



**Nganga v Ngossor & another (Environment & Land Case
95 of 2017) [2023] KEELC 20831 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20831 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 95 OF 2017
MN GICHERU, J
OCTOBER 18, 2023**

BETWEEN

PETER JOHN THUO NGANGA APPLICANT

AND

LOIS NALANG'O NGOSSOR 1ST RESPONDENT

JOSEPH NGOSSOR 2ND RESPONDENT

RULING

1. This ruling is on the notice of motion dated 29/8/2022. The motion which is under Order 40 Rules 1 and 2 *Civil Procedure Rules*, Sections 3 and 3A of the *Civil Procedure Act*, 6 and 12 of Cap 301 and all enabling provisions of the law seeks the following orders.
 - a. Order of injunction restraining the Respondent, his agents, servants, licencees and or invites from further trespassing and/or encroaching on, construction or in any manner whatsoever on L.R. No. 4480/163 pending the hearing of the suit.
 - b. The OCS Ngong Police Station to supervise and oversee the implementation and compliance of this order.
2. The motion is supported by an affidavit sworn by the first Defendant as well as eight (8) grounds. The gist of the above material is that the Plaintiff is the registered owner of L.R. No. 4480/163 while the second Defendant is the registered owner of L.R. 4480/164. The two plots are adjacent to each other. Whereas the second Defendant has been restrained from developing her property, the Plaintiff has not been so restrained and continues to develop his land.
3. The motion is opposed by the Respondent whose counsel has sworn a replying affidavit in which he replies as follows.



Firstly, he challenges the notice of motion as having no prayers and thus it is incompetent. Secondly, it does not make sense to restrain the Plaintiff just because the second Defendant was restrained. If the second Defendant is unhappy with any order of injunction issued against her, then she should appeal rather than playing a tit for tat game.

Third, the report by the surveyor is not attached and going by the attached photographs, there is no trespass. Finally, the second Defendant has not proved any of the three prerequisites to the grant of an order of injunction that she seeks.

4. I have carefully considered the motion in its entirety including the affidavits and the annexed photographs. I have also perused the entire record. I find that the motion has no merit for the following reasons.

Firstly, the second Defendant has not established a prima case with a probability of success. The court cannot restrain the plaintiff from developing his own land. He enjoys that right by virtue of Article 40 of the Constitution. As long as his building plans have been approved by the concerned authority, he cannot be restrained from developing his land as he wishes.

Secondly, the second Defendant has not shown that she stands to suffer irreparable loss that cannot be adequately compensated by an award of damages. What loss will she suffer if the Plaintiff develops his own land? She has not demonstrated.

Finally, the balance of convenience favours the plaintiff as long as he confines himself on his own land. The second Defendant has therefore not made out a good case for the grant of the orders of injunction.

The motion dated 29/8/2022 is dismissed with costs for lack of merit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF OCTOBER, 2023.

M.N. GICHERU

JUDGE

