



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gachagua v Murage & 2 others (Environment & Land Case  
E008 of 2023) [2023] KEELC 19355 (KLR) (30 August 2023) (Ruling)**

Neutral citation: [2023] KEELC 19355 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E008 OF 2023  
EK WABWOTO, J  
AUGUST 30, 2023**

**BETWEEN**

**GEORGE GACHAGUA ..... PLAINTIFF**

**AND**

**JANE WANGARI MURAGE ..... 1<sup>ST</sup> DEFENDANT**

**RICHARD MWANGI MURAGURI ..... 2<sup>ND</sup> DEFENDANT**

**EMBAKASI RANCHING COMPANY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect to the application dated 10<sup>th</sup> July 2023 and the Preliminary Objection dated 25<sup>th</sup> July 2023 filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The Notice of Motion application dated 10<sup>th</sup> July 2023 was accompanied by a Supporting Affidavit sworn by George Gachagua. The Plaintiff sought the following orders:
  - i. ...Spent.
  - ii. The Court be pleased to grant a temporary injunction restraining the Defendants/ Respondents whether by themselves, agents, employees and/or servants from trespassing on, transferring, wasting, continuing with construction on, disrupting, alienating or otherwise interfering or dealing with land parcel Plot No V.2691(now parcel No. 136/7633) and Plot No.V. 2979 (now parcel no 136/7632) Ruai Embakasi Ranching Company Limited pending the hearing and determination of this application.
  - iii. The court be pleased to grant an injunction restraining the Defendants whether by themselves, their agents, employees and/or servants from trespassing on, transferring, wasting, continuing with construction on, disrupting, alienating or otherwise interfering or dealing with land parcel Plot No V.2691(now parcel No. 136/7633) and Plot No.V. 2979 (now



parcel no 136/7632) Ruai Embakasi Ranching Company Limited pending the hearing and determination of this suit.

- iv. The costs of this Application be provided for.
  - v. The Honourable Court be pleased to make such further or other orders as it deems just and expedient in the circumstances of this case.
2. The Application was premised on the following grounds;
- i. The Plaintiff is the lawful owner Plot No V.2691 (now parcel No. 136/7633) and Plot No.V. 2979(now parcel no 136/7632) Ruai Embakasi Ranching Company Limited
  - ii. The Defendants have interfered with the said property by trespassing and maliciously started construction on the suit property with intention to defraud the Plaintiff and dispossess him off the same for their selfish gain.
  - iii. The Plaintiff made full payment for the land and as a result stands to suffer irreparable loss and damage should the Defendants continue with their illegal actions
  - iv. It is in the interest of justice and fairness that this application is allowed and injunctive orders granted against the Defendants to preserve the suit property.
  - v. The Plaintiff has fulfilled all the pre-requisite conditions for grant of a temporary injunction
  - vi. Unless restrained, the Defendant swill continue to interfere, construct on and transfer or deal with the property thereby causing irreparable damage.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a notice of preliminary objection dated 25<sup>th</sup> July 2023 seeking the suit be struck out with costs. The preliminary objection was raised on the following grounds;
- a. That the Application and the entire suit is incompetent and incurably defective for want of jurisdiction and should therefore be struck out with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  - b. That the pecuniary value of the subject matter of the suit being land identified as Nairobi Block 136 /7632 and Nairobi Block 136/7633 and situated in Ruai is approximately Kenya Shillings Three Million which is within the pecuniary jurisdiction of the Chief Magistrate's Court.
  - c. That the suit filed before the Environment and Land Court is grossly misconceived, premature and is an abuse of the Court process and as such should be dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
4. On 27<sup>th</sup> July 2023, the matter came up for hearing of the applications. Counsel Kimono made oral submissions on behalf of the Plaintiff. Counsel Murithi and Counsel Macharia represented the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant respectively.
5. The Plaintiff submitted that the nature of developments on the property had not been ascertained and for that reason it would premature to conclude that the property was only valued for Kshs 3,000,000. It was further submitted that as the lawful owner by bonafide purchase had established a prima facie case with a probability of success.
6. The Defendants submitted that the court lacked jurisdiction to entertain the suit. The Court was invited to first pronounce itself on jurisdiction, noting that the sale agreement relied upon in the substantive suit was for an amount Kshs 3,000,000, thus being presumed as the value of property.



7. I have considered the applications, respective oral submissions and the affidavits filed. In my view, the issues that arise for determination are:
- a. Whether the Court has jurisdiction to hear and determine the matter?
  - b. Whether the Plaintiff has met the threshold to be granted the interim injunction orders?
  - c. What orders should issue as to costs?
8. It is now a well-founded principle that jurisdiction is the cornerstone upon which every suit is founded and build upon. The Supreme Court in the case of Samuel Kamau Macharia -vs- Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011, observed that:
- “A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”
9. Articles 162 and 169 of *the Constitution* of Kenya established courts of equal status with the High Court and the subordinate courts respectively.
10. Article 169 (1) (a) of *the Constitution* establishes the Magistrates courts amongst other subordinate courts. Article 169 (2) gives parliament the powers to enact legislation to confer jurisdiction and functions and powers on the courts established under Article 169 (1).
11. Section 7 (1) of the Magistrates Court Act enumerates the cadres of pecuniary jurisdiction in civil matters as follows:
- a) twenty million shillings, where the court is presided over by a chief magistrate;
  - b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
  - c) ten million shillings, where the court is presided over by a principal magistrate;
  - d) seven million shillings, where the court is presided over by a senior resident magistrate; or
  - e) five million shillings, where the court is presided over by a resident magistrate.
12. Section 9 (a), confers magistrate jurisdiction to deal with environment and land matters subject to their pecuniary jurisdiction under section 7 (1) of the Act. Section 9 (a) of the Act provides: -
- “A magistrate’s court shall: -(a) in the exercise of the jurisdiction conferred upon it by section 26 of the *Environment and Land Court Act* (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to—
- (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (ii) compulsory acquisition of land;
  - (iii) land administration and management;



- (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (v) environment and land generally.”[Emphasis mine]

13. In the instant case, while no valuation report was filed to ascertain the current value of the subject matter, the Plaintiff filed a sale agreement dated 21<sup>st</sup> September 2012 which indicated that the property was sold for Ksh 3,000,000. In view of the foregoing, it is evident that the suit ought to have been filed before the subordinate court.

14. In conclusion, this court proceeds to make the following orders:

- a. The Preliminary objection dated 25<sup>th</sup> July 2023 is upheld.
- b. The Application dated 10<sup>th</sup> July 2023 and the entire suit in its entirety is hereby struck out.
- c. Each party shall bear own costs.

15. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF AUGUST 2023.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

Mr. Kimamo for the Plaintiff.

Mr. Murithi for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

N/A for the 3<sup>rd</sup> Defendant.

Court Assistant; Caroline Nafuna

