



**Muoka v Omenke & another (Environment & Land Case
E005 of 2023) [2023] KEELC 19161 (KLR) (24 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E005 OF 2023**

EK WABWOTO, J

JULY 24, 2023

BETWEEN

SAMUEL MUINDI MUOKA PLAINTIFF

AND

GEOFFREY LORE OMENKE 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

RULING

1. This ruling is in respect to the Plaintiff's application dated December 21, 2022 and the 1st Defendant's preliminary objection dated April 6, 2023. The Plaintiff filed a Notice of Motion Application dated December 21, 2022 which was accompanied by a Supporting Affidavits sworn by Samuel Muindi Muoka. The Plaintiff sought the following orders:
 - i. ...Spent.
 - ii. That the Plaintiff be restrained by a temporary injunction through himself, his agents, servants, relatives, assigns and or any other from continuing with construction of a house on Plot No D157B at Ruai or alienating, selling, wasting, damaging disposing off or in any other way interfering with the interested parties peaceful occupation, possession and use of the said plot pending hearing and determination of this application and or further orders of the court.
 - iii. That a permanent injunction do issue to restrain the defendants by itself, its directors, servants, agents or whomsoever from alienating, selling allotting, wasting, damaging, disposing or in any other way interfering with the peaceful occupation, possession and use of Plot No D157B pending the hearing and determination of this suit and or any further order of this court.



- iv. That a mandatory order directed to the 2nd Defendant ordering it, its officials and/or successors in title to forthwith and unconditionally initiate the process of issuance of a title deed to the Plaintiff.
 - v. That should the 2nd Defendant fail to execute the transfers in favour of the Plaintiff within seven (7) days of making of the said order failing which the Deputy Registrar of this Honourable Court do execute the transfer forms on behalf of the 2nd Defendant to the Plaintiff.
2. The Application was made on the grounds that:
- i. The Applicant is the beneficial owner of the said parcel of land known as Plot No D157B within Embakasi in Nairobi County pursuant to a Certificate No 656 issued by the 2nd Defendant.
 - ii. The plot originally belonged to the late Anna Wanjiku Njenga whose estate sold to the Applicant.
 - iii. The process of issuance of titles at the 2nd Defendant is ongoing and despite having started processing the Plaintiff's documents has also accepted the 1st Defendant's documents for processing.
 - iv. The Plaintiff is in actual and uninterrupted possession of the suit property since 2015 June and if orders sought are granted the Respondent will not suffer prejudice.
 - v. The 1st Defendant has trespassed on the suit property and attempted to invade and erect structures and the 2nd Defendant has put beacons
 - vi. The 1st Defendant has defiantly refused to vacate and instead intensified their activities on the said parcel.
3. The 1st Defendant filed a notice of Preliminary Objection dated 6th April 2023 which was made on the following grounds:
- i. That the Application dated December 21, 2022 by the alleged Plaintiff was served upon the 1st Defendant who is not in any way in possession or occupation of the suit property.
 - ii. The 1st Defendant does not have the locus to litigate the said matter.
 - iii. The Court lacks jurisdiction to hear and determine this matter thus will be acting ultra vires.
 - iv. The suit property is totally different from one legally owned and occupied by the 1st Defendant which is known as NAIROBI/BLOCK 136/15676 of Plot Number V 15508 and not D157B.
 - v. The Application is mischievous, incompetent and an abuse of the court process and should be dismissed in limine with costs.
4. Pursuant to directions issued by this court on April 18, 2023, the Court directed the application together with the preliminary objection to be heard together and that the same be canvassed by way of written submissions. Parties were directed to simultaneously file and exchange written submissions within 14 days.



5. The 1st Defendant filed written submissions in response to the application and in support of his preliminary objection dated June 6, 2023, in which he argued that the 1st Defendant is not aware of any property known as Plot No D157B that he owns. He also submitted that he was a stranger to the suit being that he owned a completely different parcel known as Plot No V 15508. It was further argued that since he had no linkage to the alleged suit premise, he lacked locus to litigate the said suit. Relying on Section 19 of the [Civil Procedure Act](#), it was submitted that the existing suit touches on two different properties and in entertaining the Plaintiff's suit the Court had no jurisdiction.
6. I have considered the application and the preliminary objection, the rival affidavits, written submissions and supporting documents. In my view, the main issues for determination are:
 - i. Whether the Plaintiff has met the threshold to be granted the order of injunction as prayed?
 - ii. Whether the 1st Defendant's preliminary objection dated April 6, 2023 is merited?
7. The Plaintiff has sought both orders of temporary and mandatory injunction at this interlocutory proceedings. On the issue of granting a mandatory injunction, the Court must reiterate the high bar that has been set when considering an application for mandatory injunction. On one hand, an applicant seeking a temporary injunction must establish the existence of a prima facie case with high chances of success, and that he will suffer irreparable loss/damage which cannot be adequately compensated by an award of damages if the injunction is not granted, and further that the balance of convenience tilts in his favour (See *Giella vs Cassman Brown & Co Ltd* (1973) EA 358). In comparison, an applicant seeking a mandatory injunction must establish the existence of special circumstances.
8. The case of [Locabail International Finance Limited v Agro-Export](#) (1988) 1 All ER 901, outlines general principles which the court applies when determining applications for interlocutory mandatory injunction as follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.”
9. This position was echoed by the Court of Appeal in the case of [Nation Media Group & 2 Others v John Harun Mwau](#) [2014] eKLR,:

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted.”
10. In this instance, the Plaintiff avers to being the rightful owner following a purchase from the late Anna Wanjiku Njenga and was currently in actual possession of the suit property. Beyond the said averments, the Plaintiff did not present evidence in support of this and therefore this Court finds that



the averments do not demonstrate any special circumstances that warrant the granting of a mandatory injunction.

11. With regards to the merits of the preliminary objection, it is trite law that a Preliminary Objection must be raised on a point of law as reiterated by the Court of Appeal *Nitin Properties Ltd v Singh Kalsi & another* [1995] eKLR . The constitutional mandate of this Court is rooted in Article 162 2(b) of the Court which outlines the jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. In this suit, all issues raised are centred on a parcel of land located in Ruai therefore disagree with the assertions of the 1st Respondent that this Court does not have jurisdiction
12. At this interlocutory stage, it would be prudent to ensure the premise is preserved in its current state. It is undoubtedly clear that general issues of ownership are at the heart of this suit. In my opinion, it is in the interest of justice for the parties to ventilate the issues at trial. In the upshot, I find that the preliminary objection is unmerited.
13. In conclusion and having considered the foregoing, the application dated December 21, 2022 and the Preliminary objection dated April 6, 2023 are disposed as follows;
 - i. A temporary injunction is hereby issued against the 1st and 2nd Defendants, their respective agents, servants, relatives, assigns and or any other from continuing with construction of a house on Plot No D157B at Ruai or alienating, selling, wasting, damaging disposing off the said plot pending hearing and determination of this suit.
 - ii. The Preliminary Objection dated April 6, 2023 is unmerited and hereby dismissed.
 - iii. Costs to abide the determination of the main suit.

24. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Ochieng for the Plaintiff.

N/A for the 1st Defendant and 2nd Defendant.

Court Assistant; Caroline Nafuna.

