



**Ngiri v Mugo (Environment & Land Case E018 of 2024)
[2025] KEELC 3650 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E018 OF 2024**

AK BOR, J

APRIL 29, 2025

BETWEEN

JOHN NJOKA NGIRI PLAINTIFF

AND

HANSON NJUKI MUGO DEFENDANT

RULING

1. The Plaintiff filed the application dated 11/7/2024 seeking to restrain the Defendant from evicting him or interfering with his peaceful occupation of the land known as Mbeere/Kirima/2456 (the suit land) or interfering with the status quo on the suit land pending determination of this suit. He also sought an order of inhibition over the land pending determination of the suit.
2. The application was made on the grounds that in 1987, before demarcation and adjudication, the Plaintiff bought land parcel no. 1317 situated in Mbeere Kirima from one Njeru Kigoro. He averred that he was advised to subdivide the land and register some of the resultant subdivisions in other people's names so that he could retain them when the land was being registered. That he subdivided parcel no. 1317 into numbers 2450 and 2454 to 2461 and that he registered parcel no. 2456 in Ndegi Njoka's name who was his girlfriend but is now dead.
3. He further averred that Ndegi Njoka became the first registered owner of the land even though she never occupied it during her lifetime as he was the one in occupation. He stated that he had occupied that land parcel throughout and had built some rental houses on that land. He averred that the children of Ndegi Njoka, that is Abel Caxton Njuki and Florence Immaculate Waturi sold the land to the Defendant without his knowledge and consent and the Defendant was registered as proprietor on 12/1/2023. He maintained that he had occupied the land since 1987 with his family openly without interference from anyone. He sought to have the court declare him as the rightful owner of the land and for the Defendant's name to be cancelled from the register since he had acquired an adverse title to the land.



4. He contended that the Defendant had threatened to forcefully occupy and sell the land while he is still in occupation. He stated that he had extensively developed the land and if it was not preserved pending determination of this suit, he would suffer irreparably. The Plaintiff swore the affidavit in support of the application and attached a piece of paper showing the subdivisions, photographs of the rental houses on the land, a copy of the green card of land parcel 2456 and the certificate of official search of the land.
5. The Defendant, Hanson Njoki Mugo opposed the application through the replying affidavit in which he averred that he was the registered proprietor of the suit land having bought it from Abel Caxton Njuki and Florence Immaculate Watari sometime in 2022. He stated that when he bought the land, it was vacant and not occupied by anybody including the Plaintiff. That he fenced the land and took actual occupation without any claim or complaint from anybody. He averred that as the absolute registered proprietor of the land, he had every legal right to deal with it without interference or restriction. He maintained that the Plaintiff was not in actual occupation of the suit land and had never been and that his prayer for orders of injunction and prohibition were misconceived and baseless.
6. He contended that the Plaintiff's Originating Summons dated 11/7/2024 was misconceived, a non-starter and an abuse of the court process considering that the Plaintiff had never been in possession of the suit land. He urged the court to dismiss the application with costs. He attached a copy of the title deed over the suit land and photographs of the land.
7. In response to the Defendant's replying affidavit, the Plaintiff filed a supplementary affidavit where he stated that it was not true that by the time the Defendant bought the suit land it was vacant as he was in occupation of the land and had his houses which the Defendant had since demolished and cut down his trees. He averred that the photos exhibited by the Defendant were taken after the Defendant had demolished his house contrary to court orders. He contended that the Defendant's entering the land and forcefully occupying it was in contravention of the court orders issued on 12/7/2024 and that the orders were served upon him together with other pleadings. He prayed to have his application allowed so that the suit land is preserved as the main suit is determined.
8. Parties filed and exchanged written submissions which the court has considered. The Plaintiff submitted that he had met the requirements for grant of an injunction set out in *Giella v Cassman Brown & Co Ltd* (1973) EA 358. He submitted that he had established a prima facie case by demonstrating long term occupation and substantial development of the suit land. Further, that he had shown that irreparable harm will result if the injunction were not granted as he risked permanent displacement from the land he has occupied since 1987. He added that the balance of convenience tilted in his favour given the Defendant's unlawful actions of demolishing his structures in violation of court orders. He further submitted that Section 68(1) of the [Land Registration Act](#) gives this court power to grant an inhibition order to prevent any dealings on land that is subject to litigation. It was his position that given the Defendant's conduct and his disregard for court orders, an inhibition order was the only way to prevent irreparable harm and ensure justice was done.
9. In his submissions, the Defendant mainly denied that the Plaintiff was in occupation of the land or the developments on the suit land. He contended that as the absolute proprietor of the suit land, he enjoys the rights and privileges given by Section 24(a) and 26(1) of the [Land Registration Act](#). He added that the reliefs sought by the Plaintiff were misconceived and not supported by any evidence and urged the court to dismiss the application.
10. The issue for determination is whether the Plaintiff is entitled to the orders sought. The guiding principles in handling an application for restraining orders are that the Plaintiff must establish a *prima facie* case with a probability of success, that the Plaintiff would suffer irreparable injury which would



not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of convenience.

11. The Plaintiff filed this suit seeking orders of adverse possession over the suit land. He claims that he has been in occupation of the suit land since 1987 and had made extensive developments on the land. He produced photographs showing the developments which the Defendant did not challenge. The Defendant only denied that the Plaintiff had ever occupied the suit land and produced his own photos to show that the land was vacant. The Plaintiff contended that the Defendant's photographs were taken after the Defendant demolished the Plaintiff's structures and cut down his trees. The main ingredient in a claim for adverse possession is actual occupation and possession of land uninterrupted for over 12 years. Whether the Plaintiff's occupation of the land has been for over 12 years uninterrupted is a matter to be determined during trial. The court is persuaded that the Plaintiff has been in occupation of the suit land and had made developments on the land. The Plaintiff has demonstrated a prima facie case with probability of success.
12. The Plaintiff claimed that the Defendant defied court orders and caused damage on the suit land. He also stated that the Defendant had threatened to forcefully occupy and sell the land, which are facts that the Defendant did not controvert. Given the Defendant's conduct, he may cause more damage to the suit land if he is not restrained. Nothing stops him from selling the land to another party to defeat the Plaintiff's claim.
13. Weighing the hardship to be borne by the Plaintiff by declining to grant the restraining orders, against the hardship to be borne by the Defendant by granting the orders, the balance of convenience tilts towards orders to maintain status quo. The court is satisfied that it would be just to preserve the suit property pending the hearing and determination of the suit.
14. The application dated 11/7/2024 is allowed in terms of prayers 4 and 5.
Costs shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 29TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. W. Kamochu holding brief for Ms. M. Ndeke for the Plaintiff

Mr. Njeru Ithigah for the Defendant

Court Assistant- Diana Kemboi

