



**Miller v Kiambu County Government & 3 others (Environment & Land  
Case 108 of 2021) [2022] KEELC 3406 (KLR) (13 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3406 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 108 OF 2021**

**BM EBOSO, J  
JUNE 13, 2022**

**BETWEEN**

**CECIL GUYANA MILLER ..... PLAINTIFF**

**AND**

**KIAMBU COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 2<sup>ND</sup>  
DEFENDANT**

**LAND REGISTRAR, THIKA ..... 3<sup>RD</sup> DEFENDANT**

**MINISTRY OF LAND AND PHYSICAL PLANNING ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff, Cecil Guyana Miller, is registered as proprietor of land parcel number Thika Municipality/Block 29/639, measuring approximately 2.099 hectares [the suit property]. Through a plaint dated 6/10/2021, he sought among other reliefs, an injunctive order restraining the County Government of Kiambu against encroaching on the suit property or using the suit property as a dump site. His case was that he purchased the suit property in 2012 from one Eliphas Nyaga at a consideration of Kshs 1,500,000. The suit property was subsequently registered in his name on 17/8/2012 and he was issued with a certificate of lease. He added that in 2020, he learnt that agents of the 1st defendant had trespassed onto the suit property and had converted it into a dump site without his knowledge or consent. In the same year, he obtained an official search which revealed that the 1st defendant had, on 28/11/2013, lodged a restriction against his title on the weight of an alleged subsisting suit. It was his case that he was never notified about the said restriction and that he was not aware of any subsisting suit relating to the suit property.



2. The plaintiff contended that the actions of the 1st defendant, of illegally taking possession of his property and converting it into a dump site had caused and continued to cause him great loss, injury and suffering.
3. Together with the plaint, the plaintiff filed a notice of motion dated 6/10/2021, in which he sought an interlocutory order restraining the 1st defendant together with its agents against illegally taking possession of the suit property. He further sought an interlocutory order compelling the 3rd defendant to unconditionally remove the restriction lodged against the suit property. The said application is what falls for determination in this ruling.
4. The 1st defendant opposed the application through a replying affidavit sworn on 18/1/2022 by Charles Mwangi, its Ag Director of Physical Planning. He deposed that the suit property was surveyed out of land parcel number Thika Municipality Block 29 which had been reserved and earmarked as a dump site. He contended that the 1st defendant was not privy to any approved part development plan which informed the alienation of the suit property. He added that the alienation of the suit property was not based on an approved part development plan as required under the repealed Physical Planning Act 1996, hence the ownership documents held by the plaintiff were not authentic.
5. The 2nd respondent responded to the application through a replying affidavit sworn on 15/11/2021 by Stephen Kitunga. He deposed that records held by the 2nd defendant did not indicate that the 2nd defendant had licensed the suit property as a dump site. He added that a visit to the locality by the 2nd defendant had revealed that there existed a dump site in the area, known as Kangoki Dump Site, managed by the 1st defendant, and that the 1st defendant had failed to adhere to the laid down minimum requirements relating to management of dump sites. Mr Kitunga added that it was the 2nd defendant's request to the court that parties to this suit do jointly appoint a surveyor to survey the site and point out the plaintiff's piece of land after which the 2nd defendant would be in position to take appropriate action to enforce the provisions of the Constitution and the Environmental Management and Coordination Act [the EMCA].
6. The 3rd defendant responded to the application through a replying affidavit sworn on 10/1/2022 by Mr Joseph Wangómbe Kamuyu. He deposed that registration of a new title was a result of a long process. He added that the records held in the Lands Registry indicated that the suit property was registered in the name of Eliphas Nyaga on 2/8/2012 and a certificate of lease was issued to him. He added that the suit property was transferred to the plaintiff on 27/8/2012 and a lease was issued to him. He further deposed that on 28/11/2013, a restriction was registered against the suit property vide a letter dated 27/11/2013 from the 1st defendant. Lastly, he deposed that on 13/1/2021, the County Government of Kiambu wrote to the Lands Registry requesting that all registrations and transactions relating to Thika Municipality Block 29 be deferred pending an amicable resolution of the matter.
7. The 4th defendant responded to the application through a replying affidavit sworn on 10/1/2022 by Robert Juma Simiyu, Assistant Director of Land Administration in the Ministry of Lands and Physical Planning. He deposed that according to the records held in the Ministry of Lands and Physical Planning, the suit property was allocated to Eliphas Nyaga vide an allotment letter dated 26/5/1995. Upon acceptance of the allotment and payment of the requisite money, the land was surveyed and a lease was prepared and issued to the allottee. He exhibited certified copies of documents in the Correspondence File relating to the suit property. Among the documents exhibited is a part development plan.
8. The plaintiff filed written submissions dated 21/2/2022, through the firm of Miller & Company Advocates. Counsel for the plaintiff submitted that the plaintiff had satisfied the conditions for grant of a temporary injunction pending the hearing and determination of a suit. Counsel argued that the



plaintiff had demonstrated that he legally and procedurally purchased the suit property from the then registered proprietor, Mr Eliphias Nyaga, in August 2012 and this fact had been confirmed by the 3rd and 4th defendants.

