



**Gitonga & another v Lang’at & another (Environment & Land Case
32 of 2023) [2023] KEELC 22082 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22082 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 32 OF 2023
A OMBWAYO, J
DECEMBER 7, 2023**

BETWEEN

PAMINUS MAWIRA GITONGA 1ST PLAINTIFF

GEOFFREY KAMAU MAINA 2ND PLAINTIFF

AND

ELIZABETH LANG’AT 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. Paminus Mawira Gitonga and Geoffrey Kamau Maina herein after referred to as plaintiffs have come to court against Elizabeth Lang’at and the Chief Land Registrar by way of plaint stating that the Plaintiffs have at all times material to this suit been the lawful and registered joint proprietors of all that parcel of land known as Land Reference Number 13287/127 situate in Nakuru County ("the suit property") having acquired the same from the Agricultural Development Corporation (ADC) through allocation.
2. The Plaintiffs aver that they took vacant possession of the suit property on or about 1995 following the said allocation and compliance with the conditions thereof and have had quiet and peaceful possession for over three (3) decades now.
3. The 2nd Defendant herein who effected the registration of the Plaintiffs’ interests has numerously issued certificates of official searches confirming that the Plaintiffs are the lawful registered owners of the suit property according to the official government records.
4. Recently the 1st Defendant through the aid of armed goons and agents has been making concerted efforts to violently and illegally dispossess the Plaintiffs of the suit property without justification occupation.



5. The Plaintiffs aver that the 1st Defendant's agents and or hooligans have caused extensive damage and destruction on the suit property on account of their unlawful and violent invasions with a view of forcibly evicting them and their agents therefrom.
6. The conduct of the 1st and 2nd Defendants and their agents has occasioned extreme fear and anxiety on the Plaintiffs who risk being violently dispossessed the suit property in a manner not contemplated by the law.
7. According to the plaintiff, the 1st Defendant has no legal or recognizable interest over the suit property and unless the Court intervenes, the 1st Defendant shall succeed in unlawfully and violently evicting the Plaintiffs from the suit property in violation of their right to property.
8. The Plaintiff further avers that despite reporting the Defendant and her agents' criminal actions to the police. they have remained undeterred and continue to interfere with their proprietary interest over the parcels.
9. The Defendant and her agents have threatened the Plaintiffs with continued interference with their quiet possession and enjoyment of the suit property and property rights under Article 40 of the Constitution until they yield vacant possession.
10. The conduct of the Defendant and her agents is illegal and unlawful as she tacks proprietary interest or right over the suit property,
11. The Plaintiffs having lawfully acquired the suit property and registered as such are entitled to exclusive occupation and possession of the suit property as against the Defendants and or their agents.
12. There are no pending or previous proceedings between the parties herein relating to a claim over the suit property in this or any other court having jurisdiction over the subject matter herein.
13. The suit property is located in Nakuru County and the cause of action arose within the jurisdiction of this Honorable Court.
14. The plaintiff pray for a declaration that the Plaintiffs are lawfully registered as the proprietors of Land Reference Number 13287/127 situate in Nakuru County within the Republic of Kenya and are entitled to peaceful possession and or occupation and use to the exclusion of the Defendants herein.
15. He prays for a permanent injunction be and is hereby issued restraining the Defendants either by themselves, their agents or servants or otherwise howsoever from interfering with the Plaintiffs' quiet and peaceful possession and occupation of the suit property known as Land Reference Number 13287/127 situate in Nakuru County within the Republic of Kenya.
16. They further pray for a permanent injunction against the Defendants prohibiting them whether by themselves, their agents or servants from entering upon, remaining upon, transferring, occupying, leasing, charging, assigning, developing or in any manner howsoever interfering with the Plaintiffs' quiet possession of the property Land Reference Number 13287/127 situate in Nakuru County within the Republic of Kenya, in default, an eviction order do issue and which order should be enforced by the Officer Commanding Menengai Police Station or any nearest police station.
17. Lastly, they pray for a declaration that the 1st Defendant has no legal right or recognizable interest over the property known as Land Reference Number 13287/127 situate in Nakuru County within the Republic of Kenya and any title documents she holds relating to the property is illegal, null and void and stand revoked forthwith.



18. Accompanying the plaint is a Notice of Motion seeking orders that pending the hearing and determination of the suit temporary injunction be issued restraining the defendants their agents, or servants from trespassing onto, remaining upon, transferring onto, disposing upon, developing, interfering with or any manner whatsoever, dealing with the parcel of land known as LR Number 13287/127 situate in Nakuru County.
19. The application is supported by the affidavit of the 1st plaintiff who has the authority of the 2nd plaintiff to swear the same.
20. The plaintiffs have annexed an extract of title in the affidavit and allege that the 1st defendant has visited the land with goons and has caused mayhem on the ground. In the replying affidavit the 1st defendant has denied the allegations by the plaintiff and states that she is wrongly enjoined in the suit. However, she appears to be well canvased with the suit property and has even filed a defence denying the allegations but states that the suit property has been subdivided and does not exist.
21. I do find that the plaintiff has demonstrated a prima facie case with a likelihood of success because they have exhibited a title in their name. The defendant has also annexed documents in the replying affidavit that demonstrate that the land was subdivided but there is no evidence that the plaintiffs were involved in the subdivision despite the fact that the are registered owners.
22. On the issue of irreparable harm, the plaintiff's states that the 1st defendant agents or goons have caused extensive damage and destruction of the property but ho evidence has been exhibited in the affidavit. The plaintiffs fear they are likely to be dispossessed in a violent and barbaric manner. The 1st defendant does not deny that the plaintiffs are in possession of the suit land.
23. I do find that the plaintiffs have demonstrated that they are likely to suffer irreparable loss of they are violently evicted by the person who is harassing them on the ground.
24. On a balance of convenience, I do find that the plaintiffs are likely to be inconvenienced if an injunction is not granted but they succeed in the suit because they would have been evicted from the suit property. Whereas the defendant will not suffer any inconvenience, if an injunction is granted and the plaintiffs suit is dismissed. Moreover, the defendants have no interest in the property and therefore are not likely to be inconvenienced.
25. Ultimately, I do grant an injunction in terms that pending the hearing and determination of the suit temporary injunction be issued restraining the defendants their agents, or servants from trespassing onto, remaining upon, transferring onto, disposing upon, developing, interfering with or any manner whatsoever, dealing with the parcel of land known as LR Number 13287/127 situate in Nakuru County. Costs in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF DECEMBER 2023.

A O OMBWAYO

JUDGE

