



REPUBLIC OF KENYA



KENYA LAW
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**Njoro & 3 others v Wanjuki (Environment & Land Case
4 of 2022) [2022] KEELC 2209 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2209 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 4 OF 2022**

**YM ANGIMA, J
JUNE 23, 2022**

BETWEEN

**MICHAEL MURIITHI NJORO 1ST PLAINTIFF
MONICA NJOKI NJUKI 2ND PLAINTIFF
MIRIAM WANJIKU NDOME 3RD PLAINTIFF
MARGARET WAMBUI NJOROGE 4TH PLAINTIFF**

AND

**MOSES NDIRITU WANJUKI (SUBSTITUTED AS THE LEGAL
REPRESENTATIVE OF THE ESTATE OF SAMUEL WANJUKI
NJOROGE) DEFENDANT**

RULING

1. By a notice of motion dated 30.10.2020 grounded upon Sections 1A, 1B & 3A of the *Civil Procedure Act* (Cap.21), Order 8 rules 3, 4 & 8, Order 40 rules 1, 2 & 3, Order 51 rule 1 of the *Civil Procedure Rules*, 2010, Section 68 of the *Land Registration Act*, 2012 and any other applicable provisions of the law, the Plaintiffs sought various interim orders pending the hearing and determination of the suit. The only prayer pending determination is Order No.4 seeking a temporary injunction to restrain the Defendant from sub-dividing, transferring, selling, charging, cutting trees or interfering with Title No. Nyandarua/Wanjohi/3264 - 3268 pending the hearing and determination of the suit.
2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1st Plaintiff on 30.10.2020 and the exhibits thereto. It was contended that the Defendant intended to cause further sub-division of the suit properties with intent to transfer the same to third parties before the conclusion of the suit. It was further contended that the Defendant was cutting down trees on the suit properties thus putting them to waste hence the application.



3. The Defendant filed a replying affidavit sworn on 17.01.2022 in response to the said application. It was contended that the said application was incompetent, bad in law and otherwise an abuse of the court process. It was contended that the order of inhibition which had already been granted under Section 68 of the [Land Registration Act](#) pending the hearing and determination of the suit was sufficient for the purpose of preserving the suit properties pending the hearing and determination of the suit.
4. The Defendant stated that he had no objection to the current status quo being maintained pending the hearing and determination of the suit and that he had no intention of sub-dividing or transferring any of the suit properties. It was further contended that there were no mature trees on the suit properties and that whatever trees he intended to harvest were merely for firewood for domestic use. The court was consequently urged to dismiss the prayer for an interim injunction.
5. The Plaintiffs filed a supplementary affidavit sworn by the 1st Plaintiff on 15.02.2022 in response to the Defendant's replying affidavit expressing dissatisfaction with an order for maintenance of the status quo since the current status quo was unknown. It was further contended that if the current status were to be maintained then the Defendant shall continue to occupy a disproportionately large portion of the suit properties to the Plaintiffs' prejudice.
6. When the said application was listed for inter partes hearing the Plaintiffs opted to rely entirely upon the grounds set out in the application, the supporting affidavit and supplementary affidavit. The Defendant, on the other hand, relied entirely upon the contents of his replying affidavit.
7. The court has considered the Plaintiffs' notice of motion dated 30.10.2021 for an interim injunction, the replying affidavit in opposition thereto, as well as the supplementary affidavit. The court is of the opinion that the main question for determination is whether or not the Plaintiffs have made out a case for the grant of an interim injunction in the terms out in the application. The court has noted that an interim order of inhibition under Section 68 of the [Land Registration Act](#) was still in force and that the only prayer pending determination is Order No.4 on the interim injunction. The court is of the opinion that once an order of inhibition is in place, it prevents the registration of any dealings with the suit property. Such dealings would include the sale, transfer, lease, charge or alienation of the property. There is thus no risk of alienation of the suit properties pending the hearing and determination of the suit.
8. The court has considered the Plaintiffs' prayer to restrain the Defendant from cutting down any trees on the suit properties. The Defendant contended that firewood was his only source of energy for domestic use hence it would be unjust and burdensome to injunct him from utilizing the trees. The court has noted that the Plaintiffs have not demonstrated any peculiar value and importance of those trees to them as individuals. They have not brought out any cultural, religious, ecological, or economic significance of those trees. It has not been demonstrated that their loss cannot be adequately compensated by an award of monetary damages or that damages, of whatever amount, cannot adequately compensate them for their loss.
9. The court is thus not satisfied that the Plaintiffs have made out a prima facie case with a probability of success at the trial with respect to the trees. The court is also not satisfied that the Plaintiffs have demonstrated the risk of irreparable loss or damage with respect to the trees. Accordingly, the court finds and holds that the Plaintiffs have failed to satisfy the principles for the grant of an interim injunction as envisaged in the case of *Giella –vs- Cassman Brown & Co. Ltd* [1973] EA 358.
10. The upshot of the foregoing is that the court finds no merit in the Plaintiffs' prayer for an interim injunction. The court is of the opinion that the subsisting order of inhibition shall be sufficient to



preserve the suit properties pending the hearing and determination of the suit. Accordingly, the court makes the following orders for disposal of the application:

- (a) The Plaintiffs' prayer for an interim injunction in terms of Order No.4 of the notice of motion dated 30.10.2020 is hereby declined.
- (b) For the avoidance of doubt, the interim order of inhibition under Section 68 of the [Land Registration Act](#) 2012 shall remain in force pending the hearing and determination of the suit.
- (c) The suit shall be mentioned on 21.09.2022 for pre-trial directions.

Orders accordingly.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 23RD DAY OF JUNE, 2022.

In the presence of:

N/A for the Plaintiffs

M/S Ndegwa for the Defendant

C/A - Carol

Y. M. ANGIMA

JUDGE

