



Mwangi & 2 others (Suing on Behalf of Kamiti Corner Welfare Group) v Murarandia Co Ltd & 2 others (Environment & Land Case 537 of 2007) [2023] KEELC 18822 (KLR) (13 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18822 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 537 OF 2007**

**LN MBUGUA, J
JULY 13, 2023**

BETWEEN

**MACHARIA MWANGI 1ST PLAINTIFF
MARGARET NYAMBURA NJAAGA 2ND PLAINTIFF
ROSE WANGARI KIMANI 3RD PLAINTIFF
SUING ON BEHALF OF KAMITI CORNER WELFARE GROUP**

AND

**MURARANDIA CO LTD 1ST DEFENDANT
CHARLES KABUTU KIBAARA 2ND DEFENDANT
CROSS COUNTRY VENTURES 3RD DEFENDANT**

RULING

1. The Plaintiffs' Notice of Motion application dated January 11, 2023 is for determination before this Court. They seek an injunction restraining the 2nd and 3rd Defendants from transferring, leasing, charging, disposing of, alienating or in any other way dealing with land parcels No. LR 5919/5 and LR No. 7019 or any subdivision or resultant titles therefrom. They also seek costs of the application.
2. The application is based on grounds on its face and on the joint supporting affidavit sworn on January 11, 2023 by Macharia Mwangi, Margaret Nyambura Njaaga and Rose Wangari Kimani who are office bearers of Kamiti Corner Welfare Group.
3. They aver that members of Kamiti Corner Welfare Group purchased various plots comprised in the parcel of land known as LR No. 5919/5 & 7019 in Kiambu from the 1st Defendant who was an agent of the 2nd and 3rd Defendants. They then occupied the plots at the time and put up permanent houses.



4. They state that some owners who are yet to develop their plots are being confronted by strangers claiming to have purchased plots from the 2nd and 3rd Defendants and some of them have reported the respective incidents to Kiamumbi Police Station.
5. They also state that unless an injunction is issued, members of Kamiti Welfare Group will be rendered landless and suffer irreparable loss. They further state that while this suit was filed in 2007 it is yet to take off as the court file had been lost and there was an attempt at settling the matter out of Court.
6. They aver that whereas this court has the skeleton file, the Civil Division of the high Court has the original file where an application for transfer of the file to this Court for final disposal is pending and is slated for mention on May 16, 2023.
7. The application is opposed by the 3rd Defendant vide its replying affidavit sworn on February 2, 2023 by its director one Francis Njuguna Ndegwa. He avers that the 3rd Defendant was the registered proprietor of the parcel of land known as LR No. 7019 and that it entered into a lease agreement for sale of the entire parcel to the 1st Defendant. The 1st Defendant then took possession of the land and subdivided it into plots and sold to the Plaintiffs without the 3rd Defendant's consent. However, the transaction collapsed after the 1st Defendant failed to pay the balance of the purchase price.
8. He avers that in 2015, the 3rd Defendant began subdivision of its land which resulted in a total of 193 parcels whose leases and certificates of lease were issued by the Ministry of Lands in the year 2021. Following this, some individuals who had purchased land requested to have parcels of land they occupied transferred to them by the 3rd Defendant after paying costs incurred to transfer the land parcels to them. Further, the 3rd Defendant sold some extra plots.
9. The 1st and 2nd Defendants failed to file responses to the application in question.
10. I have duly considered the rival arguments proffered herein by the plaintiffs and the 3rd defendant. Of great concern to this court are two pertinent issues. The first one is that this is a very old case, the same having been filed about 16 years ago in year 2007. The accusations and counter accusation boil down to the question of ownership, which ideally ought to be resolved in a full trial. It is therefore crucial that focus be on the finalization of the entire suit. To this end, the court is inclined to grant orders only geared towards preservation of the suit properties.
11. The second issue is that there is no controversy that the original file is at the High court, thus the file before me is a holding/skeleton one. Efforts to have the file transferred back are apparently underway. In the circumstances, it is paramount that substantive proceedings be made in the main file for purposes of sanctity of the record, case management and good order.
12. In light of the above analysis, this court desist from delving into the conflicted issues of ownership. Instead the court will give an order of maintenance of *Status Quo*.
13. In the case of *Daniel Kinyanjui Gitau & 227 others v Mary Ruguru Njoroge* [2020] eKLR , the court had this to say on the issue of status quo.

“The Court of Appeal defined what ‘status quo’ means in the case of *Shimmers Plaza Limited vs. National Bank of Kenya Limited* [2015] eKLR as follows:

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given.



If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order. The agreement of sale may have been signed prior to that date, but once the court ordered maintenance of status quo, everything else had to wait.”

The order for the maintenance of status quo therefore meant that things were to remain as they were as at the date of the delivery of the Ruling. If the Defendant or the Plaintiffs had already put up structures on the suit property, the said structures were to remain intact pending the hearing and determination of the suit”. Emphasize added.

14. The final orders given herein are that *in lieu of* granting the orders sought in the application dated January 11, 2023, an order is hereby issued for the maintenance of the status quo as from the date of delivery of this ruling until further orders are given by the court. The same entails the following;
 1. The suit parcels shall not be alienated in any manner. Hence no sale transactions shall be undertaken thereof.
 2. The parties in occupation of the suit parcels on the ground shall continue to occupy the same.
 3. The costs herein shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Lucy Wang’ombe for Plaintiff

Kanyoni Gachoka for 1st Defendant

Muthoni holding brief for Mrs. Maina for 3rd Defendant

Court Assistant: Eddel

