



Murigu v Mukua; Mukua & another (Intended Interested Party) (Administrators of the Estate of Margret Wairimu Mukua alias Margaret Mairanga Mukua - Deceased) (Environment & Land Case E137 of 2022) [2023] KEELC 20835 (KLR) (19 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E137 OF 2022
OA ANGOTE, J
OCTOBER 19, 2023**

BETWEEN

DANSON KAMAU MURIGU PLAINTIFF

AND

BETH WAMBUI MUKUA DEFENDANT

AND

FRANCIS NJENGA MUKUA INTENDED INTERESTED PARTY

BETH WAMBUI MUKUA INTENDED INTERESTED PARTY

**ADMINISTRATORS OF THE ESTATE OF MARGRET WAIRIMU MUKUA
ALIAS MARGARET MAIRANGA MUKUA - DECEASED**

RULING

1. Before the Court for determination is the Intended Interested Party's (hereinafter 'Applicants') Notice of Motion dated 18th May 2022 and brought under Articles 47, 48, 50 and 159 of *the Constitution*, Sections 3A and 80 of the *Civil Procedure Act* and Order 1 Rules 10 & 22, Order 40 Rule 1 and Order 45 of the *Civil Procedure Rules*. The Applicants are seeking for the following orders:
 - a. Beth Wambui Mukua and Francis Njenga Mukua, the Administrators of the Estate of Margret Wairimu Mukua alias Margaret Mairanga Mukua, Deceased being an interested party be allowed to join these proceedings.
 - b. Spent.
 - c. The Court be pleased to order that all the rental proceeds of the houses erected on the suit property be collected by the Applicants and deposited to Equity



Bank Account No. 0710176688511 - Margret Wairimu Mukua, Githurai Branch pending the hearing and determination of the suit.

- d. The Court be pleased to grant a temporary injunction restraining the Respondent whether by himself, his legal representatives, agents and/or servants from trespassing, collecting rent proceeds, leasing out, charging, selling, transferring, wasting, constructing on, further construction, alienating or otherwise interfering or dealing or in any manner interfering with the Applicants' peaceful occupation of the parcel of land known as LR. No. Nairobi/Block 117/509 (hereinafter the suit property) pending the hearing and determination of the suit.
 - e. The Officer Commanding Kasarani Police Station and DCIO, Kasarani do enforce compliance of the orders above.
 - f. Costs of the application be provided for.
2. The application is based on several grounds and supported by an affidavit sworn by Beth Wambui Mukua and Francis Mukua, the Defendants/Applicants. They averred that they are the Administrators of the Estate of Margret Wairimu Mukua (hereinafter 'the deceased').
 3. The Defendants/ Applicants deponed that the deceased is the bona fide owner of the suit property where she resided until her death on 5th August 2021 and that she never sold the suit property to the Plaintiff (hereinafter 'Respondent') who was a caretaker/gateman on the same land.
 4. The deponents averred that after the deceased died on 5th August 2021, the family decided that her house which was on the suit property would remain locked until after the burial. However, it was deponed, on 6th August 2021, they found that the house had been broken into and the deceased's personal documents were missing.
 5. It was deponed that On inquiry, they were informed that that was done by the Respondent; that they reported the matter to Kiwanja Police Station; that the Respondent was arrested but indicated to the police that he was gifted the suit property and that the charges of house breaking and stealing the deceased's property were held in abeyance and the matter transferred to DCIO, Kasarani.
 6. The deponents averred that the deceased with whom they had a close relationship at no time mentioned that she had gifted the Respondent the suit property and that the Respondent's claim that he purchased the suit property was questionable as he neither had the funds to purchase the same nor any documents in support of his claim.
 7. In conclusion, they deponed that they should be enjoined in the suit to lodge a claim for cancellation of the title issued to the Respondent. Additionally, they asked that the application be allowed to prevent the wastage of the deceased's property.
 8. The Respondent filed a Replying Affidavit sworn on 3rd June 2022 deponed that the application be dismissed for lack of merit and that he is the registered owner of the suit property having been gifted the same by the deceased in 2019 as per the memorandum of understanding.
 9. He averred that he applied for consent to transfer and later had the suit property transferred to his name and that he was then issued with a Certificate of Lease. Consequently, he deponed, the Defendant is a trespasser. Parties filed submissions which I have considered.



