



Gateru & another v Njeri (Sued as the legal representative and administrator of the Estate of the Late Elijah Murimi) (Environment and Land Appeal 33 of 2021) [2022] KEELC 12753 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 33 OF 2021
JO OLOLA, J
SEPTEMBER 28, 2022**

BETWEEN

CAROLINE WANJIKU GATERU 1ST APPELLANT

MARGARET MUTHONI 2ND APPELLANT

AND

AGNES NJERI RESPONDENT

SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE LATE ELIJAH MURIMI

RULING

1. By the notice of motion dated February 3, 2022, Agnes Njeri Murimi sued as the legal representative of the estate of the late Elijah Murimi Miano (the applicant) prays for an order of injunction to prevent the two appellants/respondents from trespassing on or destroying the applicant's property on all that parcel of land known as Iriaini/Gatundu/71 pending the hearing and determination of this appeal.
2. The application is supported by an affidavit sworn by the applicant and is premised on the grounds that:
 - (i) On September 2, 2021, the trial court dismissed the suit by the respondents regarding the suit property in Karatina PM ELC No 64 of 2018;
 - (ii) Even after the dismissal of their suit, the respondents proceeded to trespass on the said suit land and cultivated on it in clear disregard of the court's orders;
 - (iii) The failure to grant the orders of injunction will lead to the suit property being wasted and damaged;



- (iv) The respondents will not suffer any prejudice if the application is granted.
3. The two respondents are opposed to the application. In a replying affidavit sworn on their behalf by the 1st respondent – Caroline Wanjiku Giteru and filed herein on February 24, 2022, the respondent aver that whereas it is true that they lost the case in the subordinate court and hence this appeal, it is well documented that they reside and work on 3.9 acres of the subject land while the applicant utilizes the rest of it.
 4. The respondents further aver that the fact of their occupation of the land was well-noted by the court and asserts that there was no order of eviction issued by the court against themselves.
 5. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the rival submissions placed before me by the learned advocates representing the parties herein.
 6. The applicant herein was the defendant in Karatina ELC case No 64 of 2018 instituted by the two respondents herein. in the said suit, the respondents had sought a declaration that the registration of the applicant as proprietor of title No Iriaini/Gatundu/71 was fraudulently obtained and sought an order for its rectification. In the alternative, the respondents had sought a declaration that the applicant holds 3.9 acres of the said parcel of land in trust for themselves. That suit was heard and was dismissed in favour of the applicant.
 7. By this present application, the applicant urged the court to restrain the respondents from trespassing into and or destroying the applicant’s property in the said parcel of land. It is the applicant’s case that despite the dismissal of said suit, the respondents have continued to trespass and carry on cultivation on the suit land.
 8. The principles guiding the court in the grant of an interlocutory injunction were long established in the oft-cited case of *Giella v Cassman Brown & Company Limited* (1973) EA 358, where the court expressed itself as follows:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
 9. In *Mrao Limited v First American Bank of Kenya & 2 others* (2003) KLR 125, the Court of Appeal defined a *prima facie* case thus:

“A *prima facie* case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material, presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
 10. From a perusal of the record herein, it was clear to me that both the applicant and the respondents herein are not strangers to each other. The two respondents are the daughters of one Kangi Kamuri who is said to have been the first registered proprietor of the suit property. The said Kangi Kamuri is said to have sold the land to one Elijah Murimi Miano who was the husband to the applicant herein.
 11. While the respondents contend that no proper sale took place in the year 1971 when title supposedly passed to the name of the applicant’s husband, it was the applicant’s case that the sale was completed



on the understanding that the respondent's mother one Wangechi Kangi would retain a life interest on a portion of the suit property measuring some 3.9 acres.

12. It was not clear from a perusal of the record and the application placed before me whether the life interest held by the respondent's mother had since been extinguished and if so how. The applicant does not state whether the respondents mother is no longer active and/or whether the respondents have now cultivated or put into use a portion of land in excess of the 3.9 acres on which their mother had a lifelong interest.
13. As it were, there was no order emanating from the appealed judgment that required the respondents to vacate from the 3.9 acre portion of land that their mother has utilized since the 1970's and to grant the orders of injunction sought herein would amount to issuing eviction orders against the respondents before their appeal is heard and determined.
14. It follows that I find no merit in the application. It is misconceived and without any basis. I dismiss the same with costs to be in the appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28TH DAY OF SEPTEMBER, 2022.

In the presence of:

Ms Miriri holding brief for Nderi for the Appellant

Mr. Waweru Macharia for the Respondent

Court assistant - Kendi

J. O. OLOLA

JUDGE

