



**Kibia v Muigua & another (Environment & Land Case E012 of 2023)
[2023] KEELC 22464 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22464 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E012 OF 2023
JO OLOLA, J
DECEMBER 20, 2023**

BETWEEN

JANE WAMBUI KIBIA PLAINTIFF

AND

CHARLES GITHINJI MUIGUA 1ST DEFENDANT

CHARLES KARANJA KIIRU 2ND DEFENDANT

RULING

1. By the Notice of Motion dated and filed herein on 23rd February 2023, Jane Wambui Kibia (the Plaintiff) prays for a temporary order of injunction to issue restraining the two Defendants, their employees, servants and / or agents from interfering with, alienating, transferring, disposing of or in any manner whatsoever dealing with the parcel of land known as Mweiga/Block 5/Muthuini/1133 pending the hearing and determination of this suit. In addition, the Plaintiff prays for a temporary injunction directed at the Land Registrar Nyeri requiring him not to allow the registration of any dealings on the said parcel of land.
2. The application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds that:
 - a). The Defendants have a debt recovery court dispute emanating from an inhibition that has been placed on the suit property to secure the payment of the debt;
 - b). The suit property is the only home that the Plaintiff and the 1st Defendant have known as a home together with their children since their marriage;
 - c). The Plaintiff has not been aware of the proceedings in Mombasa CMCC No. 1222 of 2014 and neither was she aware of the imminent threat to the property;



- d). Any disposition of the suit property must have the consent of the Plaintiff otherwise the process is null and void *ab initio* and of no effect whatsoever; and
 - e). There is real and present danger that unless stopped, the property will be sold by public auction, visiting great prejudice and loss to the children of the marriage and the Plaintiff.
3. In response to the Plaintiff's application, Charles Karanja Kiiru (the 2nd Defendant) has filed a Notice of Motion application dated 8th March 2023 urging this court to strike out the Plaintiff's suit for being an abuse of the court process.
 4. The second application is supported by an affidavit sworn by the 2nd Defendant and is premised on the grounds that:
 - i). The execution which the suit seeks to challenge emanates from a decree issued by the Chief Magistrates Court in Mombasa CMCC No. 1222 of 2014; Charles Karanja Kiiru – vs- Charles Githinji Muigua;
 - ii). The decree was the subject of appeal in Mombasa HCCA No. 133 of 2014. On 4th February 2021, the Judgment of the Lower Court was set aside on conditions. If there was default in complying, the Judgment would be restored automatically;
 - iii). The conditions were not complied with. All subsequent attempts at upsetting the Judgment have failed. The last attempt was dismissed vide a Ruling delivered on 20th January 2023;
 - iv). If the Plaintiff has any complaints about the manner in which the decree is being executed, she could, by Section 34 of the [Civil Procedure Act](#) make that complaint in Mombasa CMCC No. 1222 of 2014;
 - v). The Plaintiff can, if she wants, also take objection proceedings under Order 22 rule 52 of the [Civil Procedure Rules](#) 2010 in the Mombasa case; and
 - vi). Given the foregoing, the Plaintiff's suit is contra-statute and an abuse of the court process. It is meant to delay, as far as legal ingenuity can, the 2nd Defendant's access to the fruits of the Judgment in his favour.
 5. In response to the 2nd Defendant's application, the Plaintiff in her short Replying Affidavit filed herein on 22nd March 2023 avers that she is not a party to the proceedings in the Mombasa cases and that she has filed this suit to assert her title to the land as the spouse of the 1st Defendant.
 6. I have carefully perused and considered the two applications as filed by the Plaintiff as well as the 2nd Defendant together with the respective responses thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
 7. Before me for determination are two applications. The first in time is the Motion dated 23rd February 2023 as brought by the Plaintiff seeking orders of injunction to restrain the two Defendants from dealing with, alienating, transferring or in any manner whatsoever interfering with her quite possession of the parcel of land known as Mweiga/Block 5/Muthuini/133 (the suit property). The second application dated 8th March 2023 has been instituted by the 2nd Defendant seeking to have the Plaintiff's suit struck out for being an abuse of the court process.
 8. Given its ramifications, I will first consider the second application as filed by the 2nd Defendant. According to the 2nd Defendant, the Plaintiff by this suit seeks to challenge the execution process arising from a decree issued by the Chief Magistrates Court in Mombasa CMCC No. 1222 of 2014; Charles



Karanja Kiiru – v-s Charles Githinji Muigua. It is the 2nd defendant's case that if the Plaintiff has any complaint about the execution process her options were not to file another suit but to either make a complaint about the execution process to the same court pursuant to section 34 of the Civil Procedure Act or to file objection proceedings pursuant to Order 22 rule 52 of the Civil Procedure Rules.

