



**Ngugi v Kenya Railways Corporation (Environment & Land Case
E082 of 2021) [2023] KEELC 22342 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E082 OF 2021
MN GICHERU, J
DECEMBER 18, 2023**

BETWEEN

JAMES KANIU NGUGI PLAINTIFF

AND

KENYA RAILWAYS CORPORATION DEFENDANT

RULING

1. This ruling is on the notice of motion dated 1/12/2021 The motion which is by the plaintiff seeks,
 - (iii) An order of temporary injunction to restrain the defendant or anybody claiming through it from trespassing, constructing and or any other activities curtailing the peaceful use and development of L.R. Kajiado/Kaputiei North/11535 pending the hearing and determination of the main suit. The motion is brought under Order 51 rules 1,2,3,4 and 10 and Sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act*, Sections 13 (7) and 19 of the *Environment and Land Court*, order 40 rules 1 and 2 and all other enabling provisions of the law.
2. The motion is supported by an affidavit sworn by the plaintiff dated 1/12/2021, which has several annexures and nine (9) grounds. The gist of the above material is that the plaintiff owns L.R. Kajiado/ Kaputiei North 11535 which borders Lukenya Railway Station. He acquired the said land in the year 2011. He has been enjoying quiet possession until recently when the defendant trespassed onto the said land and started putting up permanent structures. It is for this reason that the plaintiff filed this suit and seeks the above order.
3. The motion is opposed by the respondent and its senior land surveyor filed a replying affidavit dated 21-2-2022 in which he deposes that the land reserved for the Lukenya Railway Station is well documented in terms of title and ownership. The boundaries are clearly established by maps, drawings and plans which all show the beacons and the coordinates. He insists that it is the plaintiff who has encroached on land belonging to the defendant.



4. Counsel for the parties filed written submissions on 11/1/2023 and 27/6/2023 respectively.
5. This being an application for information, the principles upon which such an order will be granted are well settled as per the case of *Giella Vs Carsman Brown* 1973 EA. The applicant must establish a *prima facie* case with a probability of success. Secondly, he must prove that he stands to suffer irreparable loss than cannot be adequately compensated with an award of damages. Finally, the balance of convenience must tilt in favour of the applicant.
6. I have carefully considered the application in its entirety including the affidavits, annexures, grounds, submissions and the law cited therein and I find that the motion has no merit for the following reasons.
Firstly, the applicant has not made out a prima facie case with a probability of success. He has not demonstrated that this court has jurisdiction to entertain a boundary dispute before the same has been determined by the Land Registrar. Section 18 (2) of the [Land Registration Act](#) provides as follows,

“The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

At the time of filing the suit, the plaintiff did not file evidence of any resolution of the boundary dispute by the Land Registrar. A prima facie case with a probability of success cannot be said to have been made out if the plaintiff has jumped the gun, so to speak.
7. Secondly, the loss that the plaintiff stands to suffer has not been demonstrated. He has not proved that there are buildings that are in danger of demolition. He has not shown the new infrastructure that the defendant is putting up on the disputed land.
8. Finally, since the court is not sure of the two prerequisites to the grant of an order of injunction, it need not look at the balance of convenience.

For the above stated reasons the motion dated 1/12/2021 is dismissed.

Costs in the cause.

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

M. N. GICHERU

JUDGE

In the presence of:

Plaintiff's Counsel – Miss Bundi

Defendant's Counsel – Mr. Muisyo

