



REPUBLIC OF KENYA



KENYA LAW
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**Ngeny & another v Sigei & 4 others (Environment & Land Case
10 of 2023) [2023] KEELC 20009 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20009 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 10 OF 2023
CG MBOGO, J
SEPTEMBER 26, 2023**

BETWEEN

GRACE CHELANGAT NGENY 1ST PLAINTIFF

GEORGE KIPROP KORIR 2ND PLAINTIFF

AND

JOHN SIGEI 1ST DEFENDANT

AMBROSE ROTICH 2ND DEFENDANT

FRANKLINE ROTICH 3RD DEFENDANT

SAMWEL CHERIRO 4TH DEFENDANT

DOUGLAS SADERA 5TH DEFENDANT

RULING

1. Before this court is a notice of motion application dated April 11, 2023 filed by the applicants and which is expressed to be brought under order 40 rule 1,2(1),3(1), order 51 rule 1 of the [Civil Procedure Rules](#) and sections 3A and 63 of the [Civil Procedure Act](#) seeking the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to grant a temporary injunction order restraining the defendants, the defendants agents, servants or any other person acting through the defendants instructions from subdividing, trespassing onto, encroaching upon, remaining on, or taking possession, fencing off or interfering with LR. No. CisMara/Olposimoru/444 pending the hearing and determination of this suit.



- d. That the costs of this application be provided for.
- e. Spent.
2. The application is premised on the grounds on its face and more particularly as set out in the affidavit. The application is supported by the affidavit of the 2nd applicant sworn on April 11, 2023.
3. The 2nd applicant deposed that on or about the year 1985, the 1st applicant purchased land known as LR. No. Cismara/Olposimoru/444 (herein referred to as the suit land) measuring approximately 5 acres from Shina Chemotion after which she entered the suit land, fenced it and started utilizing the same. Thereafter, the 1st applicant allocated him some portion of the suit land which he has been tilling and on or about April 11, 2023, the respondents hived off 1.5 acres and fenced off while threatening the applicants.
4. The 2nd applicant further deposed that on or about April 4, 2023, the assistant chief summoned him to his offices over a dispute over the suit land over claims that they had sold the land, an allegation which is false. Further, that on April 11, 2023, the respondents armed with pangas forcefully entered the suit land and curved out a portion of 1.5 acres to themselves.
5. That prior to this in the year 2016, the respondents had complained to the chief but were asked to produce a sale agreement which they failed to do so and it is then that the respondents were ordered not to enter the suit land unless on production of a court order.
6. The application was opposed by the replying affidavit of the 2nd respondent sworn on June 27, 2023 on behalf of the co-respondents. The 2nd respondent deposed that the applicants are not being honest in their allegations since sometime in the year 2015, the 2nd applicant and himself entered into a land transaction of one acre of land and falsely obtained Kshs. 217,000/- from him stating that he was selling land to him.
7. Further, that the 2nd applicant showed him a parcel of land that he was selling to him only for the owners to emerge when he started fencing the same. That indeed, a meeting was held at the chief's office on diverse dates in the year 2015 when the 2nd applicant admitted to receiving money from him which prompted the parents to request for three months to come up with a solution.
8. The 2nd respondent further deposed after the lapse of three months, another meeting was convened where the 1st applicant was also present together with the 2nd applicant's father. The 2nd respondent deposed that he has been in peaceful occupation of one acre until 1st April, 2023 when the applicants started threatening his family with eviction. Further, that the applicants caused destruction of the farm produce and the fence and as such, it is his position that he did not encroach into the land on April 11, 2023.
9. The 2nd respondent deposed that this suit has been brought in bad faith and misrepresentation of material non-disclosure of how he ended up on the land and it would be in the interest of justice if the prevailing status quo is maintained until the dispute is decided at the trial.
10. In response thereto, the 2nd applicant filed a supplementary affidavit sworn on August 2, 2023. While reiterating the contents of his supporting affidavit, the 2nd applicant deposed that in the year 2015, he attended a meeting at the chief's office, Olposimoru on reports that he had sold land and which meeting was attended by many people. That the crowd became hostile and the chief ordered him to sign the minutes stating that he had sold land to the 2nd respondent but he refused to sign the same.



11. The applicant further deposed that the 2nd respondent has never occupied any portion of the suit land and did so on April 11, 2023 when they tried to forcefully take possession and threatened to kill him if he interfered with their occupation.
12. On August 15, 2023 the applicants filed written submissions dated August 2, 2023. The applicants raised three issues for determination as listed below:-
 - a. Whether the applicants have an arguable case with a probability of success.
 - b. Whether the applicants will suffer irreparable injury which would not adequately be compensated by an award of damages.
 - c. Whether the plaintiffs are entitled to the awards sought.
13. On September 13, 2023 the respondents filed their written submissions dated September 8, 2023. The respondents raised two issues for determination as follows:-
 1. Whether the applicants are entitled to any of the orders sought pending hearing and determination of the application and the suit.
 2. Whether the 1st, 2nd, 3rd and 4th respondents entered into the disputed land forcefully or illegally as alleged by the applicants.
14. I have considered the pleadings, the documents relied upon and the written submissions filed by both parties. At the centre of the dispute is an alleged 1.5 acres or thereabout that is claimed to be owned by either party. Upon perusal of the pleadings, the issue in contest is an alleged transaction of land whose value is said to be Kshs. 217,000/-. In my view, this is a matter that ought to be heard and determined by the Magistrates' court since it has pecuniary jurisdiction over the same.
15. As such, this matter is hereby transferred to the magistrates' court for hearing and determination on a priority basis. The orders issued by this court on May 3, 2023 are hereby vacated. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 26TH DAY OF SEPTEMBER, 2023.

HON. MBOGO C.G.

JUDGE

