



**Gichuru v Kenya National Highways Authority (Environment & Land
Case E1 of 2023) [2023] KEELC 21102 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21102 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E1 OF 2023
LA OMOLLO, J
OCTOBER 26, 2023**

BETWEEN

ARTHUR KURIA GICHURU PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 15th December, 2022.
2. The said application is expressed to be brought under Article 40 of the *Constitution* of Kenya, Section 63(c) of the *Civil Procedure Act*, Order 40 rules 1 and 3 and Order 51 rules 1, 2 of the *Civil Procedure Rules*.
3. The Applicant seeks the following prayers;
 - a. Spent
 - b. That this Honorable Court be pleased to issue conservatory orders restraining the Respondent by itself, their agents, servants and or personal representatives from wasting the land and entry onto the suit property land parcel number Miti Mingi/Mbaruk Blok 8/1224 (Kianjoya D) pending the hearing and determination of this suit inter partes.
 - c. That the Honorable Court do issue such other orders and directions as expedient in the interest of justice.
 - d. The costs of this application be provided for.



Factual Background.

4. This suit was commenced by way of a Plaint dated 15th December, 2022. The Plaintiff seeks the following prayers;
 - a. An order of permanent injunction restraining the Defendants from compulsorily acquiring the land parcel and interfering with the Plaintiff's quiet possession over land registration number Miti Mingi/Mbaruk Block 8/1224 (Kianjoya D).
 - b. Alternatively, to justly compensate the Plaintiff by:-
 - i. An award of money in lump sum or installments equal to the current value of the land, or
 - ii. An award of an alternative parcel of land of equivalent value and comparable geographical location.
 - c. General damages for mental anguish in apprehension of possible deprivation.
 - d. Interest in (b) (i) above.
 - e. Costs of the suit.
 - f. Any other relief the court deems just to grant.
5. Despite service, the Defendant did not respond to the application.
6. The Plaintiff/Applicant's application first came up for hearing on 28th February, 2023 and was reserved for ruling on 18th May, 2023.
7. On 20th March, 2023 was reserved for ruling.

The Plaintiff/applicant's Contention.

8. The Plaintiff/Applicant contends that on 3rd January, 1993 he purchased land parcel No. Miti Mingi/Mbaruk Block 8/1224 (Kianjoya D) from Kianjoya Enterprises Limited.
9. The Plaintiff/Applicant also contends that on 13th November, 2007 he was issued with a title deed.
10. The Plaintiff/Applicant further contends that he has enjoyed exclusive and quiet possession of the suit property without any interference.
11. It is his contention that in light of the security of ownership that he has enjoyed, he developed the suit property and has been carrying out farming activities.
12. It is also his contention that he discovered that the Defendant/Respondent had published a notice requiring land proprietors within some identified areas to vacate and desist from farming, informal business or construction.
13. It is further his contention that his parcel of land was among those parcels affected by the said notice and that this took him by surprise since due process was not followed.
14. The Plaintiff/Applicant contends that he has never received any notice from the Land Registrar or any other relevant body purporting to map out his parcel of land for compulsory acquisition.



15. The Plaintiff/Applicant also contends that he got distressed upon discovering the said notice that communicated potential loss and deprivation of his property, which he had earned through hard work and toil.
16. The Plaintiff/Applicant further contends that he is apprehensive that the Defendant/Respondent by itself, its agents, servants and/or personal representatives will enter the land, waste it or interfere with it thereby prejudicing his rights and interests.
17. It is his contention that he is advised by his advocates on record that he should be given an opportunity to make an inquiry and raise proprietary and compensation claims regarding the proposed compulsory acquisition.
18. It is also his contention that granting a temporary injunction will accord him time to make an inquiry on the state of compensation over the land if any while preserving its state.
19. It is further his contention that he is advised by his advocates on record that before land is compulsorily acquired, a proprietor ought to be justly compensated through the available mechanisms of compensations envisaged under the law.
20. The Plaintiff/Applicant contends that he stands to suffer substantial loss and injury to his proprietary rights if the Defendant/Respondent is to enter and waste his land without any recourse.
21. He ends his deposition by stating that he has made the application in good faith and without unreasonable delay and the Defendant/Respondent will not suffer any prejudice if the application is allowed as prayed.
22. Neither of the parties filed their submissions to the application.

