



Njogu (Suing for himself and on behalf of the estate of his late father, Njogu ngatia alias Njogu s/o Ngatia) (Suing for Himself and on Behalf of the Estate of his Late Father, Njogu ngatia alias Njogu s/o Ngatia) v Baaru & 7 others (Environment & Land Case E022 of 2022) [2023] KEELC 19896 (KLR) (22 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19896 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E022 OF 2022**

**JO OLOLA, J
SEPTEMBER 22, 2023**

BETWEEN

GEOFFREY MWANGI NJOGU (SUING FOR HIMSELF AND ON BEHALF OF THE ESTATE OF HIS LATE FATHER, NJOGU NGATIA ALIAS NJOGU S/O NGATIA) APPLICANT

SUING FOR HIMSELF AND ON BEHALF OF THE ESTATE OF HIS LATE FATHER, NJOGU NGATIA ALIAS NJOGU S/O NGATIA

AND

CHARITY KIRIGO BAARU 1ST RESPONDENT
ANN WAMUYU BAARU 2ND RESPONDENT
PATRICK WACHIRA NGATIA 3RD RESPONDENT
STEPHEN MUHORO NGATIA 4TH RESPONDENT
WILSON MAINA NGATIA 5TH RESPONDENT
JAMES BAARU NGATIA 6TH RESPONDENT
NELIUS MUTHONI KAROGO 7TH RESPONDENT
ANNA WAMUYU BAARU 8TH RESPONDENT

RULING

1. By the Notice of Motion dated 25th October 2022, Geoffrey Mwangi Njogu suing for himself and on behalf of his father Njogu Ngatia (the Plaintiff) prays for orders:



3. That the Defendants/Respondents by themselves, agents and/or servants be restrained by (an) order of this Court from developing, transferring, charging or in any other way alienating land parcel numbers Konyu/Baricho/3407, 3408, 3409, 3410, 3411, 3412, 4044, 4043, 4045, 4046, 4047, 4228, 4229 (and) 4230 pending the hearing and determination of their suit herein;
 4. That a prohibitory order be issued prohibiting dealings in land parcel numbers Konyu/Baricho/3407, 3408, 3409, 3410, 3411, 3412, 4044, 4043, 4045, 4046, 4047, 4228, 4229 (and) 4230 pending the hearing and determination of their suit herein; and
 5. That the costs of this application be provided for.
2. The application is supported by an Affidavit sworn by the Plaintiff and is premised on the grounds:
 - (a) That the Respondents illegally and irregularly caused sub-division of land parcel number Konyu/Baricho/180 without notifying the Plaintiff and other beneficiaries and no beacons were placed on the ground to mark the boundaries;
 - (b) That the parcel meant for the Applicant and his family are registered in the names of the Respondents and there is great likelihood of the Respondent dealing with the properties to the detriment of the Applicant;
 - (c) That the Applicant is now at risk of being left homeless despite having a home on the disputed land parcel; and
 - (d) That unless the orders sought are granted, the Applicant's right to own a portion of land parcel number Konyu/Baricho/180 will be infringed and he will be disinherited by the Respondents.
 3. The application is opposed. In her Replying Affidavit sworn on 5th December, 2022 on her own behalf and on behalf of the 1st Respondent, Ann Wamuyu Baru (the 2nd Respondent) asserts that the suit herein is mischievous and an abuse of the Court process. The 2nd Respondent avers that she is the wife to the late Paul Baaru and that the 1st Respondent Charity Kirigo Baaru is her co-wife who also passed away in 2019.
 4. The 2nd Respondent avers that the Plaintiff/Applicant is a vexatious litigant and that the Applicant together with his brothers have been filing cases concerning the same properties and they are intent on putting the Respondents on perpetual litigation on matters that have been decided.
 5. The 2nd Respondent further avers that LR no Konyu/Baricho/180 is no longer in existence and that the estate of the original owner was handled and distributed a long time back to the late Paul Baaru and Nelson Njogu who shared the estate. It is further her case that the Applicant is aware of the succession proceedings and that the issues being raised in this suit are *res judicata*.
 6. The 3rd, 4th, 5th and 6th Respondents are equally opposed to the application. In a Replying Affidavit sworn on their behalf on 1st December, 2022 by Patrick Wachira Ngatia (the 3rd Respondent), they assert that the Applicant is non suited against them and that if he has any claim, the Respondents are the wrong persons to be sued.
 7. The 3rd to 6th Respondents state that their father who is deceased was polygamous and that their mothers and that of the Applicant were different. The Respondents further assert that after the Certificate of Succession was issued pursuant to Karatina DM Succession Cause no 46 of 1977, LR no Konyu/Baricho/180 was registered in the joint names of Baaru Ngatia alias Paul Baaru Ngatia and Nelson Njogu Ngatia. The two thereafter caused the land to be partitioned and each house was then given its share of the land.



