



**Gachanja v Ogalo & another (Environment & Land Case
E273 of 2021) [2022] KEELC 2368 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2368 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E273 OF 2021**

**MD MWANGI, J
JUNE 30, 2022**

BETWEEN

HANNAH WANJIKU GACHANJA PLAINTIFF

AND

CLIFFORD NYAKOE OGALO 1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 2ND DEFENDANT

RULING

1. The plaintiff has moved this court by way of an Amended Notice of Motion Application amended on the February 16, 2022 filed under the provisions of Order 40 Rule 1, Order 51 Rule 1 of the *Civil Procedure Rules*, sections 1A, 1B and 3A and 63(c) of the *Civil Procedure Act*, as well as Article 159 of the *Constitution*.
2. The applicant prays for Orders that;
 - a. Spent
 - b. Spent
 - c. That the honourable court be pleased to issue an injunction restraining the defendants herein, their servants, employees and/or agents from trespassing, constructing, entering, damaging, wasting and/or interfering in whatsoever manner with the plaintiff's parcel of land known as Plot No. P4909 now LR. No. Nairobi Block 105/4472 pending the hearing and determination of this suit.
 - d. That the 2nd defendant be compelled by an order of this court to identify and allocate the plaintiff's bonus parcel of land on the ground.



- e. That an order be issued to the OCS Ruai Police Station to enforce compliance of the orders herein.
 - f. That the costs of this application be provided for.
3. The application is premised on the grounds on the face of it basically that the 1st defendant with the assistance of the 2nd defendant has encroached on the plaintiff's parcel of land known as Plot No. P4909 now LR No. Nairobi Block 105/4472 with the intention of unlawfully evicting the plaintiff from the land. The plaintiff further states that she is unable to access her parcel of land subject of these proceedings as the 1st defendant has erected a perimeter wall around the said parcel of land and is in the process of constructing permanent structures therein. She further alleges that she is the rightful owner of the suit property having purchased it from the 2nd defendant. She was issued with an ownership certificate pending the issuance of a Title Deed. That position that has been confirmed by the 2nd defendant.
 4. The application is further supported by the supporting affidavit of the plaintiff, Hannah Wanjiku Gachanja, deposed on the February 16, 2022. The plaintiff/applicant explains the sequence of events leading to the filing of this suit and the instant application. In summary, the plaintiff deposes that she is the legal proprietor of the parcel of land known as Nairobi Block 105/4472. She allegedly purchased the suit property from the 2nd defendant herein. Although she is yet to be issued with a Title Deed, she has made all requisite payments to facilitate the processing of the Title Deed. The 2nd defendant had in fact written to the Ministry of Lands and Physical Planning confirming her as the rightful owner of the suit property. That the 2nd defendant had even pointed out the suit property on the ground to the plaintiff.
 5. She was utterly shocked when she went to check her property, only to find that the 1st defendant herein had encroached into the land and fenced it off. that she has reason to believe that the 1st defendant is in the process of constructing or making plans to construct some permanent structures on the suit property. It is for that reason that she seeks the orders enumerated in her application.
 6. The plaintiff's application is not opposed by either of the defendants despite them having been served. There are affidavits of service on record confirming service on both defendants. The 1st defendant sought leave of the court on the March 8, 2022 to file a replying affidavit, through the Advocate representing him. Leave was indeed granted, but he did not file a replying affidavit or any other form of response to the Plaintiff's application.

Court's Directions

7. On the same day that the court granted leave to the 1st defendant to file a replying affidavit, the court also directed parties to file their written submissions in respect of the application. The plaintiff complied with the said directions and filed her submissions dated the April 4, 2022. The 1st defendant did not file submissions as well. I have had the opportunity to read the Plaintiff's submissions.

Determination.

8. The power to grant an order of temporary injunction is discretionary and as has been correctly said time and again, such exercise of discretion must be exercised judiciously on the basis of law and evidence (*Mrao v First American Bank of Kenya Limited & 2 others* [2003] eKLR.)
9. In the instant case, though the plaintiff's application is not opposed, the plaintiff has in her application clearly stated that the first defendant is in possession of the suit property. Granting the plaintiff the



orders as framed in her application will be tantamount to issuing an eviction order before the court has had an opportunity of hearing and considering the evidence of all the parties or rather affording the parties an opportunity to present their respective cases before the court. That is not the intention of the court at this stage of the case.

10. Considering the circumstances of this case, the most appropriate order for the court to issue at this point in time which it hereby does is an order of maintenance of the status quo. Paragraph 28(k) of the *Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and title to Land and Proceedings in other Courts*, 2014, allow this court to make such an order for the maintenance of status quo until a matter is fully heard and determined. The meaning of that order is that the 1st defendant remains in possession but is barred from making any further developments or constructions on the land or transferring or in any other manner disposing of the suit property, L.R Nairobi Block 105/4472 pending the hearing and determination of the suit.
11. In regard to the second prayer to compel the 2nd defendant to identify and allocate the plaintiff the bonus parcel of land, the court is of the view that such an order cannot not issue at this interim stage of the proceedings. That is a conclusive and final order that can only issue after the hearing of the case.
12. The gist of this ruling is that the court hereby issues an order of maintenance of the status quo. The 1st Defendant shall remain in possession of the suit property, L.R Nairobi Block 105/4472 but is barred from making any further developments or constructions on the land or transferring or in any other manner disposing of the suit property, L.R Nairobi Block 105/4472 pending the hearing and determination of the suit.
13. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022

M.D MWANGI

JUDGE

In the Virtual Presence of:-

Ms. Nyaga h/b for Ms. Thungu for the Plaintiff/Applicant

Ms. Wekesa h/b for Mr. Nyabena for the 1st Defendant/Respondent

N/A for the 2nd Defendant/Respondent

Court Assistant: Hilda

M.D. MWANGI

JUDGE

