



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karanja v Kuria (Environment & Land Case E014 of 2023)  
[2023] KEELC 19176 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19176 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E014 OF 2023  
LN GACHERU, J  
JULY 27, 2023**

**BETWEEN**

**KNOX MWANGI KARANJA ..... PLAINTIFF**

**AND**

**JOYCE WAMBUI KURIA ..... DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion Application dated May 4, 2023, and sought for these orders; -
  - a. The Court be pleased to grant a temporary injunction restraining the Defendant/Respondent whether by herself, her agents and/or servants or otherwise howsoever dealing, interfering, alienating or otherwise disposing, selling by public auction from the Plaintiff/Applicant's parcel of land number Loc.17/Iganjo/1092, pending the determination of this application;
  - b. The Court be pleased to grant an injunction restraining the Respondent whether by herself, her agents and/or servants or otherwise howsoever dealing, interfering, alienating or otherwise disposing the Plaintiff/Applicant's parcel of land number Loc.17/Iganjo/1092, pending the determination of this suit;
  - c. The costs of this application be provided for;
  - d. The honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is supported by various grounds and on the Supporting Affidavit of Knox Mwangi Karanja, the Plaintiff/Applicant herein, who averred that he purchased land parcel No Loc.17/Iganjo/1092 (the suit property) from Kuria Kiega (the deceased), during his lifetime. He further



- averred that he had been in possession and occupation of the suit property since 2003, and has built his matrimonial home on the said property.
3. The deponent further averred that Kuria Kiega, died in the year 2006, before he could complete the transfer of the suit property and that the suit land was transmitted to him by Davis B.T. Kuria, the former administration of the Estate of Kuria Kiega, in Kigumo Magistrate's Court Succession Cause No 115 of 2011, which was later revoked without notice to the Applicant herein, even though he was issued with a title deed. Further that he was unable to produce the sale agreement and supporting documents due to a fire on 26<sup>th</sup> May 2006, that destroyed the documents at ACK Cathedral Bishop House, where the Applicant was a Resident Pastor.
  4. The Applicant also averred that the Respondent fraudulently misled the Court on the mode of distribution of the Estate of Kuria Kiega, leading to the suit property being erroneously sold and the proceeds shared between the beneficiaries of the Estate of Kuria Kiega. That if the orders sought are not granted, the Defendant/Respondent shall not hesitate to evict him from the suit property.
  5. The application is opposed through the Relying Affidavit of the Defendant/Respondent;- Joyce Wambui Kuria, dated June 5, 2023, wherein she averred that she was the daughter of Kuria Kiega (deceased) and the administrator to his estate. She further averred that Kuria Kiega (deceased) died on December 7, 2006, and was survived by 7 beneficiaries.
  6. The Respondent averred that in Kigumo Succession Cause No 115 of 2011 – Estate of Kuria Kiega (deceased), the Plaintiff/Applicant together with Isaak Muhoro, Carol Wairimu Thuo and Davis B.T. Kuria participated in fraud, to mislead the Court that they were the only beneficiaries to the Estate of Kuria Kiega, and which Grant was later revoked on the grounds of fraud. She further averred that Davis B.T. Kuria, conspired with the Plaintiff/Applicant to intermeddle with the estate of the deceased. Lastly, the Respondent averred that the former administrator Davis B.T Kuria attempted to disinherit the deceased's beneficiaries.
  7. The Defendant/Respondent also contended that in the event that the Applicant purchased the suit property from the deceased, all he had to do was produce a sale agreement or produce evidence of payment of the purchase price to the deceased.
  8. The Applicant filed a Supplementary Affidavit dated 13<sup>th</sup> June 2023, in response to the Defendant/Respondent's Replying Affidavit. The Applicant denied conspiring with Davis B.T. Kuria, to intermeddle with the deceased's estate, and reiterated that he was a purchaser of the suit property from Kuria Kiega (deceased). He averred that the Succession Cause was filed by Davis B.T. Kuria, the deceased's son, and that it was only during distribution that he received his rightful investment. The deponent averred that he was not privy to the dispute within the deceased's family and honestly believed that Davis B.T. Kuria, was fulfilling his deceased father's obligation to him. Lastly, the Applicant averred that he purchased the property, but was unable to complete the transfer before the deceased passed away. Further that he paid the balance of the purchase price to the Defendant/Respondent herein. He denied any knowledge of the succession dispute and urged the Court to grant the application as prayed.
  9. Parties filed and exchanged their written submissions as directed by the Court.
  10. The Plaintiff/Applicant through the Law Firm of C.M. Ngugi Rebiro & Co. Advocates, filed their written submissions in support of the application on June 23, 2023. It was submitted that the Applicant purchased the property in the year 2003, and that he has been in occupation of the same since. The Plaintiff/Applicant further averred that he was unable to complete the transfer before Kuria Kiega (deceased), passed away. It was also submitted that the suit property was transmitted to him in



