



**Nyakoe v Buyaki (Environment & Land Case E156 of 2023)  
[2023] KEELC 20358 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20358 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E156 OF 2023  
LN MBUGUA, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**ALEXINA MARCELLINA NYAKOE ..... PLAINTIFF**

**AND**

**RUTH BUYAKI ..... DEFENDANT**

**RULING**

1. The Plaintiff's application dated 2.5.2023 is for determination. She seeks a temporary injunction restraining the Defendant from further trespassing, further constructing on, occupying and in any other way interfering with her property known as Title Number Nairobi/Block 105/9062 pending hearing and determination of the suit. She also seeks orders that the Defendant be restrained from alienating, transferring, leasing or subleasing the suit property.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit sworn on 2.5.2023. She avers that she is the registered proprietor of the suit property. That the Defendant has trespassed on the said land, removed her site house, barbed wire fence and blocked her septic tank and the soak pit and has proceeded to harass her workers whom he removed. The defendant then proceeded to build a perimeter wall around the suit property without her consent.
3. The application is opposed by the Defendant vide her replying affidavit sworn on 20.6.2023. She avers that she purchased Plot No. V35561 for Ksh. 2 million from one Jack Wachira Kamau. She then submitted the sale documents to Embakasi Ranching Company Limited and paid requisite fees. She was then issued with a non-member certificate of Plot Ownership No. 033438 dated 4.6.2018. Subsequently, she took possession of the suit property and applied to be issued with a certificate of lease which was issued in her name on 9.4.2019.
4. She then constructed a perimeter wall around the property which covers 2 parcels being the suit land and LR No. Nairobi/Block 105/9063.



5. She also avers that in 2016, a group of land grabbers invaded the suit property and destroyed the perimeter wall using an excavator. She reported the matter to the police which led to the arrest of a few individuals.
6. She argues that since she is in occupation of the suit property, if the orders sought are granted, they shall amount to an eviction order hence deprivation of her right to property.
7. I have considered all the rival arguments. The question for determination is whether the application dated 2.5.2023 meets the threshold for grant of injunctive orders as set out in the case of *Giella v Cassman Brown Co. Ltd* 1973 E.A 358.
8. This is a situation whereby the Plaintiff produced a certificate of lease issued on 11.11.2020 indicating that she is the registered proprietor of the suit property. Similarly, the Defendant has availed a certificate of lease issued to her on 9.4.2019 indicating that she is the registered proprietor of the suit property. It is therefore apparent that the issue of ownership of the suit land is in contention. That issue has to be determined in a full trial and not at the interlocutory stage.
9. The court also discerns that the Plaintiff is not in occupation of the suit premises, that is why prayer (c) in her pleading, she seeks orders of eviction of the defendant. It follows that granting the orders sought at the interlocutory stage would be tantamount to granting a major relief before the trial. See *Daniel Atibu Jasimba v Ainea Sandanyi Magana* [2013] eKLR.
10. In *Virginia Edith Wambui v Joash Ochieng Ougo*, [1987] eKLR, the Court of Appeal held that:-

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial”.
11. In light of the foregoing analysis, I decline to grant the orders sought in the application dated 2.5.2023. Instead, I hereby give orders for the maintenance of status quo on the ground and in terms of registration. Thus the suit property shall not be alienated.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Kirimi holding brief for Lachiku for the plaintiff

Ogenga for Defendant

Court Assistant: Eddel

