



**Njoroge & another v Methi & Swani Farmers Co-op Society Ltd & another (Environment & Land Case E001 of 2022) [2022] KEELC 3542 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3542 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E001 OF 2022**

**LN GACHERU, J**

**MAY 19, 2022**

**BETWEEN**

**GITAU NJOROGE ..... 1<sup>ST</sup> APPLICANT**

**NANCY WANJIRU KUNGU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**METHI & SWANI FARMERS CO-OP SOCIETY LTD ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE WAMAITHA GITAU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a Notice of Motion Application brought by the Plaintiffs/Applicants dated February 22, 2022, wherein they have sought for injunctive orders against the Defendants/Respondents herein seeking that they be restrained either by themselves, or their servants, employees or agents from claiming title under them, from trespassing, appropriating, constructing upon or in any way interfering with the Plaintiffs/Applicants possession of land parcel No. LR No. Mitubiri/Wempa/Block 2/4115, which was hived off from LR No. Mitubiri/Wempa/Block 2/2067.
2. The Application is supported by the grounds stated on the face of the Application and the Supporting Affidavit of Gitau Njoroge, the 1<sup>st</sup> Plaintiff herein.
3. Among the grounds in support of the Application is that the Plaintiffs/Applicants were allocated LR No. Mitubiri/Wempa/Block 2/2067, by the 1<sup>st</sup> Defendant/Respondent in 1986. That they have been in possession of the suit property since then. However, the Plaintiffs/Applicants have recently discovered that the said property was secretly subdivided into two parcels of land-being Mitubiri/Wempa Block 2/4114 & 4115. That parcel No. LR No. Mitubiri/Wempa/Block 2/4115, was fraudulently transferred to the 2<sup>nd</sup> Defendant/Respondent herein. That the Plaintiffs/Applicants have built their homestead on this portion of land-parcels No. 4115. That the 2<sup>nd</sup> Defendant / Respondent is in the process of selling off this portion of land-LR No. Mitubiri/Wempa/Block



- 2/4115, and she is using the area chief to evict the Applicants. That the Plaintiffs/Applicant are in eminent risk of forceful eviction by the 2<sup>nd</sup> Defendant/Respondent and thus they have been exposed to undue hardship and ridicule and the Court should grant them the orders sought as prayed. That failure to grant them the orders, they will suffer incurable violation of their proprietary rights and prejudice and they urged the Court to allow their application.
4. The said Application is supported by the Affidavit of Gitau Njoroge, the 1<sup>st</sup> Plaintiff/Applicant, who averred that Nancy Wanjiru Kungu, the 2<sup>nd</sup> Plaintiff is his wife and hence he has authority to swear the affidavit on her behalf.
  5. He further averred that they purchased the suit property from one Wambui Nduati, who was a founder shareholder member of the 1<sup>st</sup> Defendant. That the said Wambui Nduati showed them the extend of the purchased land, and Applicants attached the sale agreement as annexure GN1. That upon purchase of the suit property, the 1<sup>st</sup> Defendant/Respondent issued them with a Share Certificate dated 8<sup>th</sup> August 1986, in their joint names marked as GN3. Further, in the year 1990, they built their homestead on the suit property where they live today. He attached receipts marked GN5, to show that the Plaintiffs had paid to the 1<sup>st</sup> Defendant/Respondent the requisite amount as shareholders. He also attached photographs GN5, to confirm that they have a permanent homestead on the suit property and that they have been farming on the suit property and evidence of subsistence crops was shown.
  6. Further that upon finalization of subdivision and survey works by the 1<sup>st</sup> Defendant/Respondent, the Plaintiffs/Applicants parcel of land was identified as LR No. Mitubiri/Wempa Block 2/2067, which comprised of two plots that were consolidated.
  7. However, the 1<sup>st</sup> Defendant /Respondent did not issue them with a title deed as the 1<sup>st</sup> Defendant/Respondent informed them that there were few issues to be sorted out. Later the Plaintiffs/Applicants were informed that the 2<sup>nd</sup> Defendant/Respondent had laid claim to their portion of land.
  8. Further, that in the year 2016, the 1<sup>st</sup> Defendant issued them with title deed for LR No. Mitubiri/Wempa Block 2/4114 which was issued on November 17, 2016 and they were further informed that the land parcel number changed upon surveying of the said land.
  9. However, in May 2021, the area Chief summoned him and informed him that they had built their homestead on the land belonging to 2<sup>nd</sup> Defendant/Respondent. He was directed to vacate the said portion of land, but he resisted. That the 2<sup>nd</sup> Defendant's Parcel of land was allegedly LR Mitubiri/Wempa Block 2/4115, as per annexure GN 9.
  10. That in December 2021, the area Chief informed him that he would send Land Surveyor to establish the Beacons for LR No. Mitubiri/Wempa Block 2/ 4115, allegedly belonging to 2<sup>nd</sup> Defendant. That the said Land Parcel had allegedly been put up for sale by the 2<sup>nd</sup> Defendant/Respondent who has never occupied the said parcel of land.
  11. It was his further allegations that the officials of 1<sup>st</sup> Defendant/Respondent secretly, illegally and irregularly subdivided the Applicants parcel of land LR Mitubiri/Wempa Block 2/2067, and issued two title deeds, being Mitubiri/Wempa Block 2/4114 and 4115. That his family has developed their homestead on LR No. Mitubiri/Wempa Block 2/4115, which is now being claimed by the 2<sup>nd</sup> Defendant, which she is now trying to dispose off. It was his contention that they have never transferred any part of their suit property LR No. Mitubiri/Wempa Block 2/2067, to the 2<sup>nd</sup> Defendant/Respondent and thus her registration as the owner is illegal and irregular. That the 2<sup>nd</sup> Defendant's/Respondent's title deed for LR Mitubiri/Wempa Block 2/4115, was secured through fraud, illegality