Kigumo Succession Cause 115 of 2011, before the Grant was later revoke vide an application filed by the Defendant/Respondent.

11. The Applicant further submitted that the death of Kuria Kiega did not terminate the contract which the deceased executed with the Applicant, and thus remained binding on the estate of deceased, and the Defendant/Respondent as personal representative. The Applicant relied on the case of [\*Anne Murambi v. John Nyamu & Another\*](#) (2018) eKLR.
12. The Applicant submitted that the Defendant/Respondent ought to be restrained from dealing with the suit property pending the hearing and determination of this suit, and that the Applicant stands to suffer irreparable injury. The Applicant further submitted that he had established a *prima facie* case with a probability of success as provided for in the case of [\*Giella vs Cassman Brown Co Ltd\*](#) (1973) EA 358, and that he stood to suffer irreparable injury that cannot be adequately compensated by an award of damages.
13. The Defendant/Respondent filed her extensive written submissions dated June 19, 2023, through the Law Firm of J. Mukami & Co. Advocates opposing the application as summarized below. The Defendant/Respondent raised 3 issues for consideration.
16. On the first issue whether the grant issued in Kigumo Succession Cause No 115 of 2011 – the Estate of Kuria Kiega, was rightly revoked and all subsequent titles obtained through it cancelled, it was submitted that being a Succession matter, the ELC did not have appellate jurisdiction. The Applicant further submitted that the grant was revoked as provided for under Section 76 (a) (b) and (c) of the [\*Law of Succession Act\*](#) which states as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- a. That the proceedings to obtain the grant were defective in substance;
  - b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - c. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;”
17. The Defendant/Respondent submitted that from the Petition for letters of administration intestate, the matter proceeded on the wrong notion that the deceased was survived by 1 child and 2 grandchildren instead of 7 children. Further, that the appointed administrator having concealed the existence of the Defendant/Respondent and her sisters, colluded to disinherit the beneficiaries thereby misleading the Court to issue him a Grant, which he used to sanitize the transfer of the suit property.
  18. She further submitted that Davis B.T. Kuria, sold the deceased’s property after his demise, thereby intermeddling with the deceased’s estate. On this point, the Respondent relied on the case of the [\*Estate of Veronica Njoki Wakagoto \(deceased\)\*](#) (2013) eKLR, where the Court held as follows:

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”



19. On the second issue whether there was evidence that the Kuria Kiega (deceased), sold the suit property to the Plaintiff/Applicant, it was submitted that no proof of such transfer or payment was provided. Further, that the claim that the documents were destroyed by fire around May 26, 2006, was not supported by any Police Abstract or evidence, nor did the Applicant provides any addendum of the sale agreement considering that the deceased was still alive at the time of the alleged fire. The Respondent relied on the case of *Re Estate of Mukhobi Namonya (deceased)* (2020) eKLR, where the Court held as follows:

The omission of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant. Such claimants and creditors have an obligation to place their claims before the administrators, and should the administrators fail to settle the same or acknowledge them, move the Environment and Land Court to prove their claims, since the High Court no longer has jurisdiction to determine questions around ownership of immovable property in view of Articles 162(2) and 165(5) of *the Constitution*.

