



Mwaura & another (Suing as the Personal and Legal Representative of the Estate of Monica Wambui Mwaura - Deceased) v Njuguna & 21 others (Environment & Land Case E152 of 2022) [2023] KEELC 18182 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E152 OF 2022**

BM EBOSO, J

JUNE 19, 2023

BETWEEN

WILSON RUMOO MWAURA 1ST PLAINTIFF

SUSAN WANJIKU MBUYA 2ND PLAINTIFF

**SUING AS THE PERSONAL AND LEGAL REPRESENTATIVE OF THE ESTATE
OF MONICA WAMBUI MWAURA - DECEASED**

AND

PAUL NDIRANGU NJUGUNA & 21 OTHERS DEFENDANT

RULING

1. The plaintiffs initiated this suit through a plaint dated 6/12/2022. They contend that they are personal and legal representatives of the late Monica Wambui Mwaura. They brought this suit on behalf of the estate of the late Monica Wambui Mwaura (hereinafter referred to as “the deceased”). Their case is that the deceased was at all material times the registered proprietor of land parcel number Ruiru/Ruiru East Block 2/1337 [the suit property], having been registered as proprietor in 1992. They add that the deceased died in 2017 and that she never disposed the suit property during her lifetime.
2. The plaintiffs contend that last year, they were informed by neighbours that some people were constructing on the suit property. This prompted them to conduct a search on the suit property at the Lands Registry. The search revealed that on 1/8/2016, a title relating to the suit property had been re-issued on the basis of Kenya Gazette Notice No 425 of 29/1/2016. They add that a perusal of Kenya Gazette Notice No 425 of 29/1/2016 revealed that the said notice was published by the Land Registrar at the prompting of one Michael Kinuthia Kinyua and related to a different parcel of land, to wit, Muguga/Muguga/1283. It is the case of the plaintiffs that the re-issuance of the title was fraudulent because the deceased had her title with her and that Kenya Gazette Notice No 425 of 29/1/2016 related



- to a different parcel of land, hence it could not be a lawful basis for re-issuance of a title relating to the suit property.
3. The plaintiffs add that the search further revealed that on 2/12/2016, the suit property was transferred to one Paul Ndirangu Njuguna [the 1st defendant] and that on 6/1/2017, the suit property, Ruiru/Ruiru East Block 2/1337, was transferred to one Peter Njoroge Kinyanjui [the 2nd defendant] who caused the land to be subdivided into 16 subdivisions, namely, Ruiru/Ruiru East Block 2/23617 to 23632 and caused the land register relating to Ruiru/Ruiru East Block 2/1337 to be closed.
 4. It is the case of the plaintiffs that on diverse dates, fifteen of the subdivisions were fraudulently transferred to the 3rd to the 11th and the 12th to the 21st defendants. They contend that the transfer that divested the suit property from the deceased and all the subsequent transfers were illegal and fraudulent.
 5. They seek, among other reliefs:
 - (i) a declaration that the registration of the suit property in the name of the 1st defendant was illegal and fraudulent;
 - (ii) an order annulling all the entries that were made on the land register relating to parcel number Ruiru/Ruiru East Block 2/1337, starting with entry number 4;
 - (iii) an order annulling the subdivision titles held by the 3rd – 21st defendants;
 - (iv) an order of eviction and demolition of structures erected on the suit property;
 - (v) mesne profits and damages for trespass; and
 - (vi) costs of the suit.
 6. Together with the plaint, the plaintiffs brought a notice of motion application dated 7/12/2022, seeking:
 - (i) an interlocutory injunction restraining the defendants against selling, disposing, trespassing on, farming, charging, constructing on, depositing construction materials on, or in any other way dealing with the suit property and the impugned subdivisions;
 - (ii) an order of inhibitions or restriction on the impugned subdivision registers; and
 - (iii) an order directing the OCS of the Area to ensure compliance and peace. The above application is what falls for determination in this ruling.
 7. The application is supported by an affidavit sworn on 7/12/2022 by Wilson Rumoo Mwaura. He reiterates the estate's case as summarised above. Annexures to the affidavit are copies of:
 - (i) the title deed issued to the deceased on 22/4/1992;
 - (ii) the land acquisition documents issued by M/s Nyakinyua Investments Ltd;
 - (iii) photographs of ongoing constructions on the suit property;
 - (iv) the parcel register relating to Ruiru/Ruiru East Block 2/1337; and
 - (iv) subdivision registers.
 8. On 18/1/2023, this court granted the plaintiff leave to effect service of summons on the defendants through a prominent notice in either the Daily Nation or the Standard Newspaper. The 1st, 2nd and 3rd defendants neither entered appearance nor responded to the application. The 4th to 17 defendants



opposed the application. Except Equity Bank of Kenya Ltd which holds a charge in respect of one of the impugned subdivision titles, the rest of the defendants who responded to the application contend that they are innocent purchasers for value who purchased registered titles after obtaining relevant searches that revealed that the vendors were the registered proprietors. They urge the court to reject the application.