9. On her part, the Plaintiff insists that there is no abuse of the court process as she is not a party to the proceedings before the court in Mombasa. The Plaintiff avers that she is the spouse of the 1st Defendant and that she has brought this suit to assert her title as the suit property is their matrimonial property.
10. As it were, at paragraph 4 to 8 of her Plaint dated and filed on 23rd February 2023, the Plaintiff pleads as follows:

- “ 4. The 1st Defendant herein and the Plaintiff are husband and wife having lived together since 2005 and are blessed with three children namely.....
5. The suit property herein, that is to say Mweiga/Block 5/ Muthuini/1133 is the families (sic) matrimonial home having been acquired during the pendency of the said marriage;
6. The Plaintiff avers that a search at the Lands Office in Nyeri has shown that there is an inhibition placed by the court in Mombasa Chief Magistrates Civil Suit No. 1222 of 2014 which is between the two Defendants;
7. Upon further inquiries she has learnt that the court in the said Mombasa Chief Magistrates Civil Suit No. 1222 of 2014 has prohibited the 1st Defendant from any attempts to sell or charge the suit property; and
8. She avers that the property is the only home that her children and herself have known as a family home during the pendency of the marriage. The Plaintiff has not been aware of the proceedings in Mombasa Chief Magistrates Civil Suit No. 1222 of 2014 and neither was I aware of the imminent threat to the property.”

11. Arising from the foregoing, it was apparent to me that the Plaintiff had prior to the filing of this suit become aware of the decree issued in the said Mombasa CMCC No.1222 of 2014 and that as can be discerned from annexure CKK2 of the 2nd Defendant's Supporting Affidavit, the same faces an imminent threat of being sold in execution of the decree.
12. That also informs the Plaintiff's contention that any disposition of the suit property must always have her consent first had and obtained. While that position may be so if the Plaintiff were to demonstrate that the suit property were matrimonial property, I did not think it was open for the Plaintiff to file a fresh suit. In that respect, Section 34 of the Civil Procedure Act provides as follows:

“ All questions arising between the parties to the suit in which the decree was passed, or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

13. As was stated in Geoffrey Muriithi Murage & 2 Others –vs- Antony Oluoch t/a A. T. Oluoch & Company Advocates & 2 Others [2018] eKLR:

“ ...all matters relating to the execution, discharge or satisfaction of the decree or consent orders in issue shall be determined by the court executing the decree and not by a separate



suit.....to the extent that the applications and the suits relate to and seek prayers with respect to satisfaction of the consent order, the court returns that the suits and the applications were misconceived and irreparably so.”

14. Indeed even where the Plaintiff were claiming a distinct and separate interest from that of her husband (the 1st Defendant) her only recourse in the circumstances was in Order 22 Rule 51 of the Civil Procedure Rules – which provides thus:

“Any person claiming to be entitled or to have a legal or equitable interest in the whole of or part of any property attached in execution of a decree may at any time prior to payment out of the proceeds of sale of such property give notice in writing to the court and to all the parties and the decree- holder of his objection to the attachment of such property.”

15. In the circumstance herein it was apparent that the case between the Plaintiff’s husband and the 2nd Defendant had been in the court for the past nine (9) years in both the subordinate and the High Court at Mombasa. Having learnt about the case and made inquiries as she states in her pleadings, it was difficult to find a reason why the Plaintiff chose to travel all the way back to Nyeri to lay a claim that her matrimonial property was facing an imminent threat of disposition due to debts owed by her husband.

16. As the Court of Appeal stated in Kivanga Estates Ltd – vs- National Bank of Kenya Ltd [2017] eKLR:

“We entertain no doubt whatsoever that by engaging nearly all levels of the court system for the last 27 years, filing the suit in one court after the other, moving from Embu, Meru to Nairobi, amounts to gross abuse of the process of the court.

.....

The court will look closely at the conduct of the party bringing subsequent proceedings in respect of the same matter in order to prevent abuse of its process and it has the power, in case of abuse of its process to ex debito justitiae prevent it.

There is no greater duty for the court than to ensure that it maintains the integrity of the system of administration of justice and ensure that justice is not only done but is seen to be done by, amongst other measures, stopping litigations brought for ulterior and extraneous considerations. The courts, litigants and counsel are enjoined by both the Constitution and the law to assist the court to further the overriding objective for the just determination of the proceedings; the efficient disposal of the business of the court; the efficient use of the available judicial and administrative resources; the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the parties...”

17. In the circumstance herein, I was satisfied that his suit had been filed in abuse of the court process after the 1st Defendant failed to meet the conditions of stay that were placed by the High Court in Mombasa.
18. Accordingly, I hereby allow the 2nd Defendant’s Notice of Motion dated 8th March 2023 and proceed to strike out the suit with costs to the 2nd Defendant.

DATED, SIGNED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER, 2023.

In the presence of:

Ms. Cheruiyot holding brief for Kongere for the 2nd Defendant.

No appearance for the Plaintiff.

Court Assistant: Kendi.



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J. O. OLOLA
JUDGE