20. Who exactly is the creditor of the estate or what ought to be treated as liability of the estate. The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him. should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the *Law of Succession Act* being mindful of section 79 which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate.
21. The matter of transactions entered into by the survivors of the deceased after his death, and which affect the assets of the estate, is a different story. In the first place, no survivor, whether as spouse or child of the deceased, has a right to transact over estate assets until representation has been granted to them. Under section 45 of the Law of Succession it is an offence for such a person to handle estate property without first obtaining representation.
22. What the above means is that any transaction that is entered into with regard to the assets before representation is obtained, be it selling or leasing or contracting in connection with the assets, would be unlawful, and the contracts entered into would be unenforceable for that reason. A grant-holder can bind the estate since the assets vest in them by virtue of section 79, and any contracts entered into with regard to estate assets would be enforceable. However, there is a restriction with respect to immovable assets. The proviso in section 82(b) (ii) of the *Law of Succession Act* is to the effect that immovable property is not to be sold before the grant has been confirmed.
23. One of the duties of administrators, set out in section 83(d) of the *Law of Succession Act*, is to ascertain and pay out of the estate all the debts of the deceased. Ascertainment of the debts of the estate is about identifying them in terms of finding who the creditors were, how the debts were incurred, what documentation is available, before pay out can be done.”
24. The Defendant/Respondent further questioned the existence of the sale agreement between her late father and the Plaintiff/Applicant, since no copy was availed. It was submitted that the sale agreement



violated Section 3(3) of the Law of Contract Act and the LSK Conditions for Sale, as the Plaintiff/Applicant failed to provide the date that the contract was entered. That he did not prove that the agreement was signed by the buyer and the seller, and failed to provide independent witnesses. Further that the transfer was not completed within 90 days, and that the complete transfer amount was not paid in full nor did the agreement give remedies for non-compliance by the parties. The Respondent relied on the case of ELC No 85 of 2016 Daudi Ledama Morintat v. Mary Christine Karie & 2 others, where it was held as follows:

"No suit shall be brought upon a contract for the disposition of an interest in land unless:-

- (a) The contract upon which the suit is found-
  - (i) Is in writing
  - (ii) Is signed by all the parties thereto; and
- (b) The signature of each party signing has been attested by a witness who is present when the contract was signed by such party." ...

25. In the case of Patrick Tarzan Matu & Another -vs- Nassim Shariff Abdulla & 2 Others [2009] eKLR Azangalala, J (as he then was) struck out the plaintiffs case where he found the contract relied upon was in contravention of Section 3(3) of the Law of Contract Act and declined to entertain the claim for damages for breach of the contract. *Inter alia* he stated:

"The applicant in this case has satisfied me that there is no agreement between her and the Plaintiffs in terms of the provisions of Section 3(3) of the Law of Contract Act which the plaintiffs can enforce against her. The plaintiffs are urging the view that their claim for damages for breach of the contract of sale is sound. With respect, that view cannot be correct. The claims are made pursuant to an agreement that is contra statute or at the very least does not comply with the law. So, the very foundation of their claim is untenable."

26. On the final issue of whether the Plaintiff/Applicant met the mandatory requirements for the grant of an injunction, it was submitted that Order 40 Rule 1 of the Civil Procedure Rules was the guiding principle for granting of injunctions. It states:

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

27. The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

28. Reliance was placed on the case of Robert Mugo wa Karanja v. Ecobank (Kenya) Ltd & Another (2019) eKLR, which reiterated the case of Giella v Cassman Brown & Co. Ltd (1973) EA 358, where the Court held as follows:

First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise



suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

It was also submitted that the Plaintiff/Applicant failed to meet the threshold as set out above. On the issue of whether the applicant had established a *prima facie* case, the Defendant/Respondent submitted that no sale agreement was provided to establish the alleged transaction.

29. On the issue whether the applicant stood to suffer irreparable loss, the Respondent submitted that the Applicant’s remedy lied against Davis B.T. Kuria , the former administrator, and not against the deceased’s estate, and therefore the Plaintiff/Applicant could still sue for the purchase price from Davis B.T. Kuria for the fraudulent sale and transfer effected to him.

30. On the final issue of where the balance of convenience lied, the Defendant/Respondent submitted that the Plaintiff/Applicant was in possession of the suit property prior to the Orders of February 5, 2020, but has since retaken possession pursuant to interim orders of May 11, 2023, despite the orders lapsing. The Respondent relied on the case of ELC No 94 of 2019 [Margaret Njambi Kamau v. John Mwachia Kamau & Another](#) where the Court held as follows:

“It is not a blanket principle that if a person is in occupation, then the Court should find that a *prima facie* case has been established. The Court cannot be used to deodorize illegal or unprocedural occupation of a person’s land.”

