



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC ORIGINATING SUMMONS NO. E027 OF 2021

JOSHUA MUTWIRI NTARANGWI (Suing as the legal representative of the estate of the late

ROBERT RINGERA M’KIRIINYA alias NTARANGWI).....PLAINTIFF

AND

GLADYS NGATHI M’TUERANDU & VERONICA NAINA M’TUERANDU

(Sued as the legal representatives of the late

MUTWERANDU MURAGA alias M’TWERANDO M’MURAA...1ST AND 2ND DEFENDANTS

MUTUMA M’ITWERANDU.....3RD DEFENDANT

MWENDA M’ITWERANDU.....4TH DEFENDANT

SABINA KARIMI.....5TH DEFENDANT

NJAGI MUTWIRI.....6TH DEFENDANT

DAVID MUTWIRI M’ITWERANDU.....7TH DEFENDANT

ELIZABETH G. MBAE.....8TH DEFENDANT

DANIEL MUTHAURA M’ITWERANDU.....9TH DEFENDANT

RULING

1. The plaintiff seeks for temporary orders of injunction restraining the defendants from entering **L.R No. Kiiura/Ruiri/827** or in any other way interfering with his possession pending hearing and determination of this suit. The application is supported by an affidavit sworn by Joshua Mutwiri Ntarangwi on 8.11.2021.
2. The grounds of the application are that the suit land is registered under the name of M’twerando Muraga alias M’Twerando M’Muraa now deceased but represented by the applicant as a legal representative of the late Robert Ringera M’Kiriinya Ntarangwi.
3. It is averred the late Robert M’Kiriinya alias Ntaragwi had bought the suit land from M’Twerando M’Muraa in the late 1070’s as per annexure “**JM III**”, took vacant possession, made developments thereon but both of them passed on before the transfer could be effected.
4. The plaintiff avers his occupation of the suit land has been open, exclusive and uninterrupted throughout the life of the defendant’s deceased father as per the attached photographs. However the defendants in October 2021 descended on the land and effectively prevented him from continuing with any agricultural activities on the land with a view of forcefully taking over the land and physically harming him and his workers unless orders sought herein are granted.
5. In a further affidavit sworn on 10.12.2021, the plaintiff avers the land bought by his late father was the land comprised of **L.R No. Kiiura/Ruiri/827** measuring approximately 4 acres, and which he took possession of since 1970 without any objection from the defendants

and that in addition, his father had bought another 6 acres of land comprised of **L.R No. Kiirua/Ruiri/1315** which was duly transferred to him. That the two parcels adjoin the suit land and the defendants have always acknowledged the suit land belongs to the plaintiff hence the invasion was an afterthought. Further, it is averred in 2004 the 8th defendant purported to raise a claim but the same was abandoned.

6. The application is opposed by the 1st and 2nd defendants through an affidavit sworn on 2.12.2022 by Gladys Ngathi M'Tuerandu. She states the application is an abuse of the court process since her late husband is the registered owner of the land, has always had possession thereof and not the plaintiff as alleged.

7. Further, she admits the plaintiff's late father had bought some land from her late husband namely, **L.R Kiirua/Ruiri/1315** which borders the suit land but while taking possession the plaintiff's late father allegedly took up and trespassed into close to ¼ an acre of her land **Parcel No. Kiirua/Ruiri/1315** and if an injunction is issued, it would prejudice her as bonafide owner and would amount to sanctioning and or a perpetuation of an illegality.

8. Parties were directed to file written submissions dated 22.12.2021 and 22.1.2022 respectively.

9. The plaintiff submits that his application has met the three conditions under ***Giella –vs- Cassman Brown [1973] EA 358*** given the sale agreements, long occupation, acknowledgement of occupation by the defendants and the irreparable loss and damage likely to be occasioned; and that the balance of convenience tilts in favour of allowing the application since the plaintiff's family has been in occupation for over 48 years.

10. The plaintiff relies on:-

a) ***Samuel Wafunafu Wachilonga –vs- John Makokha Sakwa (2018) JELR 95112*** on the proposition that, where a party allegedly forcefully moves into a disputed land and is not enjoined, there is likelihood of destruction of vital evidence required to prove his claim hence the need to preserve the status quo until the dispute is arbitrated.

b) ***Nyeri ELC No. 2 of 2020 (O.S.) Joseph Wangondu Wambugu –vs- Cecilia Thongori Wanjeru*** on the proposition that, at an interlocutory stage, the applicant is merely required to establish a prima facie case if there has been occupation, any development's thereof and lastly evidence of likely irreparable loss or damage.

c) ***Dismas Otella Osikoyo & 2 Others –vs- Thomas Barasa Kimani [2018] eKLR***, on the proposition that, where there is documentary evidence of sale and correspondence thereof, a prima facie case is established.

11. On the other hand, the defendants submit a prima facie case has not been established for lack of any beneficial interest or any legal right capable of enforcement as held in ***Mrao Ltd –vs- First American Bank of Kenya Ltd & 2 others [2003] eKLR***.

12. Secondly, it is submitted no irreparable loss and damage has been demonstrated as the land does not belong to the plaintiff, and have not been in occupation as alleged or at all and lastly that no evidence has been produced of any damaged property and or developments therein.

13. The plaintiff filed an originating summons dated 8.11.2020 seeking for declaration that he has acquired adverse possession over the land **L.R No. Kiirua/Ruiri/827**. He attached copies of sale agreements to back his claim.

14. The originating summons was served upon the defendants on 12.11.2021 as per the affidavit of service sworn by Stanely Mworira M'Mbui and filed on 15.11.2021.

15. The defendants are yet to make a defence to the originating summons.

16. In the copy of record attached to the replying affidavit as **GNM "2"** it is apparent that the late Robert Ringera Kiriinya on 24.10.1981 was transferred **L.R No. 1315** being a subdivision of **L.N Kiirua/Ruiri/828**.

17. For an applicant to be entitled to injunctive orders, he must establish a prima facie case with a probability of success and that he shall suffer irreparable loss and damage if the orders sought are not granted and lastly that the balance of convenience tilts in favour of granting the application.

18. In this suit, there is evidence that the parties know each other and have had land transactions before.

19. The plaintiff avers he is entitled to more land as per the sale agreements whose delay to transfer was occasioned by the demise of the two parties to the sale agreements.

20. On the other hand, the respondents aver the land bought was **Parcel No. Kiirua/Ruiri/1315 and not L.R 828**. The annexures produced indicate **Parcel No. Kiirua/Ruiri/1315** was a subdivision of L.N 827.

21. On the material before this court, it appears the plaintiff has a right which the defendants have infringed on and requiring preservation of the suit land pending hearing of the case. See ***Mrao Ltd (Supra)***.

22. In the premises, I allow the application in terms of prayer 3 and 4 for one year only.

23. The defendants are directed to file a replying affidavit to the originating summons within 21 days from today and the parties to comply with **Order 11 Civil Procedure Rules** within 45 days from the date hereon.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16TH DAY OF FEBRUARY, 2022

In presence of:

Ringera for appellant/applicant

G. Wanjohi for respondent

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE