



REPUBLIC OF KENYA



Ngure & 5 others v Mugo (Sued in her capacity as the Personal Representative of the Estate of Jeremiah Ngiri - Deceased) & 2 others (Environment & Land Case 28 of 2023) [2025] KEELC 3719 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 28 OF 2023**

AK BOR, J

APRIL 29, 2025

BETWEEN

KIRANGI NGURE & 5 OTHERS & 5 OTHERS & 5 OTHERS PLAINTIFF

AND

EFUREITH IRIMA MUGO (SUED IN HER CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JEREMIAH NGIRI - DECEASED) & 2 OTHERS & 2 OTHERS & 2 OTHERS DEFENDANT

RULING

1. The Plaintiffs brought the application dated 20/7/2023 seeking an order of prohibition in respect of the parcels of land known as Mbeere/Mbita/2030 and 2032 and Mbeere/Mbita/5179 to 5196 (the suit land) pending the hearing and determination of that application. They also sought to have the costs of the application borne by the Defendants. Prayers 2 and 3 of the application are identical and seek prohibitory orders pending the hearing and determination of the application.
2. The application was made on the grounds that the Plaintiffs have instituted the instant suit whose claim against the Defendants, is for a declaration that the registration of the suit land in the name of the Defendants as proprietors was encumbered by a constructive trust and their registration did not affect or dissolve the trust. The Plaintiffs claim ownership of the various parcels of land that were registered in their names and their deceased fathers' names pursuant to objection proceedings in Mbita Adjudication section which culminated in a judgment delivered on 19/03/1991. The Plaintiffs urged that the Minister's Appeal No. 117 of 2000 filed by Jeremiah Ngiri nine years after determination of the objection proceedings was unprocedural because it was filed out of time and it unjustly reversed their lawful ownership of the suit land.
3. They contended that Jeremiah Ngiri (deceased), was irregularly registered as proprietor of the suit land on 18/01/2012, despite being dead at the time. It was alleged that the 1st Defendant subdivided part



of the disputed land and transferred portions to the 2nd and 3rd Defendants, while retaining the other land. They stated that they had reliably learnt that the Defendants were in the process of selling the suit land and unless the parcels of land were preserved and the Defendants restricted or restrained from disposing the land, the suit would be rendered nugatory.

4. Kirangi Ngure, swore the affidavit in support of the application on his behalf and on behalf of the other Plaintiffs and annexed copies of the green cards for Mbeere/Mbita/2027 to 2032, official searches for Mbeere/Mbita/5179 to 5196, proceedings of objections in Mbita Adjudication Section and the judgment delivered on 19/3/1991 as well as proceedings in the Minister's Appeal Case No. 117 of 2000.
5. The Defendants opposed the application vide the replying affidavit sworn by the 1st Defendant, Efireith Irima Mugo. She averred that the original parcel of land known as Mbeere/Mbita/2027 to 2032 formed part of the ancestral land of her late father, Jeremiah Ngiri that was passed down to him by his late father. She averred that although these parcels were awarded to the Plaintiffs and their deceased relatives during adjudication objection proceedings in 1981, her late father successfully appealed the decision through Minister's Appeal No. 117 of 2000. She added that even though her father, Jeremiah Ngiri had died before the appeal was heard, he was represented and the Minister made a decision in his favour on 30/12/2010.
6. She added that the Plaintiffs challenged that decision through Embu JR Case No. 40 of 2011, but the court dismissed their application. She then filed succession proceedings and inherited the bulk of her deceased father's estate including the parcels of land in dispute and lawfully dealt with them, including subdividing and transferring some of the resultant subdivisions to the 2nd and 3rd Defendants. It was her contention there was no evidence to show that the Minister's Appeal was filed out of time and that the issue had been raised 13 years after the Minister's decision was made and that the delay was inordinate. She argued that the 2nd, 3rd, 4th, 5th and 6th Plaintiffs were not parties to the Minister's Appeal and consequently they do not have the locus standi to present the suit and the application. She further argued that the application and the entire suit are vexatious and an abuse of court process. She added that the Plaintiffs had not demonstrated that they were entitled to the suit land hence they are not entitled to the reliefs they seek.
7. The court directed parties to file and exchange written submissions which it has considered. The Plaintiffs in their submissions cited Order 40 Rule 1 which grants the court discretion to issue orders of temporary injunction, and Section 68(1) of the *Land Registration Act* which empowers the court to issue orders of inhibition. They submitted that they had met the requirements set out in *Giella V Cassman Brown & Co Ltd (1973) EA 358* before a court can grant orders of injunction and urged that their application be allowed.
8. The Defendants submitted that the Plaintiffs had not met the said requirements and urged that the application ought to be dismissed.
9. The issue for determination is whether the Plaintiffs are entitled to prohibitory orders. The Plaintiff's main contention is that they had learned that the Defendants were in the process of selling the suit land. The Defendants argue that the Plaintiffs did not demonstrate that they were entitled to the suit land to entitle them to the reliefs sought. The purpose of an order of prohibition is to preserve the subject matter of the suit and prevent actions that may render the court's final decision nugatory. Based on the material placed before it, the court is not persuaded that there is any threat of the suit land being disposed of or interfered with in a manner that would defeat the suit.



10. The court declines to grant the orders sought in the application dated 20/7/2023. The Defendants shall have costs of the application.

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

K. BOR

JUDGE

In the presence of: -

Mr. N. Mbogo holding brief for Ms. A. Maina for the Plaintiffs

Court Assistant- Diana Kemboi

No appearance for the Defendants

Page 2 of 4

