



**Nganga v Kimani & 2 others (Environment & Land Case
E436 of 2021) [2022] KEELC 3250 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3250 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E436 OF 2021
LC KOMINGOI, J
JULY 28, 2022**

BETWEEN

AMOS KAMAU NGANGA PLAINTIFF

AND

PETER GAKERA KIMANI 1ST DEFENDANT

NAFTALY NGUGI GAKERA 2ND DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED 3RD DEFENDANT

RULING

1. This is the Notice of Motion application dated 8th December 2021.
2. The Plaintiff seeks orders:-
 - a. Spent.
 - b. Spent.
 - c. That a temporary injunction is hereby issued restraining the Defendants, their agents and/or servants or any other person under their instructions, consent authority and control from entering, remaining on, trespassing on, and/or continuing with any further construction of structures of whichever nature on Plot No.RUAI V 6946 no renamed L.R No.7082/136/9656 pending hearing and determination of this suit.
 - d. That costs of this application be provided for.
3. The application is based on grounds on the face of the application and on the supporting affidavit and further affidavit of the Plaintiff sworn on 8th December 2021 and on 21st April 2022 respectively.



4. The Plaintiff deponed that in the year 2005, he purchased a parcel of land known as Plot no.V5946 from the 3rd Defendant as a non-member after he was invited to purchase by the then directors. He further deponed that he was shown the parcel and given a non-member share certificate. He added that the said parcel was among plots hived from a larger parcel owned by the 3rd Defendant and which were allocated to members. The rest was set aside for sale by the 3rd Defendant.
5. He deponed that since 2005, he has been in possession of the property and has constructed his home. He added that he has been pursuing the 3rd Defendant for issuance of title. He also deponed that following a presidential directive to hasten issuance of Titles in 2018, he submitted his documents and paid the title processing fees to the company for the purposes of having the title document processed in his name.
6. The Plaintiff also deponed that the 3rd Defendant assured him that he will be issued with a Title to the suit property but he recently came across a final list of allottees from the 3rd Defendant which does not have his name. The suit land has the 1st and 2nd Defendant appearing as the owners. He further deponed that he lodged a complaint over the issue with the Director of Criminal Investigations on Kiambu road and investigations thereof are ongoing.
7. He deponed that sometime in September 2021, there was an attempt to demolish his property but it was thwarted by police from Ruai Police station and the local community. He further deponed that he learnt that the 1st and 2nd Defendants are claiming ownership of the suit property and the 3rd Defendant has not been able to resolve the issue. He added that due to the standoff, the 3rd Defendant wrote to the Ministry of Lands requesting that the title document to the suit land be issued in the name of the 3rd Defendant as opposed to either him or the 1st and 2nd Defendants in order to allow the 3rd Defendant to resolve the matter.
8. The Plaintiff also deponed that the 1st and 2nd Defendant grossly misrepresented themselves and obtained title to the suit land on 11th November 2020 allegedly on behalf of their deceased father, John Gakera Kimani who claims ownership of the suit land, without letters of administration. He added that he is apprehensive that unless restrained, the 1st and 2nd Defendants will invade his property.
9. The application is opposed by the 1st and 2nd Defendants vide the replying affidavit sworn on 8th December 2021.
10. On the 8th March 2022, this court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.

The Plaintiff's submissions

11. They are dated 25th April 2022. Counsel for the Plaintiff submitted that the Plaintiff purchased the suit property and has been on the suit land for over seventeen (17) years yet the 1st and 2nd Defendants were fraudulently registered as proprietors contrary to Section 55(1) of the Law of Succession Act since they lack Letters of Administration of the estate of their deceased father whom they claim to be the owner of the suit land.
12. Relying on the cases of *Pattni v Ali & 2 others* CA No.354 of 2004 (UR 183/04); *Nguruman Ltd v Jan Bonde Nielsen & 2 others* and *Lucy Wangui Gachara v Munudi Okemba Lore* [2015] eKLR, he urged the court to order maintenance of status quo since even though the 1st and 2nd Defendants hold title, fraud is alleged and its defeasibility ought not to be made summarily on affidavit evidence. Counsel also submitted that the principles for the granting of an injunction are set out in the case of *Giella v Casmman Brown* (1973) EA 358. A prima facie case with a high chance of success has been made and



that the Plaintiff stands to suffer irreparable loss if the orders sought were denied and the suit parcels disposed off and if Plaintiff became successful at the trial.

