



REPUBLIC OF KENYA



**Muriuki & 4 others v Haji & 15 others (Environment & Land Case E097 & E122 of 2023  
(Consolidated)) [2023] KEELC 19167 (KLR) (24 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19167 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E097 & E122 OF 2023 (CONSOLIDATED)  
EK WABWOTO, J  
JULY 24, 2023**

**BETWEEN**

**EPHANTUS MUGO MURIUKI ..... 1<sup>ST</sup> PLAINTIFF  
DENNIS THUO ..... 2<sup>ND</sup> PLAINTIFF  
MARTIN THIGE ..... 3<sup>RD</sup> PLAINTIFF  
JULIUS NGATIA ..... 4<sup>TH</sup> PLAINTIFF  
CHARLES NGUGI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**UBDI HAJI ..... 1<sup>ST</sup> DEFENDANT  
FATUMA MAALIM ALIO ..... 2<sup>ND</sup> DEFENDANT  
MUKTAR ABDULLIE OMAR ..... 3<sup>RD</sup> DEFENDANT  
MUHYIDIN MOHAMED DHUHULOW ..... 4<sup>TH</sup> DEFENDANT  
ADAN GABONE NOOR ..... 5<sup>TH</sup> DEFENDANT  
HAWA ELMI SHEIKH ..... 6<sup>TH</sup> DEFENDANT  
ALI RUKENYO AHMED ..... 7<sup>TH</sup> DEFENDANT  
ABDI Kafa JAMA ..... 8<sup>TH</sup> DEFENDANT  
MOHAMED KULIMYE ..... 9<sup>TH</sup> DEFENDANT  
ABDULLAHI OMAR FARAH ..... 10<sup>TH</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 11<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 12<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 13<sup>TH</sup> DEFENDANT**



**COMMISSIONER FOR LANDS ..... 14<sup>TH</sup> DEFENDANT**  
**NAIROBI CITY COUNTY GOVERNMENT ..... 15<sup>TH</sup> DEFENDANT**  
**DIRECTOR OF PHYSICAL PLANNING ..... 16<sup>TH</sup> DEFENDANT**

## **RULING**

1. This ruling is in respect to two applications dated 13<sup>th</sup> February 2023 and 24<sup>th</sup> March 2023. The 1<sup>st</sup> Plaintiff filed a Notice of Motion Application dated 13<sup>th</sup> February 2023 which was accompanied by a Supporting Affidavit sworn by Ephantus Mugo Muriuki. He sought temporary injunctive orders restraining the 1<sup>st</sup> to 7<sup>th</sup> and 11<sup>th</sup> Defendants from erecting any structures and/or engaging in any further dealings on the disputed land namely Nairobi Block 104/525, 526, 527, 529, 530, 531, 534 and 535 in any manner against the intended purposes it was set aside for pending hearing and determination of the suit and he further sought a temporary injunctive orders restraining the 7<sup>th</sup>, 11<sup>th</sup> and 16<sup>th</sup> to 13<sup>th</sup> Defendants from issuing any further allotment letters in relation to lands namely Nairobi Block 104/525, 526, 527, 529, 530, 531, 534 and 535 pending hearing and determination of this suit.
2. The Application was premised on the following grounds;
  - i. That the Applicant is the chairman of Starehe Community Group which is a member of Juja Development Company Limited, the original proprietor of L.R 209/4195 (Currently Nairobi Block 104 Mlango Kubwa located in Juja road Estate measuring 40.7 acres.
  - ii. That on 3rd September, 1986 the Director of Surveys wrote to the Chief Land Registrar informing them of the change in parcel number from 209/4195 to 1-271 and enclosed a new Registry Index Map (RIM).
  - iii. That Nairobi Block 104/271 was changed to parcel NO. 104/520 under unclear circumstances when the Director of Survey sent a letter to the Commissioner of lands sometime around December 1994 informing them of the RIM Amendment to reflect the new parcel number 104/520.
  - iv. That parcels numbers Nairobi Block 104/271 and 104/520 are one and the same.
  - v. That the alienation of Nairobi Block 104/271 and its subsequent unclear change of title to Nairobi Block 104/520 was done fraudulently in circumstances that smacked of corruption and in breach of the provisions of the law and has raised great public concern.
  - vi. That an official search indicates that the 1st Respondent was issued with a certificate of lease on 5th February 2002 with respect to Nairobi Block 104/520 who has subdivided the said property and constructed maisonettes for sale and proceeded to sell some of the parcels of land to the 2<sup>nd</sup> – 7<sup>th</sup> Respondents.
  - vii. That there is need to preserve the parcel of land known as Nairobi Block 104/520 to obviate any dealings with the land in a manner that may render this application nugatory as well as to protect the interests of Starehe Community Group.
3. The 2<sup>nd</sup> -10<sup>th</sup> Defendants filed an application dated 24<sup>th</sup> March 2023 seeking an injunction against the Plaintiffs from entering, selling, accessing or in any manner from interfering with the 2<sup>nd</sup> to 10<sup>th</sup> Defendants' quiet enjoyment, utilization and construction on all those parcels of land known as Nairobi/Block 104/525-535 pending hearing and determination of the suit.



