



Kirima v American Towers Corporation (Environment & Land Case E047 of 2023) [2023] KEELC 20047 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20047 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E047 OF 2023
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

GERISHON KAMAU KIRIMA PLAINTIFF

AND

AMERICAN TOWERS CORPORATION DEFENDANT

RULING

1. Before me is a Notice of Motion Application dated 10.2.2023 where the applicant seeks orders of injunction against the defendant restraining the latter from interfering with land parcel LR 5908/8 pending the hearing and determination of the suit and that the OCS Njiru be directed to effect compliance with the court order.
2. The applicant contends that the suit land remains part of the estate of the late Gerishon Kirima of which the applicant is an administrator of the said estate.
3. She contends that the defendant has trespassed on the suit property, put up a fence and has proceeded to put up a construction site thereon.
4. She further states that the property is a subject matter in the following suits; HCSC Cause No 1298 of 2011; ELC 585 of 2013; HC Civil Case No 662 of 2006 and ELC No 1257 of 2014 where they had obtained injunctive orders against the trespassers.
5. On 22.6.2023, this court gave directions for the Respondents to file /serve their responses by 29.6.2023 but there was no compliance with the said order, thus the application is undefended. Nevertheless, this court has a duty to interrogate the merits of the said application. See – [Gideon Sitelu Kanchellah v. Julius Lekakeny Ole Sunkuli & 2 others](#) [2018] eKLR (SCOK).
6. I have taken into consideration that as at the time the suit was filed, the alleged construction which was a huge mast was almost finalised. The plaintiff has availed photos of the mast which indeed depicts



a more or less complete construction. The issue of restraining the defendant from constructing has therefore been overtaken.

7. Secondly, I find that there are many other suits as set out in paragraph 4 of the Supporting Affidavit of the Applicant in which the claimants are asserting their rights to the suit property LR 5908/8. Some of these cases are very old; for instance the case No 662/2006 is about 17 years old. In that case the claimant (Gerishon Kirima) obtained orders of 19.7.2006 in which a mandatory injunction to vacate parcel 5908/8 was issued. This court would be interested in knowing the status of these other suits, whether the various orders of injunction were effected and whether the suits were finalized.
8. In the case of *Paul Gitonga Wanjau v. Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR, the court stated that:

“an injunction is an equitable remedy meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction taking all the relevant facts into consideration.”

9. I find that the circumstances of this case do not warrant the issuance of the orders sought. The application is dismissed with no orders as to costs.
10. The plaintiff should focus on the expeditious disposal of the various suits so that her rights and interests in the suit properties are once and for all determined.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Onduso for Plaintiff Applicant

M/s Wangilo holding brief for Mr. Kuyo for Respondent

