



Mukomunene & 8 others v District Land and Settlement Officer – Ruiru Rwarera & 3 others; M’Guambi (Interested Party) (Environment and Land Constitutional Petition E006 of 2023) [2023] KEELC 21651 (KLR) (15 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21651 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E006 OF 2023
CK NZILI, J
NOVEMBER 15, 2023

BETWEEN

EREN MUKOMUNENE 1ST PETITIONER
FLORENCE NAITORE 2ND PETITIONER
GRACE KUURI 3RD PETITIONER
JOSEPH MWITI NKANATA 4TH PETITIONER
ALICE MWIRIGI 5TH PETITIONER
JAMES KING’ORA MBOROKI 6TH PETITIONER
NAFTALY MBAABU M’MUGWIKI 7TH PETITIONER
JAMES MURITHI 8TH PETITIONER
DR. NATHAN MWONGERA 9TH PETITIONER

AND

DISTRICT LAND AND SETTLEMENT OFFICER – RUIRI
RWARERA 1ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION 2ND RESPONDENT
MINISTRY OF LANDS AND PHYSICAL PLANNING AND DEPARTMENT OF
LAND ADJUDICATION & SETTLEMENT 3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

AND

DAVID NDUMBA M’GUAMBI INTERESTED PARTY



RULING

1. The court, by an application dated 9.5.2023, is asked to issue orders of inhibition and temporary injunction or, in the alternative, status quo, barring and restraining the 1st respondent from dealing with, subdividing, sharing and implementing the decision of Objection No.3279 and Appeal No. 161 of 2021 Ruiru/Rwarera Adjudication Section, until this petition is determined. The grounds are contained on the face of the application and a supporting affidavit of Grace Kuuri on behalf of the petitioners sworn on 9.5.2023. The 3rd petitioner has deponed that the 1st petitioner was allocated the land in 1968 by the late Jackson Angaine, a relative, as per the annexed confirmation letter, measuring approximately 20 acres where she settled up to the adjudication stage, reducing his land to 15 acres. The 3rd petitioner avers that the 1st respondent's mother trespassed into the land and was forcefully evicted following Isiolo case No. 9 of 1989 and has never stepped back on the land. The 3rd petitioner averred that the 1st respondent filed an objection No. 3479 claiming the land whose decision was that the land be equally shared following Appeal No. 161/2018.
2. The 1st petitioner aver that she sold part of the land to the 3rd – 9th petitioners since there was never a lawful claim and the name of the 1st respondent was wrongfully entered. She termed the objection proceedings and the hearing as unconstitutional and having caused her immense suffering, which damages may not compensate. She attached the confirmation letter, pleadings in Isiolo court, objection proceedings and the sale agreements as annexures marked FN 1 – 4(a), respectively.
3. The respondents opposed the application through a replying affidavit by Joseph Kithinji. It is averred that the hearing and determination of the objection and the appeal was undertaken under the [Land Adjudication Act](#) (Cap 284) in the presence of the petitioners, who were allowed to testify. The respondents averred that the petitioners tendered no evidence to show that they were denied audience under the law or that the respondents acted outside the scope and mandate under Cap 284. The respondents averred that the petition and application lacked grounds and had not met the conditions to grant the prayers sought.
4. The basis of the application before the court is the petition dated 9.5.2023. The main contention by the petitioners is that the 1st interested party was wrongly and illegally awarded part of Parcel No. Ruiru/Rwarera 712, in the register, the land was recorded in the name of the 1st petitioner, and the land is under occupation by the 1st – 9th petitioners following an objection and Minister's appeal. The petitioners averred the decree for eviction made in 1989 against the 1st interested party's late mother has never been appealed against, and hence, the same superseded the objection and the minister's decision. The petitioners prayed that the objection and appeal be declared unconstitutional, null and void and that the 1st respondent revert the land to the name of the 1st petitioner in place of the interested party or any other party.
5. Inhibition orders are governed by Section 68 of the [Land Registration Act](#), which are issued against a title register for property under the Act. Given that the suit land has no title, the prayer for inhibition order lacks merits. As to temporary injunction, an applicant has to establish a *prima facie* case with a probability of success, show there will be irreparable loss and damage if the order is not granted, and show that the balance of convenience tilts in favour of allowing the application. A *prima facie* case is established if, based on the material before the court, a right has been infringed to call the opposite party to rebut the same as held in [Mrao Limited v First American Bank of Kenya Limited & 2 others](#) (2003) KLR 125. Irreparable loss and damages are those incapable of being quantified or ascertained by whatever measure as held in [Nguruman Ltd v Jan Nielsen Bonde Nielsen & 2 others](#) (2014) eKLR.



The court said that in establishing whether there is a *prima facie* case, a court does not hold a mini-trial; a party need not produce a title, but on the face of it, and based on full disclosure made by the applicant, the court may find there is a bonafide question or interest likely to be affected should the orders not issue.

6. In this application, the applicants have produced a letter of confirmation of ownership dated 9.3.2023 from the 1st respondent. It shows that the land is still under adjudication, and the Minister's decision is due for implementation. The respondents and the interested party have not denied that the decision is yet to be implemented. The developments of the petitioners on the land have not been denied. The existence of previous eviction orders by the Isiolo court has not been challenged. For the above reasons, the applicants have established a *prima facie* case with a probability of success. The balance of convenience tilts in favour of granting the orders sought. It is also in the interest of justice to preserve the substratum of the petition, pending its hearing and determination by granting conservatory orders stopping any subdivision sharing or implementation of the decision(s) made in Ministers Appeal No. 161 of 2018 regarding Parcel No. Ruiriri/Rwarera/712 for 12 months only. See [Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others](#) (2014) eKLR.
7. The petition will be listed for hearing on a priority basis.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 15TH DAY OF NOVEMBER 2023

HON. CK NZILI

ELC JUDGE

