



**Njeru v Njeru & another (Environment & Land Case 9 of 2023)  
[2023] KEELC 20033 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20033 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 9 OF 2023  
MD MWANGI, J  
SEPTEMBER 26, 2023**

**BETWEEN**

**JOSEPH NGATIA NJERU ..... PLAINTIFF**

**AND**

**SAKINA STAR LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**LOISE NGINGA NJERU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Background**

1. This is a matter that was originally filed in the Family Division of the High Court at Nairobi. However, upon an application by the 2<sup>nd</sup> Defendant herein, the High Court on 2<sup>nd</sup> June 2023 made an order transferring the case to this court after finding that it lacked the jurisdiction to hear and determine it. Maureen Odero, J found that “the correct and proper forum before which the Plaintiff ought to ventilate his claim to the suit land is the ELC.”
2. There are 2 applications before me for determination. One by the Plaintiff dated 19<sup>th</sup> June 2023 and the 2<sup>nd</sup> one by the 2<sup>nd</sup> Defendant dated 10<sup>th</sup> June 2023. Parties agreed that the 2 applications be considered concurrently. The Plaintiff’s advocate prayed that his application be considered as his response to the 2<sup>nd</sup> Defendant’s application. The court allowed the request. It also granted the Plaintiff leave to file and serve a further affidavit with corresponding leave to the Defendants to also file their affidavit upon service of the Plaintiff’s further affidavit on them. Parties further agreed to canvass the 2 applications by way of written submissions.

**Plaintiff’s Notice of Motion dated 19th June 2023.**

3. By way of the Notice of Motion dated 19<sup>th</sup> June 2023, the Plaintiff prays for an order of temporary injunction to restrain the Respondents from demolishing, leasing selling, entering, encroaching,



trespassing, working, developing and or evicting him from the suit property. Secondly the Plaintiff prays for an order to compel the Respondents to restore water and electricity supply to the Plaintiff and his tenants.

4. The Plaintiff's application is premised on the grounds on the face of the application and on the affidavit of Joseph Ngatia Njeru.
5. The Plaintiff/Applicant states that he is a beneficiary of the estate of his late father, Michael Njeru Kiraiku (deceased) who died in 1969 while the 2<sup>nd</sup> Defendant is the administrator of the estate, the widow of the deceased and his mother.
6. The Plaintiff's claim is that the suit property (L.R. 209/3531/13) was bought with the proceeds from the sale of a property in Kapsabet that was owned by his late father following a unanimous decision of the entire family. The Plaintiff avers that the family of his late father also agreed to construct rentals on the suit property and divide the rental proceeds amongst themselves. The suit property was to be registered in the sole name of their mother the 1<sup>st</sup> defendant while the Plaintiff was appointed to manage the rentals and all outgoings.
7. The Plaintiff asserts that the family of his late father proceeded to build the residential houses with financing through a mortgage which was partly serviced by rent proceeds from the development. The Plaintiff avers that he also contributed towards clearing the loan with his own personal money and occasionally also paid the land rates for the suit property.
8. It is the Plaintiff's case that in a twisted turn of events the 1<sup>st</sup> Respondent, his own mother cut him off from his share of rent proceeds without any justifiable cause when he had no other source of income or residence. This forced him in the year 2013 to construct his own rentals on his share of the suit property with the knowledge and consent of the family. He asserts that he sustains himself and his own family from the said rentals which are 18 in number both commercial and residential. The commercial ones are occupied by tenants enjoying 5 year' leases. They include a supermarket, salons, butcheries, milk depots, hotels, mpsa shops, vegetable vendors and an ice-cream shop.
9. The Plaintiff accuses the 1<sup>st</sup> defendant/Respondent of frustrating him with the intention to force him to leave the suit property by maliciously instituting a criminal case against him. The Plaintiff was however acquitted for lack of proof of the charges of breach of the peace.
10. The Plaintiff further alleges that the 1<sup>st</sup> Respondent sold the suit property to the 2<sup>nd</sup> Defendant/Respondent without the knowledge and consent of the family members in an effort to disinherit him, and force him out of the suit property. That is what forced him to file this suit which he originally filed in the Family Division of the High Court. The High Court had issued status quo orders which were discharged vide the ruling of 2<sup>nd</sup> June 2023. The Plaintiff avers that upon the discharge of the status quo orders, the 2<sup>nd</sup> Defendant/Respondent made an attempt to evict him and his tenants by force. The 2<sup>nd</sup> Defendant was allegedly prevented from demolishing the Plaintiff's house and his rentals by the local police.
11. The Plaintiff alleges that the 2<sup>nd</sup> defendant has had him arrested twice to further threaten him and frustrate him into giving up possession of the suit property. He has been charged with a criminal case in Makadara Law Courts. His tenants too have been threatened.
12. After the 2<sup>nd</sup> Respondent was unable to demolish the Plaintiff's house and rentals, he allegedly caused the disconnection of electricity and water supply to the Plaintiff and his tenants. The Plaintiff's tenants are unable to run their business in view of the disconnection of water and electricity. The Plaintiff claims that he had already, in writing committed to Kenya Power & Lighting Company to take up