Analysis and Determination

10. Based on the foregoing, the following two issues arise for determination:

- i. Whether the Applicants should be enjoined in the suit.
- ii. Whether an injunction should be granted.

11. The Applicants have deponed that they should be joined in the suit as they are the Administrators of the Estate of the deceased who is the bona fide owner of the suit property and that they have met the conditions for joinder.

12. The Supreme Court in the case of *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 Others* [2014] eKLR defined an interested party as follows:

“In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:

“[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) joinder to prevent a likely course of proliferated litigation.”

We ask ourselves the following questions: (a) what is the intended interested party’s stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?”

13. The Supreme Court in the case of *Francis Kariuki Muruatetu & Another vs Republic & 5 Others* [2016] eKLR stated as follows:

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.



- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.
14. Having perused the application, the supporting documentation and the submissions, I am convinced that the Applicants have met the requirements because, firstly, they have brought a formal application as required by law.
15. Secondly, they have set out their personal interest in the suit property as the Administrators of the Estate of the deceased who they state is the bona fide owner of the suit property, and lastly, I am satisfied that the joinder of the Applicants will result in the complete resolution of issues in the proceedings.
16. Since the Applicants claim that the suit property is the property of the deceased and not of the Respondent, I believe their joinder in the suit will help settle the issue of ownership.
17. Having established that the Applicants should be enjoined in the suit, I will now proceed to determine whether they should be granted an injunction. The Applicants have deponed that they should be granted an injunction because as Administrators of the deceased's property, they need to protect it.
18. The conditions for the grant of a temporary injunction were set out as follows in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
19. In the case of *Mrao Ltd. vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 the Court defined a prima facie case as follows:

“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”
20. It is not in dispute that the Applicants are the Administrators of the estate of the deceased. It is also not in dispute that at certain material times, the deceased was the owner of the suit property. What is in dispute is when and if the deceased passed on ownership to the Plaintiff/Respondent.
21. In view of the above information, I am satisfied that the Applicants have demonstrated a right that has apparently been infringed by the Respondent. They have demonstrated that the Estate of the deceased has a right to question the legality of the transfer of the suit property to the Plaintiff.



22. I am also convinced that the Applicants will suffer irreparable harm that cannot be compensated by damages if the injunction is not issued as there is a risk of wastage or disposal of the suit property which could in the long run be proven to be part of the deceased's estate.
23. In view of the foregoing, I find that the application is meritorious. The issue of collection of rental income from the houses on the suit property was not addressed at all by the court. The same will not be considered.
24. For those reasons, the application dated 18th May, 2022 is allowed as follows:
 - a. Wambui Mukua and Francis Njenga Mukua, the Administrators of the Estate of Margret Wairimu Mukua alias Margaret Mairanga Mukua, Deceased being an interested party be and are hereby allowed to join these proceedings.
 - b. A temporary injunction be and is hereby issued restraining the Plaintiff/Respondent whether by himself, his legal representatives, agents and/or servants from trespassing, collecting rent proceeds, leasing out, charging, selling, transferring, wasting, constructing on, further construction, alienating or otherwise interfering or dealing or in any manner interfering with the Applicants' peaceful occupation of the parcel of land known as LR. No. NAIROBI/Block 117/509 (hereinafter the suit property) pending the hearing and determination of the suit.
 - c. The Officer Commanding Kasarani Police Station and DCIO, Kasarani do enforce compliance of the orders above.
 - d. Costs to be in the course.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 19TH OCTOBER, 2023.

O. A. ANGOTE

Judge

In the presence of;

No appearance for Plaintiff

No appearance for Defendant

Court Assistant - Tracy

