



**Karugu & another v Ngigi & 2 others (Environment & Land Case E002 & E003 of 2021
(Consolidated)) [2022] KEELC 3826 (KLR) (15 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3826 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E002 & E003 OF 2021 (CONSOLIDATED)**

BM EBOSO, J

JULY 15, 2022

BETWEEN

JOSPHAT NJUGUNA KARUGU PLAINTIFF

AND

MARGARET NDUTA NGIGI 1ST DEFENDANT

JOHN NJENGA KARIUKI 2ND DEFENDANT

SAMUEL NGUGI KARIUKI 3RD DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE E003 OF 2021**

BETWEEN

**SAMUEL NYANJUI MBUGUA ALIAS SAMUEL NYANJUI
MURUNGA PLAINTIFF**

AND

MARGARET NDUTA NGIGI 1ST DEFENDANT

JOHN NJENGA KARIUKI 2ND DEFENDANT

SAMUEL NGUGI KARIUKI 3RD DEFENDANT

RULING

1. The dispute in Thika ELC Civil case number 2 of 2021 and the dispute in Thika ELC Civil Case Number 3 of 2021 are related. The two suits were initiated through the same law firm, Kamata & Company Advocates. The Plaintiffs in the two suits bear the same date, January 15, 2021. The



applications that fall for determination in the two suits similarly bear the same date, January 15, 2021. The dispute in the two suits revolves around alleged sales relating to portions of land parcel number Ndeiya/Ndeiya/491 which belonged to the late Felix Ngugi Karanja. The two suits have a common background. For the above reasons, this ruling will apply to and dispose the two applications dated January 15, 2021 in the two suits. I will outline a brief background to the two suits before I focus on the two applications under consideration in the two suits.

2. Felix Ngugi Karanja [the deceased] died intestate on November 20, 1999. His estate comprised of land parcel number Ndeiya/Ndeiya/491 and some money held in the Limuru branch of Barclays bank [now known as Absa bank]. He was not survived by a wife nor a child. He had a step brother [Kangethe Karanja] and five married sisters. The step brother and sisters had children.
3. Upon the death of the deceased, one Wilson Ngugi Ng'ang'a initiated Kiambu Principal Magistrate Court Succession Cause No 152 of 2000 and obtained a grant dated August 29, 2000 relating to the deceased's estate. The grant was confirmed on March 9, 2001. Following an application in Nairobi High Court Succession Cause No 1213 of 2001 [which was subsequently transferred to Nakuru and registered as Nakuru High Court Succession Cause No 282 of 2006], the said grant was revoked by the High Court [Aluoch J as she then was] on November 27, 2002, and a fresh joint grant was issued to: (i) Wilson Ngugi Nganga; (ii) John Njenga Kariuki and (iii) Samuel Ngugi Kariuki. An application was filed for confirmation of the joint grant. Wilson Ngugi Nganga objected to the proposed mode of distribution of the estate. Various parties who contended to have purchased portions of the suit property from the deceased were made interested parties in the succession cause.
4. Upon hearing the parties, the High Court at Nakuru [Koome J as she then was] rendered a judgment dated February 15, 2008 in which she found that the beneficiaries to the deceased's estate were: (i) the children of Kangethe Karanja and (ii) Wilson Ngugi Nganga. By dint of the said judgment and the certificate of confirmation of grant, land parcel number Ndeiya/Ndeiya/491 devolved to the said beneficiaries in equal shares. The High Court rejected the claims of the interested parties who had contended that they had purchased portions of the land from the deceased.
5. The High Court [Koome J as she then was] held as follows regarding the claims of the interested parties:

“As regards the claim by the interested parties that they purchased the deceased's land during his lifetime, the evidence by the objectors which was also not disputed by the interested parties is that the deceased was leasing his land to them as neighbours. They were cultivating subsistence crops and it is after the death of the deceased when Wilson purported to transfer the land to them and that is when they started putting up structures. There is no clear evidence of sale of the property to the interested parties by the deceased. There is no sale agreement, or consent to transfer and a transfer signed by the deceased that was produced in court. There is evidence that some money was paid to the deceased's bank account within a period of one year when he died but the interested parties were not even able to produce the evidence that they are the ones who made those payments. It is also doubtful whether, if they are the ones who made the payments, they paid lease of the land or purchase price in the absence of written agreements. It is also trite law that all agreements for sale of land must be in writing. In this probate and administration cause, it is not possible to establish the interested parties claim over the deceased's estate if indeed the deceased owed them land which they had paid for. The best forum would be for the interested parties to file a civil suit against the administrators of the deceased's estate to seek for specific performance for their contract.”



