



**Wangila v Musungu (Enviromental and Land Originating Summons
E003 of 2022) [2023] KEELC 17934 (KLR) (13 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2022**

DO OHUNGO, J

JUNE 13, 2023

BETWEEN

JANE JAMES WANGILA PLAINTIFF

AND

ELISHA MAKALE MUSUNGU DEFENDANT

RULING

1. The plaintiff/applicant moved the court through Originating Summons (OS) dated March 28, 2022, claiming that together with James Wangila who was her late husband, she purchased land measuring 200 feet by 100 feet from the late Musungu Mutia alias Musungu Musutia in 1973 and that the defendant is the administrator of the estate of the said Musungu Mutia alias Musungu Musutia. She averred that she has acquired 200 feet by 100 feet of the parcel of land known as N/Kabras/Kivaywa/919 (the suit property) by adverse possession.
2. Sometime after filing the OS, the plaintiff filed Notice of Motion dated July 4, 2022, which is the subject of this ruling. She sought an injunction restraining the defendant from selling, charging, leasing, subdividing or otherwise parting with possession of the suit property pending hearing and determination of the suit. The application is supported by an affidavit sworn by the plaintiff. She reiterated that she purchased a portion of the suit property in 1973 and that defendant is secretly seeking to subdivide the suit property and transfer it.
3. When the application came up for inter parte hearing, an order was made that it be canvassed through written submissions. The respondent's counsel sought and was granted time to file a replying affidavit and submissions. Ultimately, the respondent neither filed a replying affidavit nor submissions. On her part, the applicant filed submissions in which she urged the court to grant the orders sought.
4. I have considered the application, the supporting affidavit, and the submissions. The applicant is seeking an interlocutory injunction. The principles that apply to such an application are that the



applicant must establish a prima facie case with a probability of success. Even if she succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella -vs- Cassman Brown & Co Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR

5. As noted earlier, the applicant's case has not been challenged by the respondent. Consequently, based on the uncontested material on record, I am persuaded that the applicant has a prima facie case with a probability of success and that since the dispute concerns ownership of land, damages will not be an adequate compensation to her.
6. It follows therefore that Notice of Motion dated July 4, 2022 is meritorious. To ensure that the suit is expeditiously prosecuted and in line with Order 40 Rule 6 of the *Civil Procedure Rules* 2010, I will limit the life of the injunction that I will grant.
7. Consequently, I make the following orders:
 - a. An injunction is hereby granted restraining the defendant/respondent from selling, charging, leasing, subdividing or otherwise parting with possession of the parcel of land known as N/ Kabras/Kivaywa/919 pending hearing and determination of this suit.
 - b. The injunction shall, unless otherwise extended by the court, remain in force for a period not exceeding 12 (twelve) months from the date of delivery of this ruling.
 - c. Costs shall be in the cause.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 13TH DAY OF JUNE, 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The plaintiff/applicant present

Mr Nyikuli holding brief for Mr Manyoni for the defendant/respondent

Court Assistant: E. Juma