- payment of electricity bills of the suit premises and had even over paid to the extent of Kshs 54,728.11. He also commits to pay the water bills pending hearing and determination of this suit.
13. The Plaintiff alleges that the 2<sup>nd</sup> Defendant's application dated 10<sup>th</sup> June 2023 is an attempt to beguile the court into granting them demotion orders for fictitious or temporary structures while their actual intention is to demolish every single building that the Plaintiff has constructed on the suit property. This according to the Plaintiff will render the suit nugatory and cause irreparable harm to the Plaintiff and his tenants which cannot be atoned by way of damages whatsoever or howsoever.
  14. The Plaintiff reiterates that the actions by the Defendants amount to blatant abuse and disregard of his right to a share of inheritance of the suit property under the law of succession act and by extension article 40 of the constitution of Kenya 2010 as read with section 24 of the Land Registration Act.  
The 2<sup>nd</sup> Defendant's Notice of Motion application dated 10<sup>th</sup> June 2023.
  15. On its part, the 2<sup>nd</sup> Defendant too has filed a Notice of Motion application dated 10<sup>th</sup> June 2023. The 2<sup>nd</sup> Defendant prays for an order of temporary injunction restraining the Plaintiff from entering, trespassing or operating a business from the illegal extensions, temporary mabati structures and residential premise situate on the suit property pending hearing and determination of this suit. Secondly, the 2<sup>nd</sup> defendant prays for a temporary mandatory injunction directing the Plaintiff to demolish all the illegal extensions, temporary mabati structures constructed along the wall/frontage and on top of the suit property pending hearing and determination of the suit.
  16. The 2<sup>nd</sup> Defendant's application is premised on the grounds on its face and the supporting affidavit of one Shariff Abdullahi Omar.
  17. The 2<sup>nd</sup> defendant asserts that he is the registered owner of the suit premises having acquired the same from the 1<sup>st</sup> Defendant with a residential premise therein. The 2<sup>nd</sup> defendant further avers that he removed all tenants to the residential premises on the suit property pursuant to a notice.
  18. It is the 2<sup>nd</sup> defendant's case is that extensions, temporary iron sheets, mabati structures along the frontage of the wall and on top of the residential premises the suit property were constructed without approval of the County Government and are illegal. Operation of businesses from the said structures is therefore illegal. The 2<sup>nd</sup> Defendant asserts that the Plaintiff took advantage of the status quo orders and put up additional temporary iron sheet/mabati structures along the wall and on top of the residential premises on the suit property. Further in an act of stealing a match, the Plaintiff put in new tenants to the residential premises that had been vacated.
  19. The 2<sup>nd</sup> Defendant accuses the Plaintiff of acting with impunity by threatening the 2<sup>nd</sup> Defendant's directors and inciting the tenants against them as well as collecting rent hence preventing the 2<sup>nd</sup> defendant from enjoyment of their private rights to property. The 2<sup>nd</sup> Defendant further alleges that it has been forced to settle bills for electricity and water consumed by the Plaintiff and his agents. The Plaintiff has also allegedly created 3<sup>rd</sup> party contracts without the consent of the 2<sup>nd</sup> Defendant, the registered owner of the suit property though the same was disconnected on 8<sup>th</sup> June 2023.
  20. The 2<sup>nd</sup> Defendant further prays for the expeditious disposal of this case.

