



**Sang v Mungai (Environment & Land Case E045 of 2021)
[2022] KEELC 13405 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13405 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E045 OF 2021
EO OBAGA, J
SEPTEMBER 29, 2022**

BETWEEN

JONATHAN KAPLELACH ARAP SANG PLAINTIFF

AND

MARY WAMBUI MUNGAI DEFENDANT

RULING

Introduction

1. This is a ruling in respect of two applications. The first application is dated July 26, 2021. It is brought by the plaintiff/applicant. It seeks the following orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of the suit herein, the honourable court be pleased to issue a temporary conservatory order restraining the 2nd and 3rd respondents from adjudication or determining the boundary dispute between the applicant and 1st respondent in respect of land parcel number Ngeria/Kesses Block 5(Bayete)/1 and applicant's portion of land.
 4. That costs of this application be provided for.
2. The second application is dated February 11, 2022. It is brought by the 1st defendant/applicant. It seeks the following orders:-
 1. Spent
 2. Spent



3. That pending the hearing and final determination of this suit the court do issue; a permanent injunction restraining the plaintiff by himself, his agents or servants from occupying, encroaching, trespassing, ploughing and/or in any other manner from interfering with suit land being land parcel known as Ngeria/Kesses Block 5 (Bayete)2.
4. That pending the hearing and determination of this application, the court do issue an order directing the plaintiff to remove the fences and/or any other structures erected by himself on the land parcel known as Ngeria/Kesses Block 5 (Bayete)2.
5. Costs of this application be provided for.

Background

3. The two applications relate to two separate properties which are neighbouring each other. The first application relates to LR No Ngeria/Kesses Block 5 (Bayete)/1 which is registered in the name of Simon Karanja Mwangi who is now deceased. The second application relates to LR No Ngeria/Kesses Block 5 (Bayete)/2 which is registered in the name of Mary Wambui Mungai who is the defendant who is the applicant in the second application.
4. The two parcels were carved out of LR No 11130 measuring about 665 acres. This land belonged to a white settler known as Christoffina Magdalene Sheakam. When the white settler wanted to sell the land, some two co-operative societies or groups teamed up to purchase the same. One group was Bayete Farmers' Co-operative Society Limited which contributed Kshs 20,000/=. The other group was Wendani Farmers' Co-operative Society which contributed Kshs 50,000/=. When it came to distribution, Bayete Farmers Co-operative Society Limited which had contributed Kshs 20,000/= took the lion's share of 335 acres leaving 320 acres to Wendani Farmers' Co-operative society Limited which had contributed Kshs 50,000/=
5. This unfair sharing became a source of dispute which has lasted over four decades. Bayete Farmer's Co-operative Society brought in surveyors who subdivided their portion which was given to various individuals. This further aggravated the ownership dispute which persists to date. Whereas titles arising from the parent title were issued in 2003 as in the present case, other documents purport to show that the parent title is still in existence.
6. The National Land Commission was roped in to unravel the mess but it ended up plunging the whole matter into deeper mud. For instance, in July 2017 *vide* Gazette Notice No 6862 of July 17, 2017, the commission recommended revocation of the parent title. Barely a year later when some interested parties raised another complaint, the commission in a verdict dated March 13, 2018 declined to resolve the dispute saying that the dispute had been settled *vide* judgments in Eldoret CMCC No 384 of 1980 and Eldoret CMCC No 241 of 2007.

The Two Applications

7. The two applications are interrelated as they both seek injunctive orders against each other. I will therefore deal with the two together. In the case of the first application, the applicant contends that he owns an unsurveyed plot which is next to the one held by the 1st defendant who is the applicant in the second application.
8. The applicant in the first application contends that he was served with a letter dated July 8, 2021 from the Office of the County Surveyor Uasin Gishu County indicating that the surveyors from that office were coming to re-establish the boundary between his land and that of the 1st defendant.



