



**Wairungu & another v Njeri (Environment & Land Case E153 of 2023)
[2023] KEELC 22499 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E153 OF 2023
EK WABWOTO, J
DECEMBER 18, 2023**

BETWEEN

MIGWI WAIRUNGU 1ST PLAINTIFF

SYLVIA WANGUI MWANGI 2ND PLAINTIFF

AND

MARY MAGDALENE NJERI DEFENDANT

RULING

1. This ruling is in respect to two applications. The application dated 4th May 2023 by the Plaintiffs and the Defendants application dated 21st June 2023. The Plaintiffs filed a Notice of Motion Application dated 4th May 2023 which was accompanied by a Supporting Affidavits sworn by Sylvia Wangui Mwangi. The Plaintiffs sought the following orders:
 - i. ...Spent.
 - ii. ...Spent .
 - iii. That the OCS, Buruburu Police Station do oversee the enforcement of the orders and ensure there is no breach of peace.
 - iv. That the Honourable Court be pleased to grant orders of injunction restraining the Defendant whether by herself or through her agents and/or servants or anyone acting under them from trespassing, transferring, alienating, disposing, leasing, constructing, interfering in any manner with LR No Nairobi/ Block 83/14/2008 pending hearing and determination of this suit.
 - v. That the Honourable Court be pleased to issue a mandatory injunction requiring the Defendant and/or her agents to pull down all the temporary structures erected in LR No Nairobi/Block 83/14/2008 and/or in the alternative Plaintiff be authorized to pull down the said structures.



- vi. That the costs of the Application be provided for.
2. The Defendant separately filed an application dated 21st June 2023 seeking that the orders given on 7th June 2023 be set aside and a fresh hearing of application dated 4th May 2023 be undertaken. The application was premised on the following grounds:
 - i. The Applicant has an arguable case to oppose the application dated 4th May 2023.
 - ii. The applicant had filed a replying affidavit in opposition of the application that the Court inadvertently disregarded it.
 - iii. The applicant's advocates mistakenly assumed that the Court was not sitting on the strength of an advocate notice by the Judiciary.
 - iv. That the applicant is in possession of the suit premises and as the orders stand, she stands to be evicted in the most callous manner.
 3. On 7th June 2023, the Court allowed the Plaintiffs' application in term of Prayer 2 which had sought the following orders;

“That the Honourable Court be pleased to grant interim order of injunction restraining the Defendant whether by herself or through her agents and/or servants or anyone acting under them from trespassing, transferring, alienating, disposing, leasing, constructing, interfering in any manner with LR No Nairobi/ Block 83/14/2008 pending hearing and determination of the application inter-partes.”
 4. Pursuant to the directions issued by this court on 24th July 2023, it was directed that both pending applications be heard simultaneously and be canvassed by way of written submissions.
 5. The Defendant filed submissions dated 7th September 2023 (illegibly crossed over) in response to both applications. The Defendant argued that it was a sufficient cause that the advocate was impaired by technology and unable to attend court and therefore the orders ought to be set aside. It was also submitted that the Court inadvertently disregarded the Defendant's substantive reply.
 6. The Plaintiff filed submissions dated 5th October 2023 and grounds of opposition dated 6th October 2023. It was submitted that the Plaintiffs had demonstrated and satisfied all the conditions for the grant of the injunctive orders sought in respect to their application dated 4th May 2023. Reliance was placed to the cases of *Nguruman Limited v Jan Bonde Neilsen & 2 Others*, *Mrao Limited v First American Bank of Kenya*, *Naftali Ruth Kinyua v Patrick Thuita Gachure & Another* (2015) eKLR, *Niaz Mohamed Jan Mohamed v Commissioner for Lands & 4 Others* (1996) eKLR, *Joseph Mbugua Gichaga v Cooperative of Kenya Limited* (2005) eKLR among others
 7. The court has considered the applications, the rival affidavits, submissions filed. The main issues for determination are; whether the Plaintiffs have met the threshold to be granted the order of mandatory injunction as prayed, whether the Plaintiffs have met the threshold to be granted the order of injunction as prayed and whether the Defendant's Notice of Motion dated 21st June 2023 is merited.
 8. On the issue of granting a mandatory injunction, there exists a high bar that has been set when considering an application for mandatory injunction. An applicant seeking a mandatory injunction must establish the existence of special circumstances as an addition to the tenets of an interim injunction. *Locabail International Finance Limited v Agro-Export* (1988) 1 All ER 901, outlines



general principles which the court applies when determining applications for interlocutory mandatory injunction as follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the Plaintiffs. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.”

9. This position was echoed by the Court of Appeal in the case of *Nation Media Group & 2 Others v John Harun Mwau* [2014] eKLR,:

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted.”

10. In this instance, the Plaintiffs aver to being the rightful owners following a purchase from the Susan Mukami Mugo and were currently making land rate payments for the suit property. Beyond the said averments, the Plaintiffs claimed that they were apprehensive that the property would pass to third parties and had called upon the Court to protect their rights as being first in time on the suit premises. Bearing this in mind, the Court is not persuaded that any special circumstances exists that warrant the granting of a mandatory injunction.

11. With regards to the interim injunction, the Court takes cognizance of all attempts made by the Plaintiffs in reporting anomalies on the premise and follow up with respective authorities. The Plaintiffs’ efforts coupled with the evidence placed before the Court do make a strong case in favour of the Plaintiffs. For this reason, I believe it would be prudent to ensure the suit property is preserved in its current state and retain the earlier interim orders issued. All the other issues raised by the parties shall be resolved in finality during trial.

12. In view of the foregoing, the Court makes the follows orders:

- a. An order of injunction is hereby issued restraining the Defendant whether by herself or through her agents and/or servants or anyone acting under them from trespassing, transferring, alienating, disposing, leasing, constructing, interfering in any manner with LR No Nairobi/Block 83/14/2008 pending hearing and determination of this suit.
- b. The Notice of Motion application dated 21st June 2023 is unmerited and hereby dismissed.
- c. Costs will abide the final determination of the suit.

It is so ordered.

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

E. K. WABWOTO

JUDGE



In the presence of: -

Mr. Maingi for the Plaintiffs.

Mr. Obaga for the Defendant.

