



**Waweru v Munene (Environment and Land Miscellaneous Application  
E166 of 2021) [2023] KEELC 20263 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20263 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E166 OF 2021  
OA ANGOTE, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MOSES KARANJA WAWERU ..... PLAINTIFF**

**AND**

**REWEL MUNENE ..... DEFENDANT**

**RULING**

1. For determination is a Notice of Motion application dated 10<sup>th</sup> September, 2021 seeking the following orders:-
  - a. This Honourable Court be pleased to grant a temporary injunction restraining the Defendant/Defendant his agents, servants, employees and/or servants from trespassing into erecting and/or leasing, renting or constructing illegal structures or alienating, disposing of or otherwise interfering with the Plaintiff/Plaintiff's ownership, quiet and peaceful occupation and enjoyment of the suit plot or parcel of land known as Nairobi Block 120/336 situated within Chokaa in Nairobi County pending the hearing and determination of this application and/or suit herein.
  - b. The Defendant/Defendant his agents, servants, employees and/or servants be and hereby ordered, be stopped forthwith from threatening in any way the Plaintiff/Plaintiff with disturbances and violence in anyway and the order of this court enforced by the OCS Chokaa Police Station and DCIO Ruai Police Station respectively.
  - c. That the cost of this Application be provided for.
2. The grounds in support of the Motion are that the suit property was derived from allotment letter Ref. No. 50382 and was originally part of LR 6823 which was registered under Roysambu Housing Co-operative Society Limited and that the Plaintiff processed the title and became the registered owner of the suit property vide Certificate of Lease dated 11<sup>th</sup> August, 2016.



3. It was deponed by the Plaintiff that on or about 4<sup>th</sup> April, 2021, he became aware that the Defendant/Defendant had trespassed onto the suit property disregarding his proprietary rights and stationed thugs on the said property and that the Defendant/Defendant is in the process of constructing shops on the suit property and leasing them without his knowledge.
4. The Plaintiff deponed that he became a member of the Roysambu Housing Co-Operative Society Limited in 1990 under Share Certificate No. 50382; that on 11<sup>th</sup> day of August, 1992 he was given a Letter of Allotment Ref. No. 50382 in which he was allocated a parcel of land known as Nairobi Block 120/336 (the suit property) and that he accepted the offer together with the terms and conditions attached thereto.
5. According to the Plaintiff, the suit property was registered under the Registered *Land Act* in his name; that he was issued with a Lease dated 1<sup>st</sup> September, 1992 and that on 11<sup>th</sup> day of August, 2016, the suit property was again registered in his favour under the *Land Registration Act* No. 3 of 2012. Upon such registration, he was issued with a Certificate of Lease.
6. The Plaintiff further deponed that he visited his property on 2<sup>nd</sup> September, 2020 only to find that a stranger had trespassed onto the land and was undertaking construction thereon; that he carried out a search on the property on 15<sup>th</sup> September, 2020 and confirmed that it was still registered in his name and that he further confirmed payment of rates to Nairobi City Council for land known as Block 120/336.
7. In response to the Notice of Motion application, the Defendant deponed that he had been wrongly sued as he is not the owner of the property known as Nairobi Block 120/336 and is in fact a stranger to its existence.
8. He deponed that the property he manages is identified as Plot No. 987/1204 allotted to his mother, one Faith Nyambura Munene, by the Hurlingham Squatter Development vide Certificate No. 206 dated 29<sup>th</sup> June, 2005 and that this property which is owned by his mother and the one claimed by the Plaintiff are not one and the same on the ground.
9. Further, it was deponed, the two properties are different because they were allotted by two different entities, Nairobi Block 120/336 (the suit property) having been allotted by Roysambu Housing Co-Operative Society and Plot No. 987/1204 being allotted by Hurlingham Squatter Development, and hence there is no nexus between the suit property and his mother's property Plot No. 987/1204.
10. The Defendant further deponed that his mother was allotted Plot No. 987/1204 on 26<sup>th</sup> June, 2005 which was vacant at the time; that she immediately took possession of it; and that at the time of filing the suit, she had remained in uninterrupted possession of the said Plot No. 987/1204 from the year 2005 (16 years).
11. It is the Defendant's case that a lot of money has been dispensed on developing his mother's said plot, which his family relies on for rental income; that he is not a trespasser as the property he is currently occupying was allotted to his mother, who is waiting to be issued with the title documents and that the Title Deed to be issued will be different from the Plaintiff's Title No. Nairobi Block 120/336.
12. Finally, the Defendant deponed that the suit is devoid of merit as the Plaintiff has never been in possession of either Plot No. 987/1204 or the suit property and that 16 years, the number of years his mother has been in occupation of her plot, is a long time for one not to assert proprietary rights over a property. Both parties filed submissions which I have considered.