and corrupt scheme, perpetrated by the officials of the 1<sup>st</sup> Defendant/Respondent, and thus this suit and application for injunction. He urged the Court to grant the said injunction.

12. The suit and the Application is contested by the 2<sup>nd</sup> Defendant who filed grounds of objection and states as follows; -
  1. That the Application is misconceived since the Plaintiffs have not demonstrated reasonable cause of action against the 2<sup>nd</sup> Defendant as title No. Mitubiri/Wempa Block 2/4115, is distinct from Mitubiri/Wempa Block 2/4114.
  2. That the Application has not met the requisite conditions for grant of orders of injunction against the 2<sup>nd</sup> Defendant.
  3. That the Application is incompetent as there is no nexus between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. She urged the Court to dismiss the second Application with costs.
13. The 1<sup>st</sup> Defendant/Respondent did not file any response to the instant Application. The Court directed the parties to canvass the said Application by way of Written Submissions.
14. The Plaintiffs/Applicants filed their submissions on May 9, 2022, through Kimani Kiarie & Associates Advocates. However, the 2<sup>nd</sup> Defendant/Respondent did not file any submissions.
15. The Court has considered the instant Notice of Motion Application which is an Application for injunction. The Court has considered too the annexures thereto and the written submissions.
16. It is an Application brought under various provisions of Law. In particular Order 40 Rule 1. The Court has considered the provisions of the said Order 40 Rule 1 and finds that under the said orders, the Court has discretion to grant injunctive orders when the suit property is in danger of being wasted, damaged, alienated or being disposed off by any party to the suit before the main suit is heard and determined.
17. The Principles for grant of injunctive orders are well laid down in the case of *Giella vs Cassman Brown and Co. Ltd* (1973) EA 358, being;- that firstly, an Applicant must show a prima facie case with a probability of success ,secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages, and thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
18. The Court will also take into account that at this juncture, it will not delve into the disputed facts and cannot give definitive finding of the facts herein as it is only considering affidavit evidence. See the case of *Edwin Kamau Muriu vs Barclays Bank of Kenya Ltd*, Nairobi HCCC No. 1118 of 2002, where the Court held;

"In an interlocutory Application, the Court is not required to determine the very issues which will be canvassed at the trial with finality. All the Court is entitled at that stage is whether the Applicant is entitled to an injunction sought on the usual criteria"
19. Have the Plaintiffs/Applicants herein being able to establish the threshold for grant of injunctive orders?
20. On whether the Plaintiffs/Applicants have established a prima facie case with probability of success, the Court finds that the Plaintiffs/Applicants have alleged that they purchased the suit property in 1986 from one Wambui Nduati. The suit property was allegedly registered there as LR Mitubiri/Wempa/Block 2/2067.