8. I have carefully perused and considered both the application as well as the respective responses thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the Parties herein.

9. By the application before the Court, the Plaintiff prays for orders restraining the 8 Defendants from developing, transferring, charging or in any other way alienating some fourteen (14) parcels of land pending the hearing and determination of the suit.

In addition, the Plaintiff craves for a prohibitory order to issue prohibiting any dealing in the said parcels of land.

10. As was long stated in *Giella v Cassman Brown & Company Limited* (1973) EA 358:

“The conditions for the grant of an interlocutory injunction are now, I think well settled in East Africa. First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not be normally 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 the balance of convenience.”

11. That being the case, the first inquiry that this Court must make is whether or not the Plaintiff has made out a *prima facie* case with a probability of success. As was held by the Court of Appeal in *Mrao v First American Bank of Kenya Limited & 2 Others* (2003) KLR 125:

“... a *prima facie* case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

12. In the matter before me, the Plaintiff accuses the eight (8) named Respondents of sub-dividing the original parcel of land known as Konyu/Baricho/180 into several pieces of land and thereafter acquiring title deeds thereto to the exclusion of the Plaintiff and other members of his family who were entitled as beneficiaries to the said parcel of land.

13. It was the Plaintiff’s case that the said original parcel of land belonged to the Plaintiff’s grandfather one Ngatia Njogu and that his own father Njogu Ngatia was one of the beneficiaries of the estate but his family had not benefitted from the same. He accused the Respondents of illegally and irregularly causing the sub-division of the original parcel of land without notifying and/or including the other beneficiaries like himself.

14. From the material placed before me, it was apparent that the Plaintiff’s grandfather, the said Ngatia Njogu passed on way back in November, 1974. His estate was the subject of Karatina District Magistrates Court Succession Cause no 46 of 1977. It is apparent from a perusal of the proceedings in the said Succession Cause annexed to the Plaintiff’s Supporting Affidavit that the old man had three wives and that one of the wives had no male children.

15. By orders issued on 3rd November 1977, the Karatina District Magistrates Court decreed that the parcel of land known as Konyu/Baricho/180 be registered in the names of Baru s/o Ngatia and Nelson Njogu s/o Ngatia representing the two houses of Njogu Ngatia which had male children.

16. It was also apparent to me that it was the two registered proprietors who proceeded to sub-divide the land and to issue the same to their siblings. That can be discerned from the fact that the Plaintiff



does not disclose exactly when the sub-divisions were done. From a copy of the Certificates of Official Searches annexed to the Plaintiff's application, it was apparent that some of the sub-divisions were done as early as the year 2007.

17. It was also clear to me that the Plaintiff was aware of the sub-divisions a long time back. That is the reason in the year 2010, some 12 years before he filed this case, he had instituted Nyeri HCCC no 152 of 2010 (OS) against the 1st and 2nd Respondent herein as widows of the said Baaru Ngatia claiming that they held one of the sub-divisions being LR no Konyu/Baricho/3069 in trust for the Plaintiff and other unnamed beneficiaries.

18. As was stated in Nguruman Limited v Jan Bonde Nielsen & 2 Others (2014)eKLR:

“The party on whom the burden of proving a *prima facie* case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

19. In the circumstances of this case where the sub-divisions complained of were done many years back, I was not persuaded that there was any urgent necessity to grant any orders herein. It was also apparent that the Plaintiff was dissatisfied with the mode of distribution of his grandfather's estate following the Succession Cause that was concluded in the Karatina District Magistrates Court in 1977. I was not persuaded at this interlocutory stage that this was the correct forum to pursue the issue of the distribution of the estate.

20. In the premises, I was not persuaded that the Plaintiff's Motion dated 25th October, 2022 had any merit. The same is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 22ND DAY OF SEPTEMBER, 2023.**

In the presence of:

Mrs. Machira for the Plaintiff/Applicant

Mr. H. K. Ndirangu for the 1st and 2nd Respondents

Ms Mwangi for the 3rd to 6th Respondents

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J. O. OLOLA

JUDGE

