



**Wambugu v Njeri & another (Environment & Land Case E003 of 2023)  
[2023] KEELC 19937 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19937 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E003 OF 2023  
JO OLOLA, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**PRISCILLA MUTHONI WAMBUGU ..... PLAINTIFF**

**AND**

**FAITH NJERI ..... 1<sup>ST</sup> DEFENDANT**

**GERALD NDONGA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated and filed herein on February 2, 2023, Priscilla Muthoni Wambugu (the Plaintiff) prays for an order that pending the hearing of this suit, this Honourable Court do issue an order of temporary injunction restraining the two (2) Defendants or anyone claiming under them from entering and/or remaining upon the suit premises, collecting rent therefrom or interfering with the Plaintiff's quiet possession.
2. The application is supported by an Affidavit sworn by the Plaintiff wherein she avers that her husband one Vincent Ernest Muguku Muriu passed away on January 8, 2023. The Plaintiff avers that they got married with the deceased under Kikuyu Customary Law and that during his lifetime, they purchased land parcel No Nyeri Municipality/ Block 1/1434 which they developed by putting up rental flats known as 'Valley View'.
3. The Plaintiff further avers that her husband was polygamous and that the 1<sup>st</sup> Defendant herein was his first wife while the 2<sup>nd</sup> Defendant is their son. It is her case that shortly after the husband's death and interment, the Defendants took over the suit property and directed the tenants thereon to pay rent to themselves. The Plaintiff further accused the Defendants of having installed security guards on the suit premises thereby hindering her access thereto to her detriment and those of her children.
4. Faith Njeri Muguku and Gerald Ndonga (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively) are opposed to the grant of the orders sought. In a Replying Affidavit sworn by the 1<sup>st</sup> Defendant on February 17, 2023



and filed herein on February 20, 2023, the two Defendants who are a mother and her son aver that contrary to the Plaintiff's assertions, the Plaintiff is not the wife to the said Vincent Ernest Muguku Muriu (the deceased).

5. The 1<sup>st</sup> Defendant avers that she is the only surviving spouse of the deceased having been married on November 1, 1975 at St John's Church Kiru in Murang'a County. It is the 1<sup>st</sup> Defendant's case that the deceased was incapable of contracting another marriage during the subsistence of their marriage as they were in a monogamous union.
6. The 1<sup>st</sup> Defendant avers that their union was blessed with six (6) children and that they worked hard together with the deceased to raise the children and to acquire property for the well-being of their future. In that respect, the 1<sup>st</sup> Defendant asserts that in the year 2011, she personally took up a loan facility from Housing Finance to support the construction of the buildings on the suit property and another parcel of land known as Nyeri Municipality Block 3/71.
7. The 1<sup>st</sup> Defendant asserts further that contrary to the Plaintiff's contention that she jointly acquired the suit property with the deceased, the suit property was solely acquired by the deceased in the year 1998 at a consideration of Kshs 200,000/-. As at the time of the sale, the vendor had not yet procured title over the same and as such did not transfer the same to the deceased at the time of sale and the transfer was only done on July 9, 2019.
8. The 1<sup>st</sup> Defendant further avers that prior to the transfer, the deceased had applied for a loan facility from Equity Bank on April 30, 2019 to facilitate further construction of rental units on the suit property. The 1<sup>st</sup> Defendant states further that she is aware that the Plaintiff frustrated the deceased by lodging a caution on the title by falsely claiming that she was a wife to the deceased and as a result the loan application was disrupted.
9. The Defendants aver that the suit property was initially registered in the sole name of the deceased and the same constitutes their matrimonial property. The 1<sup>st</sup> Defendant asserts that she did not give any consent for the registration of the Plaintiff as a joint proprietor of the land and if such a transfer was done, the same was illegal, null and void.
10. The 1<sup>st</sup> Defendant avers further that the Plaintiff has no right to issue any notice to her tenants as the suit property was and continues to be matrimonial property. She asserts that the purpose of hiring security guards was to ensure the tenants and the property are protected considering that there were several petty theft cases reported to herself.
11. The 1<sup>st</sup> Defendant further avers that she is aware the Plaintiff resides on the 1<sup>st</sup> Defendant's other parcel of land known as Nyeri Municipality Block 3/71 and she has never charged her rent but out of mutual respect allowed her to collect rent therefrom. It is her case that the assertion that the Plaintiff and her children are suffering is therefore false and misleading.
12. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the Defendants. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
13. By this application before me, the Plaintiff prays for an order of injunction to restrain the two Defendants or anyone claiming under them from entering and/or remaining upon the suit premises, collecting rent therefrom or interfering with the Plaintiff's quiet possession.
14. It is the Plaintiff's case that together with one Vincent Ernest Muguku Muriu (now deceased) they did purchase the parcel of land known as Nyeri Municipality Block 1/1434 and that they did develop the



same by putting up rental flats known as 'Valley View'. It is the Plaintiff's case that she was married to the said Vincent Ernest Muguku Muriu (the deceased) as his second wife.