21. That they were not issued with a title deed on time because the 1<sup>st</sup> Defendant/Respondent alleged that there were some issues that were yet to be sorted out.
22. Later the 1<sup>st</sup> Defendant/Respondent informed the Plaintiffs/ Applicants that the 2<sup>nd</sup> Defendant/ Respondent was laying claim to the said parcel of land. Eventually the Applicants were issued with a title deed being LR No. Mitubiri/Wempa/Block 2/4114, and the 1<sup>st</sup> Defendant/Respondent informed them that the numbers changed after the survey. The 1<sup>st</sup> Defendant/Respondent did not file any response to the instant application. At this juncture, this Court cannot confirm whether indeed the 1<sup>st</sup> Defendant had issued the Plaintiffs/Applicants with LR Mitubiri/Wempa/Block 2/2067, or not.
23. However, it has not been disputed that the Plaintiffs/Applicants have occupied the whole portion of land from 1986 to date. Prima facie, the Court finds that prior to 2014, the Plaintiffs/Applicants were in occupation of the whole portion of land which comprises of LR Mitubiri/Wempa/Block 2/4114 and 4115. It is also evident that land parcels No. 4114 and 4115 were subdivisions of LR Mitubiri/Wempa/Block 2/2067, as is evident from the Mutation Form attached to the 2<sup>nd</sup> Defendant's/ Respondent's responses to the instant Application.
24. This said subdivision was done in the year 2016. It is evident that the said subdivision was done many years after the Plaintiffs/Applicants took possession of the disputed parcel of Land. The 1<sup>st</sup> Defendant/ Respondent have not availed evidence to controvert the Plaintiffs/Applicants allegations that land parcels No. Mitubiri/Wempa Block 2/2067, which was initially occupied by the Applicants since 1986 was later subdivided in 2016 and a portion of the said land was given to 2<sup>nd</sup> Defendant/Respondent.
25. The reasons that caused the said subdivisions can only be availed at the main trial. However, it is evident that the 2<sup>nd</sup> Defendant/Respondent is now granted a portion of land that was initially being utilized by the Plaintiffs/Applicants herein.
26. For the above reasons, the Court finds that the Plaintiffs/Applicants has established that they have a prima facie case with probabilities of success at the trial.
27. On whether the Plaintiffs/Applicants will suffer irreparable loss/injury that cannot be compensated by an award of damages, it was the Plaintiffs/Applicants allegations that they have occupied the whole suit property that was known as LR Mitubiri/Wempa/Block 2/2067 from the year 1986, when they purchased the said land from the original owner Wambui Nduati. That in the year 1990, the Applicants did put up their homestead on the portion of land which is now LR Mitubiri/Wempa/Block 2/4115. That they live on the said portion of land to date.
28. That the said portion-No. 4115 is now registered in the name of the 2<sup>nd</sup> Defendant/Respondent who intends to sell the same. The 2<sup>nd</sup> Defendant/Respondent did not dispute the fact that she intends to sell the said parcel of land. The said registration of Parcel No. LR Mitubiri/Wempa/Block 2/4115, in favour of 2<sup>nd</sup> Defendant/Respondent is disputed by the Plaintiffs/Applicants herein. If the same is sold, the Plaintiffs/Applicants will be forced to vacate the same and thus abandon or demolish their homestead. In the event that the Plaintiffs/Applicants are successful litigants in future, they will have suffered irreparable loss which cannot be compensated by an award of damages. The Plaintiffs/Applicants have a sentimental attachment to their homestead since 1990 and in the event of eviction, they will suffer irreparably and the said loss cannot adequately equated to any monetary compensation.



See case of *Narendra Changalal Solanki vs Neepu Auto Spares Ltd Kisumu* HCCC No.90 of 2003, where the Court held;

"The Applicant may be man of straw, but money is not always a factor in the grant of injunction, and the Court cannot close its eyes against the violation or threatened violation of the Applicants rights because the other side is capable of paying damages".

29. On whether the Court is in doubt, this Court finds that it has no doubt at all. In any event, the balance of convenience tilts in favour of the Plaintiffs/Applicants who has been in occupation of the suit property since 1990. It was alleged that the 2<sup>nd</sup> Defendant/Respondent has never occupied the suit property. She will therefore not suffer any inconvenience, if status quo is maintained. It is trite that when there is a dispute, it is important to maintain status quo. See the case of *Joash Ochieng Ougo & another v Virginia Edith Wambui Otieno* [1987] eKLR where it was held as follows;

"The general principle which has been applied by this court is that where there are serious conflicts of fact, the trial court should maintain the status quo until the dispute has been decided in a trial."

30. Having carefully considered the instant Notice of Motion Application dated February 22, 2022, the Court finds the same is merited and the said application is consequently allowed entirely in terms of prayers No. 4 and 5, with costs to the Plaintiffs/Applicants.
31. Further, the Plaintiffs/Applicants are directed to ensure that the suit herein is heard and determined expeditiously, so that the contested issues can be resolved without further delay.
32. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19<sup>TH</sup> DAY OF MAY, 2022.**

**L. GACHERU**

**JUDGE**

In the presence of;-

Alex Mugo - Court Assistant

Mr. Kimani for the Plaintiffs/Applicants

No Appearance for the 1<sup>st</sup> Defendant

No Appearance for the 2<sup>nd</sup> Defendant

**L. GACHERU**

**JUDGE**

