



**Kimani (Suing as Personal Representative of Samuel Kimani Nganga
- Deceased) v Ndichu (Environment and Land Appeal E006 of 2023)
[2023] KEELC 21752 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21752 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E006 OF 2023
MN GICHERU, J
NOVEMBER 27, 2023**

BETWEEN

**DAVIN KIMANI ALIAS DAVID NGANGA KIMANI (SUING AS
PERSONAL REPRESENTATIVE OF SAMUEL KIMANI NGANGA -
DECEASED) APPELLANT**

AND

JOHN KISEMBEI NDICHU (ALIAS) JOHN MBUGUA NDICHU RESPONDENT

RULING

1. This ruling is on the notice of motion dated 26/7/2023. The motion which is by the appellant seeks a temporary injunction to restrain the respondent, his agents, servants, personal representatives from alienating, taking possession, transferring, selling, disposing of either by private treaty or public auction and/or interfering with the appellants ownership of parcel number Ngong/Ngong/37363 (the suit property) pending the hearing and determination of this suit.
2. The motion is supported by an affidavit sworn by David Kimani alias David Ng'ang'a Kimani which has four annexures. It is also based on six (6) grounds.

The gist of the above material is that the applicant is in occupation of the suit land on which there is a home and unless the motion is allowed, there is danger of losing the land and the developments thereon rendering the appeal nugatory.
3. The motion is opposed by the respondent and his counsel has filed grounds of opposition dated 15/9/2023 which read as follows.

“The application is incurably defective as this court is constrained by law not to grant the ultimate prayer of injunction sought hence rendering the entire application futile”.



4. I have considered the motion in its entirety including the grounds, the affidavits, the annexures and the grounds of opposition. I find that it is fair and just to order that the status quo be maintained so that the appeal is not rendered nugatory. This order is granted on condition that the appeal is prosecuted within the shortest time possible and in any case not outside the period of one year, otherwise this order will lapse under Order 40 Rule 6 *Civil Procedure Rules*.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF NOVEMBER 2023.

M.N. GICHERU

JUDGE