## Analysis and determination

13. The first issue to be considered is whether the Defendant is the correct party to be brought before this court. There is no dispute that the suit property is Nairobi Block 120/336. However, the narrative told by the Defendant is that he has been wrongly sued because the property he “manages”, Plot No. 987/1204, actually belongs to his mother one Faith Nyambura Munene who bought it from the Hurlingham Squatter Development. He is therefore not a trespasser on the said Plot No. 987/1204.
14. The Defendant is not claiming ownership nor does he have any proprietary rights to the property he is managing, identified as Plot No. 987/1204. He also claims that he has no interest over the suit property; that as a manager/caretaker, he stands not to be affected by any orders concerning ownership of the suit property and that he lacks locus standi to defend the suit.
15. Section 3 (1) of the Trespass Act, Cap 294 provides that:

“Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.”
16. This clearly means that trespass is any act of knowingly entering another person’s property or land without permission. By its very nature, trespass does not require the trespasser to have any interest or claim of right over the property. It would therefore be enough that the Defendant has entered onto the Plaintiff’s property with the intent of depriving him permanently of the land.
17. In the current application, the Plaintiff has accused the Defendant of trespass onto the suit property. In support of his case, the Plaintiff has annexed to the Supporting Affidavit the Certificate of Lease together with a Survey Plan for the said parcel of land and a Certificate of Official Search indicating that he is the registered proprietor of the suit premises. These documents are evidence of ownership of the suit property, which is prima facie proof of possession.
18. It is the Plaintiff’s case that on 2<sup>nd</sup> September, 2020, he visited his property and found that someone had trespassed onto his land and was digging out trenches for construction. The Plaintiff deposed that he found out that the Defendant was the person who had entered his land. Having proved on a prima facie basis that he is the registered owner of the suit property, the Plaintiff is entitled to both ownership and possession of the suit property.
19. That being so, it follows that no other party should have any right to enter the suit property, including the Defendant.
20. The Plaintiff is complaining about the Defendant’s occupation of the suit property. The Plaintiff produced a map showing the exact position of the suit property. That being the case, it is more probable than not that the property occupied by the Defendant is one and the same as the suit property. If the land which the Defendant was occupying was different from the suit property, there would be no need for the Plaintiff to have the Defendant restrained therefrom.
21. In fact, if the two parcels of land were indeed different, the Defendant would not be so opposed to the application, seeing as the orders, if granted, would ideally not relate to his property and such orders would be incapable of denying him access and use of his land.
22. That position is further informed by the Plaintiff’s averment, in paragraph 6 (v) of the Replying Affidavit, which is reiterated at Paragraph 11 (v) of the Defendant’s Defence that, “his mother had been



in possession of the Plot No. 987/1204 for a period of 16 years and this was an unreasonably long time for one not to assert proprietary rights over a property.”

23. I take this as an indirect admission of the Plaintiff’s title over the suit property, save that the Defendant’s mother, who he appears to be claiming through, has been in possession of the property for 16 years and which possession is adverse to the Plaintiff’s title. Therefore, the Defendant’s claim that the property he is occupying is not the suit property but a different parcel of land lacks credibility.
24. On the basis of the material placed before me, I am satisfied that the Plaintiff has made out a prima facie case with a probability of success.
25. I must agree with the Plaintiff that undertaking construction on the suit property, leasing the premises to tenants and collecting rental income from the suit property is not only proof of the Defendant’s trespass onto the property, but also goes to show that the Plaintiff is indeed incurring losses, and such losses will continue to be incurred if the temporary injunction is not issued.
26. In my view, therefore, the Plaintiff’s inability to occupy and develop the suit property, due to the Defendant’s trespass is loss that cannot be quantified or adequately compensated by way of damages. That aside, the Plaintiff has further expressed a fear that the Defendant might part with possession of the suit property to his detriment and such an event, should it occur, will also be difficult to be adequately compensated by way of damages.
27. The court thus agrees with the Plaintiff that there is need to preserve the suit property pending the outcome of the final judgment after parties have been heard on merit and a determination made on the ownership of the suit property.
28. For those reasons, the application dated 10<sup>th</sup> September, 2021 is allowed as follows:
  - a. A temporary injunction be and is hereby issued restraining the Defendant his agents, servants, employees and/or servants from trespassing into erecting and/or leasing, renting or constructing illegal structures or alienating, disposing of or otherwise interfering with the Plaintiff’s ownership, quiet and peaceful occupation and enjoyment of the suit plot or parcel of land known as Nairobi Block 120/336 situated within Chokaa in Nairobi County pending the hearing and determination of the suit.
  - b. The above order does not amount to an eviction of the Defendant or demolition of any developments that may be standing on the suit property.
  - c. Each party to bear his own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023.**

**O. A. ANGOTE**

**JUDGE**

**In the presence of;**

Mr. Kariuki for Defendant/Respondent

No appearance for Plaintiff

Court Assistant - Tracy