9. The applicant in the first application further contends that LR No Ngeria/Kesses Block 5 (Bayete) 1 is in the name of Simon Karanja Mwangi who is deceased and therefore the 1st defendant had no capacity to make a complaint to Uasin Gishu County Surveyor and Land Registrar to come and deal with a boundary between the two parcels and that in any case, the parent title had been revoked by the National Land Commission and further that the County Land Registrar and Surveyor Uasin Gishu County have no jurisdiction to deal with unsurveyed land.
10. The applicant in the first application argues that if survey is carried out as planned, it will affect his house which is next to the boundary of plot held by the 1st defendant. He further argues that the 1st defendant is trying to revive Eldoret CMCC No 384 of 1980 which was dismissed by the court and an attempt to evict him and others flopped when the application for eviction was dismissed on May 5, 2003.
11. The applicant in the second application contends that she is the registered owner of LR Ngeria/Kesses Block 5 (Bayete)/2. This plot borders LR No Ngeria/Kesses Block 5 (Bayete)/1 which is registered in the name of Simon Karanja Mwangi who was her brother in-law. She states that the applicant in the first application is occupying land meant for his late brother in-law and that he has encroached into her land by 0.75 acres.
12. The applicant in the second application contends that the applicant in the first application has fenced off the encroached portion which he continues to till to her exclusion. It is on this basis that she prays for the orders as shown in paragraph two herein above.

Analysis and Determination

13. The applicants in the two applications filed submissions in respect of their respective applications. The respondents in the two applications filed their submissions in respect to their respective applications. Though the Attorney General who appears for the 2nd to 4th respondents was given time to file replying affidavits to both applications as well as their submissions, they neither filed replying affidavits nor written submissions.
14. I have carefully considered the two applications as well as the opposition to the same. I have also considered the submissions filed by the parties. The first issue for determination is whether the applicant in the first application has demonstrated that he has a *prima facie* case to warrant issuance of an injunction in the manner prayed for. The second issue is whether the applicant in the second application can be granted injunctive orders which are not based on any suit. Thirdly which order should be made on costs
15. The applicant in the 1st application is either ignorant of the facts in respect of the two properties the subject of these applications or he was trying to mislead the court. Whereas in his application he claims that he owns an unsurveyed land, he has turned around to concede that the land he occupies is owned by Simon Karanja Mwangi who is now deceased.
16. The invitation by the 1st defendant to the 2nd and 3rd respondents to come and re-establish boundaries was in respect of LR No Ngeria/Kesses Block 5 (Bayete)/2 which was originally owned by Charles Mungai Mwangi who is her deceased husband. The land was later registered in her name by way of transmission after the process of succession.
17. The letter inviting the applicant in the first application and the 1st defendant to be present during the re-establishment of the boundary clearly stated that the land targeted was LR No Ngeria/Kesses Block 5 (Bayete)/2. The 1st defendant has no interest in LR No Ngeria/Kesses Block 5 (Bayete)/1 which is



owned by Simon Karanja Mwangi who is her brother in-law. The 1st defendant did not require to sue or obtain letters of administration in respect of the estate of her brother in-law for her to call upon the land registrar and surveyor to re-establish the boundary of her land.

18. The argument by the plaintiff that titles in respect of land which gave rise to the two properties were revoked has no basis. The National Land Commission merely made a recommendation for revocation. This recommendation was supposed to be implemented by the land registrar. This was not done and this can be confirmed from the plaintiffs own documents in a further affidavit whereby there is a provisional title which was purportedly issued in respect of the parent title in 2021.
19. The 1st defendant did not make a complaint to the 2nd and 3rd defendants over title LR No Ngeria/Kesses Block 5 (Bayete)/1 but the same was made regarding encroachment to LR No Ngeria/Kesses Block 5 (Bayete)/2 which is her property. This being the case, I do not see what *prima facie* case the plaintiff has to warrant grant of injunctive orders.
20. As regards the second application, the law is clear that an injunction must be based on a suit. The suit herein relates to LR No Ngeria/Kesses Block 5 (Bayete)/1. The 1st defendant's claim is based on LR No Ngeria/Kesses Block 5 (Bayete)/2. There is no counter-claim filed herein. The 1st defendnat cannot ride on the back of this suit to obtain injunctive orders in respect of a separate title.

Disposition

21. From the above analysis, it is clear that the two applications are devoid of merit. The two applications are dismissed with each party bearing their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF SEPTEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Ngeno for Mr. Yego for 1st Defendant/Respondent.

Court Assistant –Albert

E. O. OBAGA

JUDGE

29TH SEPTEMBER, 2022