31. Having read and considered the pleadings by both parties herein, the annexures thereto, the rival written submissions, authorities cited and the relevant provisions of law, this Court finds that the main issue for determination is:

1. Whether the orders sought for injunctive relief pending the hearing and determination of this suit are merited?

32. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of [Giella v Cassman Brown](#) (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of [Nguruman Limited v Jan Bonde Nielsen & 2 others](#) CA No77 of 2012 (2014) eKLR, where the Court of Appeal held that;

In an interlocutory injunction application the Applicant has to satisfy the triple requirements to

- a) establishes his case only at a *prima facie* level,
- b) demonstrates irreparable injury if a temporary injunction is not granted and
- c) ally any doubts as to b, by showing that the balance of convenience is in his favour.

33 These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

34. The Plaintiff/Applicant herein is required to first establish a *prima facie* case. The Applicant submitted that he had established a *prima facie* case with probability of success at the trial.

35. In the present case, the Plaintiff/Applicant contends that he purchased the suit property from Kuria Kiega (deceased), but the said Vendor died before he could complete the registration of the transfer. The Applicant further averred that the sale agreement and supporting documents to the transfer of the



suit property were destroyed in a fire. A letter from the Diocese referring to a fire was provided by the Plaintiff/Applicant. However, no Police Abstract or report of any kind explaining the circumstances behind the fire was attached or availed. The Defendant/Respondent contented that the Applicant having failed to provide a sale agreement had failed to establish that he had a *prima facie* case, with probability of success at the trial to warrant him benefit from the injunctive relief.

36. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not adequately be compensated by an award of damages. Irreparable injury was defined in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR, as follows;

"Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a *prima facie* case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury."

37. The Plaintiff/Applicant submitted that he stood to lose the suit property which he purchased, invested in and is where he currently resides and calls home. The Defendant/Respondent opposed this notion on the grounds that since the Applicant had failed to demonstrate that he had a *prima facie* case, no loss would be suffered by the proper transmission of the Estate of Kuria Kigeni (deceased), to the rightful dependants as the Plaintiff/Applicant can sue the former administrator for recovery of the purchase price that he had allegedly paid.
38. The final condition for the granting of an interlocutory injunction is that if the Court is in doubt regarding the above requirements, the application is to be decided on the balance of convenience. At this interlocutory stage, the trial court does not make any conclusive or definitive pronouncements or findings on the substantive issues in the suit.
39. The contention in this suit relates to whether there existed a sale agreement between the Plaintiff/Applicant and one Kuria Kigeni (deceased). The matter of the revocation of grant has been determined and has not been overturned. Nonetheless, this Court does not have jurisdiction to decide the issue of the Grant or the reasons it was revoked. The Plaintiff contends that an agreement existed but failed to provide such sale agreement stating that it was destroyed in fire. There was no attempt by the Plaintiff/Applicant to replace or re-write the said sale agreement, despite the seller still being alive at the time of the alleged fire, considering that Kuria Kiega died on December 7, 2006, while the fire was reportedly on May 26, 2006.
40. In the above circumstances, this Court is of the view that the balance of convenience tilts in favour of the Defendant/Respondent who has demonstrated that the suit property was solely subject to succession proceedings wherein a lawful appointed administrator was proceeding with the matter.
41. Having analysed the available evidence, this Court finds and holds that the Plaintiff/Applicant has failed to establish any of the principles for grant of injunctive orders as laid down in the *Giella's* case (*supra*).
42. Consequently, this Court finds and holds that the notice of motion application dated May 4, 2023, is not merited, and the said application is hereby dismissed entirely with costs to the defendant/respondent.
43. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 27<sup>TH</sup> DAY OF JULY, 2023.**

**L. GACHERU**

**JUDGE**

**Delivered online in the presence of; -**

Plaintiff/Applicant - Absent

M/s Kisotu H/B Mr Makumi for the Defendant/Respondent

Joel Njonjo - Court Assistant

**L. GACHERU**

**JUDGE**

**JULY 27, 2023**