Analysis And Determination.

23. After considering the Plaintiff/Applicant's application, the only issue that arises for determination is whether the court should issue conservatory orders restraining the Defendant/Respondent from entering land parcel No. Miti Mingi/ Mbaruk Block 8/1224 (Kianjoya D) pending the hearing and determination of this suit.
24. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR the Supreme Court held as follows;

“(86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the Applicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”



25. In the judicial decision of *Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General* [2011] eKLR the Court stated thus;
- “It is important to point out that the arguments that were advanced by counsel and that I will take into account in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s application and not the Petition. I will not therefore delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the *Constitution*” (Emphasis mine)
26. In the present matter, it is the Plaintiff/Applicant’s contention that he is the registered owner of land parcel No. Miti Mingi/Mbaruk Block 8/1224 (Kianjoya D).
27. It is also the Plaintiff/Applicant’s contention that the Defendant/Respondent issued a notice requiring that he vacates the suit property without consulting him.
28. It is further the Plaintiff/Applicant’s contention that he is apprehensive that the Defendant/Respondent is likely to enter the suit property and that this will result in the infringement of his rights.
29. For the court to grant a conservatory order, it has to determine whether a prima facie case has been established and whether the Plaintiff/Applicant’s case is arguable and not frivolous.
30. In support of his application, the Plaintiff/Applicant annexed an agreement for sale entered between Kianjoya Enterprises Limited as the vendor and Wilfred Mwathi Gichuru, Arthur Kuria Gichuru and others as purchasers.
31. The said agreement shows that the property being sold is Plot No. 1224 which was a subdivision of LR 4630/7, 8, 9 and LR 8851/2 situated near Nakuru town.
32. The purchase price of the suit property is shown as Kshs. 300,000/=. Possession was to be given upon completion of the survey works and upon full payment of the purchase price.
33. The Plaintiff/Applicant also attached to his application a public notice issued by the Defendant/Respondent titled “Nairobi (Rironi)-Nakuru-Mau Summit (A8) Road Expansion Project Compulsory Acquisition to pave way for a project.”
34. The public notice requires that all the people in the list shared with interior officers, present their original identification documents as per a schedule that was on said notice.
35. The Plaintiff/Applicant also attached a title deed of land parcel No. Miti Mingi/Mbaruk Block 8/1224 (Kianjoya ‘D’) registered in his name. It was issued on 13th November 2007.
36. As stated before, the Plaintiff/Applicant has to demonstrate that he has a prima facie case before a conservatory order is granted.
37. The Plaintiff/Applicant has demonstrated that he is the registered owner of land parcel No. Miti Mingi/Mbaruk Block 6/1224 (Kianjoya ‘D’).
38. The Plaintiff/Applicant has also demonstrated that the Defendant/Respondent is in the process of compulsorily acquiring land for the Nairobi (Rironi)- Nakuru – Mau Summit (A8) road expansion project.



39. However, the Applicant has not demonstrated that the suit property is among the parcels of land intended to be compulsorily acquired by the Respondent for the Nairobi (Rironi)- Nakuru – Mau Summit (A8) road expansion project.

40. In *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] eKLR the court held as follows;

“26. It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis.” (Emphasis mine)

Disposition.

41. In the result, I find that the Plaintiff/Applicant’s Notice of Motion application dated 15th December, 2022 lacks merit and is hereby dismissed with costs.

42. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF OCTOBER, 2023.

L. A. OMOLLO

JUDGE

