



**Geoffrey v Mwirebua & another (Environment & Land Case
E010 of 2023) [2023] KEELC 20112 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20112 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E010 OF 2023
CK YANO, J
SEPTEMBER 27, 2023**

BETWEEN

JOSEPH NTEERE GEOFFREY PLAINTIFF

AND

SAMSON MWIREBUA 1ST RESPONDENT

LAND REGISTRAR MERU 2ND RESPONDENT

RULING

1. The application for determination is the notice of motion dated May 19, 2023 brought under order 40 rule 1,2,3, and 4, order 51 rule 1 of the [Civil Procedure Rules](#), sections 1A, 1B and 3A of the [Civil Procedure Act](#) and other enabling provisions of the law. The plaintiff/applicant is seeking the following orders-;
 1. Spent
 2. Spent
 3. That a temporary injunction do issue against the defendants/respondents jointly and or severally restraining them, their agents and or servants or anyone acting under their instructions from alienating, selling, leasing, encroaching and or trespassing, interfering, wasting, constructing further/or howsoever dealing with the land parcel Nkuene/Upper Mikumbune/1080 and Nkuene/Upper Mikumbune/1081 which form part of the estate of the deceased pending the hearing and determination of the suit.
 4. That titles of property number Nkuene/Upper Mikumbune/1080, 1081 and 1082 which are in possession of the 1st defendant be released to the custody of the court pending hearing and determination of the suit.



5. That the titles emanating from Nkuene/upper Mikumbune/1082 be recalled for proper subdivision among the beneficiaries of the estate as per the mutation forms at the land registry.
 6. That the titles of land parcel number Nkuene/Upper Mikumbune/1078, 1079 and 1083 be recalled and subdivision be carried out by a government surveyor subdividing the properties into 3 equal portions and the remainder to be declared to form part of the estate of the deceased.
 7. That the costs of this application be borne by the defendants/respondents in any event.
2. The application is premised on the grounds in the face of the motion and supported by the affidavit of Joseph Nteere Geoffrey the applicant sworn on May 19, 2023 and a further affidavit filed on July 6, 2023.
 3. The applicant's case is that the 1st respondent and himself are among others the legal beneficiaries of the suit properties which were registered under their late father, Geoffrey M'Kiara M'Mwirebua (deceased) who passed away on June 14, 2011 and whose estate is yet to undergo succession. That the deceased is survived by 8 dependants among them the 1st respondent and the applicant.
 4. It is the applicant's contention that prior to his demise, the deceased assigned the 1st respondent the responsibility of subdividing the property known as Nkuene/Upper Mikumbune/145 into seven portions which later became Nkuene/Upper Mikumbune 1077 – 1083. The applicant accuses the 1st respondent of intermeddling with the estate of the deceased.
 5. The applicant alleges that the 1st respondent is in possession of a fake title and might alienate and/or waste the suit property that forms part of the estate of the deceased which action would be prejudicial to the applicant and other beneficiaries of the estate of the deceased.
 6. In his supporting affidavit, the applicant has annexed copies of the death certificate of the deceased, chief's letter confirming the beneficiaries, mutation forms, certificates of official search and OB number extract. Although the applicant has deposed in his further affidavit that he has annexed a certified copy of the limited grant *ad litem* issued on April 3, 2023, the same is not annexed to the affidavit filed.
 7. In opposing the application, the 1st respondent filed a replying affidavit sworn by himself on June 8, 2023. He admits that the applicant is his younger brother and that their father who owned parcel No Nkuene/Upper Mikumbune/145 passed away on June 14, 2011. He stated further the deceased in his lifetime and particularly in the year 1988 caused the said land to be subdivided into seven portions to wit, Nkuene/U-Mikumbune/1077- 1083, and transferred some parcels to his sons, including the applicant and the 1st respondent and retained some parcels in his name. The 1st respondent denied carrying out the sub-division as alleged by the applicant.
 8. It is also the 1st respondent's contention that the applicant lacks the *locus standi* to file suit in respect of the suit parcels of land that are in the name of the deceased since he does not have letters of administration in respect of the estate of the deceased.
 9. The application was canvassed by way of written submissions which were duly filed by the applicant and the 1st respondent.

Analysis And Determination

10. I have considered the application, the affidavits in support and against and the rival submissions as well as the authorities relied on. The issues for determination are whether temporary injunctive orders should be granted over the suit parcels of land and whether prayers 4, 5 and 6 in the application are merited.



11. The principles to be applied when considering an application for temporary injunction are well settled. In the famous case of *Giella v Cassman Brown & Co Ltd* (1973) EA 358, the conditions were laid and they are;

“First the applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”

12. In this case, the dispute is over properties in the name of the applicant's and 1st respondent father who is said to be deceased. In paragraph 2 of his supporting affidavit, the applicant has deponed that the estate of their deceased father is yet to undergo succession. It is trite law that a grant of representation gives one authority to deal with the estate of a deceased person. Whereas in the further affidavit the applicant has deponed that he obtained a limited grant to bring the suit in respect of the estate of the deceased, the alleged limited grant *ad litem* has not been exhibited. I also find it suspicious that the applicant, who initially stated the estate of the deceased had not yet undergone succession proceedings suddenly changes tune and states that he had obtained a limited grant *ad litem* issued on April 3, 2023. It is worth noting that this change of tune only occurred after the 1st respondent had challenged the locus standi of the applicant.

13. From the material on record, I find that the applicant has not established a prima facie case with a probability of success and I decline to grant the orders of temporarily injunction.

14. With regard to the issue whether prayers 4, 5 and 6 in the application are merited, I note that the applicant is also seeking the same prayers in the main suit. I am in agreement with the 1st respondent's submissions that allowing the same will have the effect of determining substantive issues in the main suit. It is trite law that the court should not grant interim relief which amounts to final relief unless under special circumstances. In this case, no special circumstances have been shown why the court should grant orders which amount to final orders at an interlocutory stage. Besides and having carefully considered the material before me, I cannot safely consider this a clear case that can be decided at once or in a summary manner. I am therefore not persuaded that the prayers sought should be granted.

15. The upshot is that the notice of motion dated May 19, 2023 is devoid of merit and the same is dismissed with costs to the 1st respondent.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF SEPTEMBER, 2023.

C.K YANO

JUDGE