9. On its part, the 1st defendant filed written submissions through Ms Keziah Mbugua. Counsel for the 1st defendant submitted that the suit property was a public utility land reserved to be used as a dump site and contended that the plaintiff had failed to furnish the court with the requisite part development plan which formed the basis of the alienation of the land. Counsel added that due process was not followed in the issuance of the title held by the plaintiff. It was the position of counsel for the 1st defendant that the plaintiff did not deserve the orders sought in the application.
10. The 2nd defendant filed written submissions dated 22/2/2022. Counsel for the 2nd defendant submitted that the 2nd defendant had done its part by prescribing the minimum requirements on solid waste management and that the 2nd defendant would only be able to take further steps once survey is conducted and boundaries of the suit property are established. The 3rd and 4th defendant did not file written submissions.
11. I have considered the application, the response to the application, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. Two issues fall for determination in the application. The first issue is whether the plaintiff has satisfied the criteria for grant of ordinary interlocutory injunctive reliefs. The second issue is whether the plaintiff has satisfied the criteria for grant of mandatory injunctive orders at an interlocutory stage. I will make brief sequential pronouncements on the two issues in the above order.
12. The criteria upon which an ordinary interlocutory injunctive relief is granted is well settled [See *Giella v Cassman Brown & Co. Ltd* EA 358]. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is required to demonstrate that he would stand to suffer irreparable injury that may not be indemnified through an award of damages if the injunctive relief is declined. Thirdly, should the court be in doubt on both or either of the above two requirements, the application is to be decided on the balance of convenience. Lastly, at this interlocutory stage, the court does not make conclusive or definitive pronouncements on the issues in dispute.
13. The gravamen of the plaintiff is that the 1st defendant has encroached onto his land and is dumping waste on the land. The plaintiff holds a title to the land, having purchased it from one Eliphias Nyaga. The 1st defendant has cast doubts on the plaintiff's title, contending that the plaintiff failed to avail the approved part-development plan which informed the alienation of the suit property.
14. The suit property was allocated to Eliphias Nyaga by the Department of Lands. The 4th defendant filed a replying affidavit sworn by its Assistant Director of Land Administration in the Ministry of Lands and Physical Planning. He confirmed that the Ministry alienated the suit property to Mr Eliphias Nyaga. He exhibited the Correspondence File relating to the suit property. Among the exhibited documents is a part development plan. Whether or not the said plan is authentic is a matter for consideration at the substantive hearing of the suit.
15. The 3rd defendant swore an affidavit confirming that based on the lease that was issued to Eliphias Nyaga, the Land Registry registered him as proprietor of the suit property and issued to him a certificate of lease. The Land Registrar similarly confirmed that upon purchase of the suit property, the Land Registry registered the plaintiff as a proprietor of the suit property and issued to him a certificate of lease.
16. What emerges from the foregoing is that the suit property was alienated by the 4th defendant and the 4th defendant caused a lease to be issued to one Eliphias Nyaga. Subsequently the plaintiff purchased



the suit property from Mr Eliphas Nyaga. The plaintiff holds a title issued by the relevant Lands Registry. Unless and until it is demonstrated that the plaintiff's title does not qualify for the protection accorded to a registered proprietor under sections 25 and 26 of the Land Registration Act, there is a proper basis for finding that the plaintiff has demonstrated a prima facie case with a probability of success. In my view, the plaintiff has met the requirement of the first limb of *Giella v Cassman Brown & Co. Ltd* EA 358.

17. It does also emerge that the 1st defendant has not only trespassed onto the suit property; it is dumping waste on the suit property in total disregard of the minimum requirements prescribed by the 2nd defendant, thereby exposing the suit property to environmental harm. The court is in the circumstances, satisfied that damages may not be an adequate remedy for the environmental damage.
18. The balance of convenience similarly tilts in favour of preserving the suit property against environmental harm. I will in the circumstances grant prayers 3 and 5 of the notice of motion dated 6/10/2021.
19. The second issue in this application focuses on prayer 4 which is an interlocutory plea for a mandatory injunction compelling the 3rd defendant to unconditionally remove the restriction placed on the register relating to the suit property at this interlocutory stage. The criteria upon which a mandatory injunctive order at the interlocutory stage is granted was outlined in the case of Locabi International Finance Limited v Agro-Export and another (1986) All ER 901 in the following terms:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction, the court had to feel a high sense of assurance that at the trial it would appear that the injunction had already been granted, that being a different and higher standard than was required for a prohibitory injunction.”
20. The Court of Appeal of Kenya has embraced the above criteria in a line of cases, among them, Civil Appeal No 298 of 2005 Nation Media Group & 2 others v John Harun Mwan [2014] eKLR and Civil Appeal No 332 of 2000 Kenya Breweries Limited & another v Washington O Okeyo [2002] eKLR.
21. In the present application, the 1st defendant has raised doubts on the process through which the suit property was alienated. Removal of the restriction without a proper hearing of the dispute and determination of the issues would not be proper in the circumstances because what might follow is a disposal of the suit property to third parties. I would, in the circumstances, let the restriction be in place for a period of 12 months, during which period the plaintiff and the 1st defendant will be expected to procure a hearing and determination of this dispute.
22. In the end, the plaintiff's notice of motion dated 6/10/2021 is disposed as follows:
  - a. The plea for interlocutory relief is granted in terms of prayers 3 and 5 of the application.
  - b. The plea for removal of the restriction at this interlocutory stage is declined.
  - c. Parties shall prepare, file and exchange trial bundles within 30 days from today so that this case can be heard and determined within 12 months from today.
  - d. Costs of the application shall be in the cause.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF JUNE  
2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Chege for the Plaintiff

Ms Mbugua for the 1st Respondent

Ms Majune for the 2nd Respondent

Court Assistant: Ms Lucy Muthoni