6. Aggrieved by the judgment, Josphat Njuguna Karugu lodged Civil Appeal no 60 of 2009 in the Court of Appeal. The appeal was subsequently dismissed on October 7, 2015 for want of prosecution. Subsequently, on May 23, 2017, the High Court issued a certificate of confirmation of grant in tandem with the Judgment of Koome J.
7. Subsequent to that, the surviving administrators of the estate of the deceased filed in the succession cause in the High Court an application dated August 20, 2020, seeking eviction orders against Josephat Njuguna Karugu, Grace Wambui Njuguna, Samuel Nyanjui Mbugua and Patrick Ngui Gitau together with their agents and servants, from parcel number Ndeiya/Ndeiya/491. James Muchungu Mburu, Samuel Kiritu Kimani and Victor Michuru Nkiiri filed a notice of preliminary objection to the said application, contending that the High Court did not have jurisdiction to hear and determine the application as the orders sought could only be granted by the Environment and Land Court. At that point, Thika ELC Civil Case no 2 of 2021 and Thika ELC Civil Case No 3 of 2021 had been filed in this court.
8. The High Court [Muchelule J] considered the application for eviction together with the preliminary objection and held that the effect of the revocation of the grant by the principal magistrate court on August 29, 2000 was that all transactions relating to land parcel number Ndeiya/Ndeiya/491 were null and void and that persons who had acquired titles pursuant to the revoked grant became disentitled to any part of the above parcel of land. The High Court further held that the interested parties having failed to obtain a review of the judgment of the High Court dated February 15, 2008, there was no pending dispute on ownership of land parcel number Ndeiya/Ndeiya/491 between the parties in the succession cause. The court rejected the preliminary objection and granted the order for eviction on June 21, 2021.

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9. It does emerge from the materials placed before this court that, upon being served with the application for eviction orders, Josephat Njuguna Karugu [the plaintiff in Thika ELC Civil Case no 2 of 2021] and Samuel Nyanjui Mbugua alias Samuel Nyanjui Murunga [the Plaintiff in Thika ELC Civil Case no 3 of 2021] initiated the present two suits seeking among other reliefs, declarations that they purchased part of the suit property from the deceased and took possession of their respective portions and were therefore entitled to ownership of their respective portions under the doctrine of adverse possession. As alternative reliefs, they sought orders of specific performance directing the estate of the deceased to complete their respective contracts of sale relating to their respective portions. As further alternatives, they sought refund of the purchase prices together with interest.
10. Together with the plaints, the plaintiffs in the two suits brought applications dated January 15, 2021, seeking interlocutory injunctive orders restraining the estate against entering, selling, leasing out, taking anything from, implementing the judgment/orders in the succession cause or in any other way interfering with their occupation of the suit property, pending the hearing and determination of the suits. The said two applications fall for determination in this ruling.
11. The two applications were supported by affidavits sworn by the respective applicants. They were canvassed through separate written submissions dated January 28, 2022. I have read the said affidavits and written submissions.
12. The defendants who are administrators of the estate of the deceased filed statements of defence in the two suits in which they contested the alleged sales of land to the plaintiffs. They also contested payment of purchase price to the deceased by the plaintiffs and contended that the plaintiffs entered the land



on the basis of leases. They added that there were no contracts relating to purchase of portions of the suit property, capable of attracting orders of specific performance.

