



**Mwai v Muthaithi (Environment & Land Case 37 of 2019)
[2022] KEELC 12746 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 37 OF 2019
JO OLOLA, J
SEPTEMBER 28, 2022**

BETWEEN

MOSES JACKSON MWAI PLAINTIFF

AND

MOSES NDEGWA MUTHAITHI DEFENDANT

RULING

1. By the Notice of Motion dated 17th January 2022, Moses Jackson Mwai (the Plaintiff) prays for an order of temporary injunction to issue restraining the Defendant from in any way gaining entry into, trespassing, dealing, alienating, wasting, constructing building(s) and/or developing the parcel of land known as Nyeri/Municipality Block II/705 pending the hearing and determination of this suit.
2. The application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds that:
 - (a) The Plaintiff is the registered owner of the said parcel of land measuring about 0.0254 Hectares;
 - (b) Sometimes in 1992 or thereabout the National Housing Corporation initiated a Third Urban Project for the dwellers of Nyeri Town in order to develop the infrastructure i.e road, water, drainage system, sewerage, design engineering and survey;
 - (c) The Corporation developed the infrastructure using its own funds and the cost was to be recovered from individuals who were to be allotted the plots which were situated at Kiawara Shauri Yako within Nyeri;
 - (d) The Plaintiff balloted for the Plots upon payment of the fee of Kshs.200/- and was allotted Plot No. R-8 Kiawara Shauri Yako;



- (e) Upon completion of the project the Plaintiff paid the sum of Kshs.39,446.20/- being the cost recovery of the Project to the Corporation through the Nyeri Municipal Council;
 - (f) Upon receipt of the confirmation of the payment, the Corporation wrote to the Commissioner of Lands on 27th January, 1999 asking him to process titles for the allotted property which had now been surveyed and had become known as Nyeri/Municipality/Block II/705;
 - (g) On 26th November 2018, the Plaintiff was issued with a letter of allotment by the National Land Commission upon payment of the processing amount of Kshs.25,620/- and on 1st July 2019 he was issued with a Certificate of Lease for the suit property.
 - (h) The Defendant has illegally without the approval, consent, authority and knowledge of the Plaintiff trespassed onto the Plaintiff's parcel of land constructed a permanent building thereon and is currently proceeding with further construction works;
 - (i) The Defendant's actions of invasion and/or trespass amount to curtailment of the Plaintiff's quiet possession and enjoyment of his constitutional and proprietary rights over the property;
 - (j) Unless the reliefs sought are granted the Plaintiff stand to suffer irreparable harm which cannot be compensated by an award of damages.
3. Moses Ndegwa Muthaithi (the Defendant) is opposed to the application. In his Replying Affidavit sworn on 24th February, 2022 and filed herein on 25th February 2022, the Defendant avers that he is the registered owner of a freehold title of LR No. Nyeri Municipality Block 11/705 (Kiawara) which measures 0.0254 Ha. having bought the same from the former owner, one Samuel Gichingiri Gichini.
 4. The Defendant avers that the County Government of Nyeri effected the transfer of the Plot to himself in 2017 after the vendor swore an affidavit to confirm he was the owner of the plot and was transferring the same to the Defendant. By then the said vendor had cleared all the necessary outstanding fees, penalties and rates that were due to the said County Government.
 5. The Defendant further avers that later the licence was converted to freehold and Registry Index Maps were created showing R8 Kiawara was now Nyeri Municipality Block II/705 (Kiawara). On 11th September 2019 the Defendant was issued with a freehold title deed for the same by the Ministry of Lands.
 6. The Defendant further avers that immediately the County Government transferred the land to himself, he commenced development of the same by erecting a storeyed building which is now almost complete and a majority of the rooms thereon are now occupied by tenants.
 7. I have carefully perused and considered the Plaintiff's application as well as the Defendant's response thereto. I have similarly perused and considered the rival submissions and authorities placed before me by the Learned Advocates representing the two parties.
 8. The Plaintiff herein prays for an order of temporary injunction to restrain the Defendant from entering into, trespassing, dealing,



alienating, wasting or constructing buildings on a parcel of land described as Nyeri/Municipality Block II/705 pending the hearing and determination of this suit. The Plaintiff's prayers arise from his assertion that he is the registered proprietor of the said parcel of land measuring some 0.0254 Ha. The Plaintiff accuses the Defendant of illegally trespassing onto the said parcel of land and proceeding to construct a permanent building thereon without his approval and/or consent.

9. The Defendant does not deny that he has entered the land and constructed a building thereon. On the contrary, the Defendant asserts that he is the registered proprietor of the said parcel of land upon which he has put up a three storey building which is nearing completion.
10. From the material placed before me at this stage, it would appear that both parties lay claim to the same piece of land. While the Plaintiff was issued with a Certificate of Lease for the parcel of land he describes as Nyeri Municipality Block II/705 on 1st July 2019, the Defendant was some two months later issued with a freehold title deed for the parcel of land described as Nyeri Municipality Block II/705 (Kiawara) on 11th September, 2019.
11. Thus while the Plaintiff claims a leasehold interest on the suit property, the Defendant claims a freehold interest therein. In my view, given that both parties have annexed documents purporting to grant both of them ownership of the land in question, this Court would be required to make a full inquiry as to the accuracy and authenticity of the documents of title.
12. As at now, the Defendant has been on the land since 2018 and has put up a building thereon with tenants in occupation. If the Plaintiff's application were to be granted, it would mean the eviction of the Defendant and his tenants from the land before the Court can establish the proper ownership of the land. That weighed with the fact that the Plaintiff did not claim to have been in occupation of the land at any stage would in my view tilt the balance of convenience in favour of the Defendant. It was not clear why the Plaintiff did not come to Court immediately the Defendant commenced construction on the land.
13. In the circumstances I am not satisfied that there is any basis to grant an injunction at this stage. The application is dismissed with the costs in the cause.

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

In the presence of:

Mr. Onyari for the Applicant

Mr. Kebuka Wachira for the Respondent

Court assistant - Kendi

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J. O. Olola

JUDGE