4. The application was made on the following grounds:
  - i. They were the registered proprietors of the suit properties, which they were developing for sale and share of the proceeds.
  - ii. The plaintiffs were said to be trespassing and interfering with the construction.
5. Pursuant to the directions issued by this court, it was directed that both applications be heard together and by way of written submissions to be filed by the parties. The 1<sup>st</sup> Plaintiff filed lengthy submissions dated 14<sup>th</sup> June 2023 while the 2<sup>nd</sup> to 10<sup>th</sup> Defendants filed written submissions dated 5<sup>th</sup> July 2023.
6. The 1<sup>st</sup> Plaintiff submitted that the suit property had been set aside for construction of a nursery school and recreational purpose, which the entire community had been deprived of. The 1<sup>st</sup> Plaintiff outlined three main issues for determination:
  - i. Whether the Plaintiffs have established the existence of a prima facie case with a probability of success at the trial
  - ii. Whether the Plaintiffs might otherwise suffer irreparable injury which cannot adequately be compensated by an award of damages and;
  - iii. If in doubt, the Court will determine the application on the balance of convenience.
7. In opposition of the 2<sup>nd</sup> to 10<sup>th</sup> Defendants application, the 1<sup>st</sup> Plaintiff argued that any loss likely to be suffered by the 2<sup>nd</sup> to 10<sup>th</sup> Defendants was not irreparable since it could be quantified and compensated in damages. It was also argued that there were some irregularities that cast doubt on the title registered to the 1<sup>st</sup> Defendant. It was submitted that should the 1<sup>st</sup> Defendant's title be illegal, it was highly probable that good title did not pass to the 2<sup>nd</sup>-10<sup>th</sup> Defendants.
8. The 15<sup>th</sup> Defendant filed submissions dated 17<sup>th</sup> July 2023, it was submitted that the 1<sup>st</sup> Plaintiff neither pleaded or proved any material evidence that would confer proprietary interest on the suit properties. On the other hand, the 2<sup>nd</sup>- 10<sup>th</sup> Defendants had produced evidence to support their claim of being registered owners and have been in possession for almost a decade. It was also submitted that the Plaintiff's did not manage to trace the exact root of the title and as such made false assumptions on the reparation of plot numbers.
9. I have considered the applications, rival affidavit, respective written submissions and authorities cited. In my view, the issue that arises for determination is whether both applications as filed by the parties are merited and warrant the grant of any of the orders sought.
10. *Giella v Cassman Brown* (1973) EA 358 and *Nguruman Limited v. Jan Bonde Nielsen & 2 Others*, Ca No. 77 of 2012, set out the principles to determine the threshold for temporary injunction in that a party seeking a temporary injunction has to establish a prima facie case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience.
11. This Court is further guided by Section 63 of the [Civil Procedure Act](#) and Order 40(1) of the [Civil Procedure Rules](#), 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, 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.”

12. In *Paul Gitonga Wanjau vs. Gatbuthis Tea Factor Company Ltd & 2 Others* [2016] eKLR, where the Court expressed itself:-

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies.”

13. Additionally, Steven Mason & McCathy Tetraut in their article "Interlocutory Injunctions: Practical Considerations have authoritatively stated as follows:-

“...In certain circumstances, the court will impose a more restrictive standard and require the moving party to demonstrate that it has a more strong prima facie case. If the injunction will likely end the dispute between the parties, then the court may hold the plaintiff to this higher standard.”

14. In this instance, the Court considers that the issue of ownership and legality of the respective conveyancing processes are highly contested. At this stage of disposing the plea for an interlocutory injunction, the court seized of these application does not need to make definitive or conclusive pronouncements on the key issues in the suit. I have also considered the need for a delicate balance of the rights of the parties from a public interest perspective vis a vis a commercial investment perspective. In my opinion, issues of such gravity should be duly heard and determined exhaustively at trial. I have also considered the fact that on 22<sup>nd</sup> June 2023 pursuant to an application made by the 2<sup>nd</sup> to 10<sup>th</sup> Defendants, this court allowed them to proceed with the ongoing construction albeit in line with certain conditions.

15. In view of the foregoing, this Court hereby makes the following disposal orders in respect to the applications dated 13<sup>th</sup> February 2023 and 24<sup>th</sup> March 2023:

- i. That pending the hearing and determination of this suit, the orders issued on 22<sup>nd</sup> June 2023 shall continue to apply save that there shall be no alienation, selling and transfer of the suit properties.
- ii. Costs will abide the final determination of the main suit.

16. It is so ordered.

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



**E. K. WABWOTO**  
**JUDGE**