13. In answer to the applications for interlocutory injunctive reliefs, the defendants filed replying affidavits and written submissions which I have read.
14. I have considered the two applications in the two suits; the responses to the two applications; and the parties respective submissions. The question that falls for determination in the two applications is whether the applicants have satisfied the criteria upon which our courts exercise jurisdictions to issue interlocutory injunctive reliefs. I will make brief analysis and pronouncements on the above question.
15. The criteria upon which our trial courts exercise jurisdictions to issue interlocutory injunctive relief 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. Second, the applicant is required to demonstrate that if the injunctive relief is not granted, he will stand to suffer damage that may not be adequately indemnified through an award of damages. Thirdly, if the court has doubts about the applicant's satisfaction or either of both of the above two requirements, the application is to be decided based on the balance of convenience. Lastly, at the stage of interlocutory proceedings, the court does not make conclusive pronouncements on the key issues in the suit.
16. Have the plaintiff's demonstrated *prima facie* cases? First, it is clear from the evidential materials placed before this court that the two suits were triggered by the defendants' application in the High Court, through which the defendants sought to enforce the judgment of the High Court through obtention of eviction orders against the plaintiffs. The said judgment was rendered on February 15, 2008. The appeal which had been preferred against the said judgment was dismissed by the Court of Appeal for want of prosecution. Twelve years and eleven months from the date of the judgment, and faced with an application seeking enforcement of the judgment, the plaintiffs brought their respective suits and applications. It is clear from the evidence before this court at this interlocutory stage that the two applications seek to secure a stay of the Judgment rendered by Koome J in 2008. Secondly, the two suits seek to secure what the plaintiffs were unable to secure in the succession cause and in the subsequent appeal to the Court of Appeal. Further, the High court rendered itself on the question of the plaintiffs' occupancy of the suit property and issued an order of eviction against them. To invite this court to stay eviction orders issued by the High Court through a parallel injunctive order against the defendants is, in my view, an abuse of the process of the court. If the plaintiff's want a stay of the eviction orders, the platform where to canvass the plea for stay is the Succession Court or the Court of Appeal.
17. The plaintiffs/applicants have contended that they have acquired title to the suit properties through adverse possession. They contend that they acquired portions of the suit property as purchaser in 1998 and 1999 respectively. From the evidence placed before this court at this interlocutory stage, it does emerge that litigation relating to their claim to portions of the suit property ensued in 2001 in Nairobi High Court Succession Cause No 1213 of 2001 and culminated in the revocation of the initial grant in 2002. After that, litigation relating to the plaintiffs' claims continued in the High Court, culminating in the judgment of February 15, 2008. What followed was an appeal. Soon after the appeal was dismissed the administrators of the estate applied for confirmation of the grant. Upon confirmation of the grant, they applied for enforcement of the decree of the High Court. What emerges from the above litigations is the estate's steadfast assertion of its ownership rights over the suit property. The plaintiffs have at this point not demonstrated at what point in time they ceased to be purchasers; at what point in time their occupancy as adverse possessors commenced; and at what point in time their titles as adverse possessors crystalized. What has been presented to this court at this point is evidence of assertion of ownership rights by the estate through the litigations that have been ongoing from 2001 to date.



18. On the plea for an order of specific performance, the applicants have at this point not placed before this court any evidence of a formal land sale contract together with evidence of payment of full purchase price which would inform the grant of an interlocutory injunctive relief.
19. For the above reasons, the court is not satisfied that the two plaintiffs have made out *prima facie* cases to warrant grant of interlocutory injunctive reliefs.
20. On the inadequacy of damages as alternative reliefs, it is noted that the plaintiffs prayed for refund of their purchase prices as alternative reliefs. They also prayed for damages as alternative reliefs. Having acknowledged that refund of purchase price and damages are appropriate alternative remedies, there is no reason why the court should not agree with them, that should they establish that there was sale / purchase of portions of the suit property and that they paid money to the deceased, the remedy of refunds and damages will suffice.
21. Lastly, the balance of convenience favours maintaining orderly administration of justice by refraining from reviewing the eviction order issued by the High Court through parallel orders of injunction by this court.
22. The result is that I find no merit in the two applications dated January 15, 2021, brought in Thika ELC Civil Case no 2 of 2021 and Thika ELC Civil Case no 3 of 2021 respectively. The two respective applications in the two respective suits are dismissed for lack of merit. The respective plaintiffs/ applicants shall bear costs of the applications.
23. Lastly, because these two suits relate to the same property and are against the same defendants, they are hereby consolidated. The lead file will be Thika ELC Civil Case no 2 of 2021.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 15TH DAY OF JULY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Kamata for the plaintiffs

Mrs Muhuhu for the defendants

Court assistant: Ms Lucy Muthoni

