



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kithira v Kibiti (Environment & Land Case E003 of 2023)  
[2023] KEELC 21116 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21116 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E003 OF 2023  
CK NZILI, J  
OCTOBER 25, 2023**

**BETWEEN**

**SARAH KITHIRA ..... PLAINTIFF**

**AND**

**SILAS KIBITI ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 28.8.2023, the plaintiff/applicant prays for a temporary injunction barring and restraining the defendant, his agents, servants, or employees from evicting or interfering and or for the preservation of the current status of her dwelling or settlement over one acre of LR No. Nyaki/Munithu/327.
2. The application is based on the grounds set on the face of the application and in an affidavit sworn by Sarah Kithira on the event date. It is the plaintiff/applicant's averments that she entered the land registered under the defendant/respondent's name in 1975, erected a house, and has raised all her children therein. The respondent has acknowledged her occupation as per the demand letter sent to her dated 17.8.2023, and if the eviction takes place, she stands to suffer irreparable loss and damage. The applicant has attached a copy of the search, chief letter dated 19.7.2023, photographs, and a demand letter as annexures marked SK "1-04", respectively.
3. The defendant/respondent opposed the notice of motion through a replying affidavit sworn on 22.9.2023 by Silas Kibiti. He averred that the land came to him as an administrator of the estate of late M'Rura M'Mungania as per the official search and following a judgment in Meru Succession Cause No. 167 of 2019. He attached a copy of the judgment and a confirmation of the grant as an annexure marked SK 1 (a) & (b). The defendant denied the alleged occupation by the plaintiff for 12 years except that an order of injunction was issued in the succession cause. Further, the defendant/respondent averred that there was a delay in effecting service on the originating summons, though the



estate's beneficiaries were not opposed to the orders sought concerning one acre of the land only, with no order as to costs.

4. There is no dispute that an inhibition order has been in place against the title held by the defendant/respondent since 4.10.2013, but the same was lifted on 13.4.2023, as per entry number 4 in an annexure marked SK – “02”. The chief’s letter also confirms that the plaintiff has been on the land for a while, going by the attached photographs. The defendant/respondent has also acknowledged that there was an injunction in the succession cause.
5. By written submissions dated 2.10.2023, the plaintiff/applicant takes the view that the test for the grant of interlocutory relief of injunction under Order 40 (2) of the *Civil Procedure Rules* as set under *Giella vs Cassman Brown & Co. Ltd* (1973) E.A 358 and, *NBK Ltd & another vs Sam - Con Ltd* (2003) eKLR, had been met per the photographs supplied to court, occupation is not disputed, and the balance of scales of convenience tilt in favour of her
6. There being no objection to the application by the defendant/respondent and considering that the plaintiff/applicant has justified why there is a need to maintain the status quo, I therefore, direct that the status quo subsisting as of the date of this ruling subsist. There shall be no new transactions over the suit land touching on the portion of land measuring approximately 1 acre or thereabouts, occupied by the plaintiff/applicant. The defendant/respondent and the beneficiaries of the deceased's estate can implement the rectified confirmed grant so long as the portion described above is not subdivided, sold, transferred, or registered in the name of any third party.
7. The order shall subsist for a period of one year only. Parties to list the suit for hearing on a priority basis.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 25<sup>TH</sup> DAY OF OCTOBER 2023**

In presence of

C.A Kananu

Mwendwa for applicant

**HON. CK NZILI**

**ELC JUDGE**

