

Mr. Kamau for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> & 5<sup>th</sup> Defendants.

Court Assistant – Mutisya.