#### **Response by the 1<sup>st</sup> Defendant.**

21. The Advocate for the 1<sup>st</sup> Defendant informed the court that the 1<sup>st</sup> Defendant was in support of the 2<sup>nd</sup> Defendant's application. She was however opposed to the Plaintiff's application dated 19<sup>th</sup> June 2023. Her response to the Plaintiff's application was by way of replying affidavit sworn on the 20<sup>th</sup> July 2023.



22. The 1<sup>st</sup> Defendant deposed that the Plaintiff was her 2<sup>nd</sup> born son. He sued her after she had sold and transferred her property L.R. No. 209/3531/13 (the suit property) to the 2<sup>nd</sup> Defendant. She exhibited the sale agreement, deed of assignment, transfer and the title.
23. The 1<sup>st</sup> Defendant is categorical that she owes the Plaintiff no explanation whatsoever for the sale of her property. She asserts that the suit property was her personal property and not family property as alleged by the Plaintiff. She had purchased it on 15.12.1993, 24 years after the death of her husband. She was not holding it in trust for the family. It was solely hers until she sold and transferred it to the 2<sup>nd</sup> Defendant on 11.11.2022.
24. The 1<sup>st</sup> Defendant deposes that after the sale and transfer of the suit property to the 2<sup>nd</sup> defendant, she issued notices dated 5.11.2022 to the Plaintiff and her 20 tenants informing them of the sale and requiring them to vacate and yield possession to the 2<sup>nd</sup> Defendant. She too wrote to KPLC and Nairobi Water and sewerage Company instructing them to close her accounts. She therefore has no interest over the suit property. The Plaintiff too has no interest in the suit property and never had any at all.
25. The 1<sup>st</sup> Defendant avers that the Plaintiff's has no reasonable cause of action against her and the 2<sup>nd</sup> Defendant. His application and suit are therefore non – starters.
26. The 1<sup>st</sup> Defendant states that she has no remaining tenants on the suit property. All her tenants vacated from the suit property or about December 2022. The Plaintiff and his alleged tenants are merely trespassers.
27. The 1<sup>st</sup> Defendant denies ever leasing her former property to any commercial tenant. Since 2004 she only issued residential tenancies.

### **Court's Directions**

28. The court directed parties to file written submissions. The parties complied and filed their written submissions. The court has had occasion to read the submissions which now form part of the record of the court.

### **Analysis and Determination.**

29. This matter is already pending hearing before this court. I will therefore be deliberately economical with my words in order not to prejudice or embarrass the hearing of the case. From my reading of the submissions by the parties herein, their submissions touch on the substantive dispute between them. They have substantially submitted as if the court was making a final determination at this point in time.
30. What is before the court are interlocutory applications which are not meant to conclusively decide the rights of the parties but are, as Cotton L.J observed in the case of *Gilbert v Endean* (1878) 9 CH.D 59,  

“..... made for the purpose of keeping things in status quo till the rights can be decided, or for purpose of obtaining some direction of the court as to how the cause is to be conducted as to what is to be done in the progress of the cause for the purpose of enabling the court ultimately to decide upon the rights of the parties.”



