



**King'ng'o v Kiragu (Environment & Land Case 164 of 2015)
[2022] KEELC 12738 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 164 OF 2015
JO OLOLA, J
SEPTEMBER 28, 2022**

BETWEEN

DAVID MUCHEMI KING'NG'O PLAINTIFF

AND

DAVID NDIRANGU KIRAGU DEFENDANT

RULING

1. By the Notice of Motion dated 16th March, 2017, David Muchemi King'ong'o (the Plaintiff) prays for orders –
 2. That an injunction order be issued restraining the Defendant, members of his family, relatives, servants and agents from trespassing and interfering with the Plaintiff's father's land LR Nyeri/Waraza/877;
 3. That an order be issued by this Honourable Court directing the Land Registrar Nyeri and the District Surveyor Nyeri to pick, fix and determine the boundaries of land titles LR Nyeri/Waraza/877 and Nyeri Waraza/19;
 4. That the Land Registrar do file his determination report to the Court within 90 days of the Court order; and
 5. That costs be in the cause.
2. That application which is supported by an affidavit sworn by the Plaintiff is premised on the grounds:
 - (i) That the Plaintiff filed this suit on 29th May, 2015 praying for a permanent injunction order restraining the defendant from trespassing and interfering with parcel No. Nyeri/Waraza/877;
 - (ii) That this court has no jurisdiction to hear and determine boundary disputes before the Land Registrar determines the boundaries.



3. From a perusal of the record herein I was unable to find any response filed by the Defendant – David Ndirangu Kiragu to the Plaintiff’s application. It was however apparent that when the application came up for inter-partes hearing on 7th March, 2017 an order was issued inter alia that the matter be referred to the Land Registrar Nyeri to establish and fix the boundaries for land Parcels Nyeri/Waraza/19 and Nyeri/Waraza/877.
4. The Land Registrar was however initially unable to effect the Court’s orders. By a letter dated 24th November 2020, the Land Registrar informed the Court that the said Land Parcel No. Nyeri/Waraza/19 did not exist as the same was sub-divided on 28th June, 2016 resulting into parcel numbers 2574 and 2582 which were nevertheless still in the name of the previous owner.
5. Accordingly and following an application made by the Plaintiff on 12th July 2021, the Honourable Justice Y. M. Angima then seized of the matter granted orders as follows:
 1. That the prayer for amendment is hereby granted in view of the Land Registrar’s letter dated 24th November, 2020 indicating that the Parcel No. Nyeri/Waraza/19 is not existent as a result of the subdivision.
 2. That accordingly the earlier Court order is hereby amended to read that the parcels to be visited are Nyeri/Waraza/2574 and 2582 and that the Land Registrar shall ascertain if any of those parcels have encroached upon parcel No. Nyeri/Waraza/877 and file a report in Court within 60 days from the date hereof.
6. The Land Registrar has now complied with the said orders. In his Report dated 5th October, 2021 but filed herein on 8th March 2022, the Land Registrar reports that parcel No.s Nyeri/Waraza/2580 -2582 which are subdivisions of the original Parcel No. Nyeri/Waraza/19, have partially encroached into the parcel No. Nyeri/Waraza/877 by 74 M on the upper side which is along the road.
7. As it were, the most important consideration before granting an order of temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property. Where such circumstances exist, the Court is by law enjoined to grant a temporary injunction to restrain such acts.
8. In the instant case and consequent upon the findings of the Land Registrar, there is no doubt that the suit property is in danger of being wasted and/or alienated as the Defendant has been dealing with the encroached portion of 74 M as his own.
9. Arising from the foregoing I am persuaded that the Plaintiff has established a prima facie case with a probability of success at the trial and that he stands to suffer irreparable loss unless the orders of injunction are granted.
10. In the premises, a temporary injunction order is hereby issued restraining the Defendant his servants and/or agents from trespassing upon and/or interfering with the parcel of land known as Nyeri/Waraza/877 pending the hearing and determination of this suit.
11. The costs of the application shall be in the cause.

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

In the presence of:

Ms Miriti holding brief for Muguku for the Plaintiff



No appearance for the Defendant

Court assistant - Kendi

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J. O. OLOLA

JUDGE