The Defendant's submissions

13. They are dated 16th June 2022. Counsel submitted that since the Plaintiff claims to have been on the suit land since 2005 yet he was issued with a non-member certificate of ownership on 25th October 2013 indicates that he is a beneficiary through a sale /purchase and could have been defrauded. He added that the 1st and 2nd Defendant's father Gakera Kimani (deceased) was issued with a member Certificate No.2489. He added that Title LR No.7082/136/9656 was issued by the 3rd Defendant after verifying the same.
14. Counsel also submitted that the 1st and 2nd Defendant applied for Grant of Letters Administration Ad Litem on 25th April 2019 for the purposes of defending this suit and not for the purposes of distribution as alleged. He added that the 1st and 2nd Defendants filed ELC No.4053 of 2019 (Milimani) Peter Gakera Kimani and Naftaly Ngugi Gakera (Suing as the Administrator of the Estate of John Gakera Kimani(deceased) v Embakasi Ranching Company Limited where the 3rd Defendant admitted that the suit land belongs to John Gakera Kimani and the suit was thereafter allowed. He added that the said case was instigated by the Plaintiff's interference with the suit land and despite the pending case, the Plaintiff went on to construct the house that he now resides in.
15. I have considered the notice of motion and the affidavits in support. I have also considered the response thereto, the written submissions and the authorities cited.
16. The sole issue for determination is whether the Plaintiff has met the threshold for grant of a temporary injunction. The threshold for grant of injunctions was set out in the *Giella v Cassman Brown* (1973) EA 358. In the said case, it was held that to succeed in an application for injunction, the applicant needs to demonstrate a prima facie case with a probability of success; show that he stands to suffer irreparable harm unless the injunction is granted; and where the court is in doubt, it will decide the application on a balance of convenience.
17. The Plaintiff claims that he bought the suit land from the 3rd Defendant. There is a non-member certificate issued to him. The Plaintiff also established attempts to procure proprietorship of the suit land from the 3rd Defendant which was eventually granted to the 1st and 2nd Defendants. On the other hand, the 1st and 2nd Defendants are heirs to the estate of John Gakera Kimani (deceased). The suit property is registered in their names but it is certain the said registration was not done under the [*Law of Succession Act*](#). From the material on record and the 1st and 2nd Defendant's own admission, the Plaintiff has been occupying the suit property.
18. The 1st and 2nd Defendants argued that they filed ELC No.4053 of 2019 (Milimani) Peter Gakera Kimani and Naftaly Ngugi Gakera (Suing as the Administrators of the Estate of John Gakera Kimani (deceased) v Embakasi Ranching Company Limited which was allowed but the court found that the suit property belonged to John Gakera Kimani (deceased). There is no ruling and/or pleadings attached to ascertain the existence of that suit. This set of facts lead to the conclusion that the Plaintiff has established a prima facie case.
19. The second limb of the threshold for grant of injunction is that an Applicant needs to show that he stands to suffer irreparable harm unless the injunction is granted. The Plaintiff has established possession and occupation of the suit land and established that damages would not be adequate compensation since he has substantially developed it. He would be the one to suffer irreparable loss if the orders are not granted. The balance of convenience also tilts in the Plaintiffs favour.



20. In conclusion, I find merit in this application and the same is allowed in the following terms:-

- a. That a temporary injunction is hereby issued restraining the Defendants, their agents and/or servants or any other person under their instructions, consent authority and control from entering, remaining on, trespassing on, and/or continuing with any further construction of structures of whichever nature on Plot No.Ruai V 6946 no renamed L.R No.7082/136/9656 pending hearing and determination of this suit.
- b. The costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 28TH DAY OF JULY 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiffs

Mr. Peter Gakera Kimani the 1st Defendant in person

No appearance for the 2nd -3rd Defendants

Steve - Court Assistant