31. Ringera J (as he then was) in the case of *Airland Tours and Travels Ltd v National Industrial Credit Bank Nairobi* (Milimani) HCCC No. 1234 of 2002 too stated that,
- “...in an interlocutory application the court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law.”
32. Looking at the applications and submissions by the parties, that is actually what they have invited this court to do. Their affidavits heavily dwell on the main dispute between them; the substance of the suit.
33. Ideally and under the common law doctrine of ‘Lis Pendens’, in land cases like this one, status quo should be maintained from the time a case is filed in court until its determination.
34. The *Black’s Law dictionary*, 9<sup>th</sup> edition defines ‘Lis Pendens’ as the jurisdictional power or control acquired by a court over property while a legal action is pending.
35. The Court of Appeal in the case of *Ruth Kinyua v Patrick Thuita Gichure & another* (2015) eKLR cited with approval Turner L.J in *Bellany v Sabine* (1857) 1 De J 566 where he had held that:
- “ (Lis Pendens) is a doctrine common to the courts both of law and equity and rests as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation pendente lite were permitted to prevail. The Plaintiff would be liable in every case to be defeated, by the Defendants alienating before the Judgment or decree, and would be driven to commence his proceedings de novo subject again to defeat by the same course of proceedings.”
36. Madan J (as he then was) had in the case of *Mawji v US international University and another* (1976) KLR 185, stated that,
- “ The doctrine Lis Pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice.”
37. Nambuye J (as she then was) too had in the case of *Bernadette Wangare Muriu v NSSF Board of Trustees & 2 others* (2012) eKLR also affirmed the necessity of the doctrine of Lis Pendens in adjudication of Land matters in the following words;
- “ The necessity of the doctrine of Lis Pendens in the adjudication of land matters pending before the court cannot be gainsaid, particularly for its expediency as well as the orderly and efficacious disposal of justice.”
38. Though the doctrine of Lis Pendens is not presently expressly provided for in the land statutes of this country after the repeal of the *Indian Transfer of Property Act* (ITPA), the Court of Appeal in the case of *Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another* (2015) eKLR held that *Lis Pendens* being a common law principle was still applicable in Kenya by virtue of the provisions of section 3(1) of the *Judicature Act*, Cap 8 Laws of Kenya which provides that: -
- “ The jurisdiction of the High Court, the Court of Appeal and all Subordinate Courts shall be exercised in conformity with-
- a. the *constitution*.



- b. Subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in part 1 of the schedule to this Act, modified in accordance with part II of that schedule.
- c. Subject thereto and so far as those written laws do not extend or apply, the substance of the Common Law, the Doctrines of Equity and the Statutes of general application in force in England on the 12<sup>th</sup> August 1897 and the procedure and practice observed in Courts of Justice in England at that date;

Provided that the Common Law, Doctrines of Equity and Statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.”

39. The ELC Practice Directions of 2014 enjoins this court in exercising its authority and jurisdiction, to, at all stages of any trial be guided by Article 159 of the constitution, Sections 1A & 1B of the Civil Procedure Act and Section 13 of the Environment and Land Court Act so as to facilitate: -
  - a. Fast;
  - b. Expeditious
  - c. Proportionate; and
  - d. Accessible resolution of disputes.
40. Clause 32 of the ELC Directions 2014 on the other hand encourages parties during the inter-partes hearing of any interlocutory application to agree to maintain the status quo. Where they cannot agree, the Judge is mandated to, after considering the nature of the case or hearing both sides, exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.
41. In the instant case, having considered the arguments of the parties in this matter; and having in mind the nature of this case; further applying the principle of lis pendens, and guided by the provisions of clause 32 of the ELC Directions 2014, I am of the considered view that it is not in the interest of justice to grant either party the orders sought in their respective applications. The appropriate action at this point in time is to order for status quo pending the hearing and final determination of this suit. Let the situation remain as it is. No party should alter it in any way.
42. Further, considering the peculiar circumstances of the case, the court will ensure its expedient hearing and disposal in any event in the next 12 calendar months at most. To facilitate that, and in accordance with the provisions of Order 11 of the Civil Procedure Rules and the ELC practice directions, 2014, the court directs that there shall be two pre-trial conferences only to confirm compliance with Order 11 (of the Civil Procedure Act) and certification of the matter as ready for hearing.
43. Accordingly, the court directs the parties to file and exchange their paginated trial bundles which must include copies of all their pleadings, witness statements and list and bundle of documents, within the next 21 days from the date hereof.
44. Finally, the costs of this application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**M. D. MWANGI**



**JUDGE**