15. The Plaintiff avers that following the demise of the deceased on January 8, 2023 and his subsequent interment, the 1<sup>st</sup> Defendant who was his first wife and the 2<sup>nd</sup> Defendant who is their son proceeded to take over the suit property and directed the tenants thereon to pay rent to themselves. The Plaintiff further accused the Defendants of posting security guards on the suit premises thereby hindering her access thereto to her detriment and that of her six (6) children.
16. But on their part, the two Defendants deny that the Plaintiff was a wife to the deceased. It is their case that the 1<sup>st</sup> Defendant was the sole wife to the deceased having been married to him on November 1, 1975. They aver that the deceased was incapable of contracting another marriage as they were in a monogamous union.
17. The 1<sup>st</sup> Defendant in particular asserts that they worked hard over the years together with the deceased to raise their six (6) children and to acquire property. In that respect, the 1<sup>st</sup> Defendant asserts that in the year 2011, she took up a loan facility for purposes of supporting the construction that herself and the deceased were carrying on the suit premises.
18. The Defendants assert that contrary to the Plaintiff's contention that she jointly acquired the suit property with the deceased, the said property was solely acquired by the deceased in the year 1998 at a consideration of Kshs 200,000/-. It is further their case that the property was on July 9, 2019 transferred to the name of the deceased and that the Plaintiff's claim is hence baseless.
19. The guiding principles for the grant of orders of temporary injunction were long settled in the judicial decision of *Giella -vs- Cassman Brown & Company Limited (1973) EA 358*. The position taken in that famous case has been reiterated in numerous decisions among them being the case of [\*Nguruman Limited -vs- Jan Bonde Nielsen & 2 Others CA No 77 of 2012 \(2014\) eKLR\*](#) where the Court of Appeal held that:

' In an interlocutory injunction application the Applicant has to satisfy the triple requirements to (a) establish his case only at a prima facie level; (b) demonstrate irreparable injury if a temporary injunction is not granted and (c) allay any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially'.

20. That being the case, the Plaintiff ought to first establish a prima facie case with a probability of success. As was stated by the Court of Appeal in *Mrao Limited -vs- First American Bank of Kenya Limited (2003) eKLR*:

' A prima facie case in a Civil Case 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 there exists a right which has apparently been infringed by the opposite Party as to call for an explanation or rebuttal from the latter.

21. In the matter before me, the two Defendants have produced a copy of a Certificate of Lease issued in the sole name of the deceased on August 26, 2019. In addition, they have produced a Certificate of Official Search dated September 30, 2019 indicating again that the suit property was solely registered



- in the name of the deceased and that the Plaintiff had as at that time lodged a caution on the land claiming an interest as a licensee.
22. The Plaintiff does not deny having lodged the caution. It is her case that though they jointly owned the suit premises with the deceased, the deceased had at the time sought to use the suit premises as security to secure a loan. Being opposed to the use of the land as collateral, she did lodge the caution to protect her interest in the property.
  23. From a perusal of Paragraphs 16 to 21 of the Defendants' Replying Affidavit, it was apparent that at least some three (3) years before the death of the deceased, they had been aware of the Plaintiff's claim to the land. The 1<sup>st</sup> Defendant indeed concedes that she was aware that the Plaintiff/Applicant frustrated the loan application by her husband after she (the Plaintiff) claimed to be the wife and lodged the caution on the land. It was apparent that following the Plaintiff's protest, the loan facility was never extended to the deceased.
  24. In support of her case, the Plaintiff has attached a Certificate of Search and an abstract of title which show that on the same June 26, 2019 when the Certificate of Lease whose copy was produced by the Defendants was issued in the sole name of the deceased, another title was issued in the joint names of the deceased and herself. The abstract of title gives the history of the suit property from when it was first registered in the name of one Humphrey Mbaka Nandi on March 21, 2013. It further indicates that the caution lodged by the Plaintiff was eventually withdrawn on November 1, 2019 and that the joint proprietors used the same to secure a loan of Kshs 2,000,000/- on August 23, 2021.
  25. The abstract of title further reveals that on an unclear date in February 2023, the 1<sup>st</sup> Defendant lodged a restriction on the land citing the fact that her husband Vincent Muguku was deceased. That in my view lends credence to the Plaintiff's contention that it was herself and the deceased who had been in possession and control of the suit premises and that the Defendants forcefully took control of the same following the demise of the late Vincent Muguku who is said to have passed away on January 8, 2023.
  26. While the circumstances under which the Plaintiff came to be registered as a joint proprietor with the deceased remain unclear, it was apparent from a perusal of the abstract that as at the time of the deceased's death, the two were registered as joint proprietors of the suit property. While the Defendants contend that the transfer and subsequent registration of the two as joint proprietors was fraudulent and/or irregular, no evidence of such impropriety has been put before the Court at this stage.
  27. It follows that this Court is persuaded that the balance of convenience tilts in favour of the Plaintiff who as a joint proprietor would become wholly entitled to the land under the doctrine of survivorship if she were to succeed in her case at the full trial.
  28. In the premises, I am persuaded that there is merit in the motion dated February 2, 2023. I allow the same in terms of Prayer No 3 thereof.
  29. I make no order as to costs.

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

**J. O. OLOLA  
JUDGE**