9. I have considered the application; the response to the application; and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The key question to be determined in the application under consideration is whether the application satisfies the criteria for grant of an interlocutory injunctive relief.
10. The relevant criteria was spelt out in the case of *Giella v Cassman Brown* (1973) EA 358. First, the applicant is expected to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate to the court that if the injunctive relief is not granted, he would stand to suffer injury that may not be adequately indemnified through an award of damages. Thirdly, should the court have doubts on either or both of the above, the application is to be determined based on the balance of convenience. Lastly, at the stage of disposing an application for interlocutory injunctive relief, the court does not make conclusive or definitive pronouncements on the key issues in the suit.
11. Have the applicants demonstrated a prima facie case with a probability of success? The applicants have come to court on behalf of the estate of the late Monica Wambui Mwaura. They are waving the original title relating to the suit property. They contend that the deceased never disposed the suit property during her lifetime and that the re-issued title which was used to divest the suit property from the deceased was procured illegally and fraudulently using a Gazette Notice that did not relate to the suit property. Though served with summons, the 1st defendant elected not to enter appearance. Neither did he respond to the application. Similarly, the 2nd defendant elected not to enter appearance. He also elected not to respond to the application. The court has not been told the circumstances under which the duo obtained registrations leading to quick subdivision of the suit property.
12. A perusal of the parcel register relating to the suit property, Ruiru/Ruiru East Block 2/1337, reveals that the impugned title was re-issued on 1/8/2016 on the basis of Kenya Gazette Notice No 425 of 29/1/2016. The plaintiffs have exhibited Gazette Notice No 425 of 29/1/2016. It does emerge that the Gazette Notice was published by the Land Registrar at the behest of Michael Kinuthia Kinyua and that the notice related to land parcel number Muguga/Muguga/1283. It did not relate to land parcel number Ruiru/Ruiru East Block 2/1337 [the suit property]. It was not issued at the behest of Monica Wambui Mwaura who was the registered proprietor of land parcel number Ruiru/Ruiru East Block 2/1337 at the time of re-issuance of the title.
13. Given the above circumstances, and in the absence of controverting evidence by the 1st and 2nd defendants, the court is satisfied that the plaintiffs have demonstrated a prima facie case in relation to the impeachment of the title which was hurriedly subdivided and transferred to the defendants who responded to the application and in relation to the resultant subdivision titles.
14. On the inadequacy of damages, the dispute in this suit relates to land. If the suit land is not preserved, there is a possibility that the impugned titles may be conveyed to unsuspecting members of the public. The persons who are alleged to have perpetrated the alleged fraud have elected not to step forward to defend their titles. There is no evidence that they would be available to satisfy any monetary award that may be made.



15. Equally important is the fact that should holders of the impugned titles be allowed to continue developments on the suit property, the substratum of the subject matter of this suit will change completely.
16. Lastly, the balance of convenience favours issuance of a presevatory injunctive order that preserves the existing land registers and also maintains the existing status quo in terms of the physical status of the suit property.
17. For the above reasons, the court finds that the plaintiffs have satisfied the criteria upon which our trial courts exercise jurisdiction to grant interlocutory injunctive reliefs. Consequently, the notice of motion dated 7/12/2022 is disposed in the following terms:
 - a. Pending the hearing and determination of this suit, no dealings shall be registered in the land registers relating to Ruiru/Ruiru East Block 2/1337 and the land registers relating to all the sixteen subdivisions therefrom, namely, Ruiru/Ruiru East Block 2/23617 to Ruiru/Ruiru East Block 2/23632.
 - b. Pending the hearing and determination of this suit, there shall be no construction works on any of the above subdivision parcels of land.
 - c. The Police Officer Commanding the Area Police Station shall provide necessary support in enforcing this order.
 - d. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF JUNE 2023

B M EBOSO

JUDGE

In the presence of: -

Mr Wachira for the Plaintiff

Mr Omondi for the 9th Defendant

Ms Wambui for the 4th, 5th, 6th, 7th, 8th, 10th, 11th, 13th, 14th, 15th, 16th and 17th Respondents

Mr Muraya for the 12th Respondent

Court Assistant: Hinga

