



**Nteere v Marangu (Environment & Land Case E003 of 2022)
[2022] KEELC 12609 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E003 OF 2022
CK NZILI, J
SEPTEMBER 28, 2022**

BETWEEN

JANET KATHURE NTEERE PLAINTIFF

AND

DANIEL GIKUNDA MARANGU DEFENDANT

RULING

1. The court by an application dated February 24, 2022 brought by the plaintiff is asked to issue an inhibition order stopping any dealings over LR No Kibirichia/Kibirichia/6775 (herein after the suitland) together with a temporary injunction restraining the defendant or his agents, servants or employees from entering, taking possession or in any way whatsoever, interfering with the plaintiff's quiet possession, occupation and use of the suit land pending the hearing and determination of the suit.
2. The application is supported by an affidavit of Janet Kathure Nteere sworn on February 24, 2022 in which she has attached copies of the green card and an official search as JKN (1) and (2) respectively. She deposes that she has been in exclusive, open and uninterrupted occupation of the suit land since 2009 which land is registered under the defendant's name and who has never been in occupation of the land. She stated that she is now apprehensive that the defendant may evict her and or interfere with her developments therein as demonstrated in the photos attached as JKN(3) in her affidavit.
3. The defendant has filed a replying affidavit sworn on March 19, 2022 stating that the suit property previously belonged to his father and the probate court on September 21, 2007 issued a certificate of confirmation of grant hence the plaintiff is a stranger trying to force herself to the land with no colour of right. It is averred the applicant trespassed the land on March 14, 2022 by bringing hooligans to plant crops. A report was made to the police. Further the defendant stated he had subdivided the land with effect from August 6, 2009 and acquired LR No 3966.



4. The defendant deponed that he has developed his land which he acquired since 2013 and had tried to sell it to one Festus Marete but his family objected to it. He made a refund as per annexures DAM 1-3 respectively.
5. The defendant stated the plaintiff is a daughter of the intended purchaser who is falsifying the facts. He further stated the plaintiff has never had any dealings with him and hence her claim lacks basis.
6. The basis of the plaintiff's claim is the originating summons dated February 24, 2022 in which she seeks to be declared as entitled to LR No 6775 by virtue of adverse possession.
7. The originating summons is supported by an affidavit sworn by Janet Kithure Nteere on February 24, 2022, in which she stated she has occupied LR No 6775, a subdivision of LR No Kibirichia/Kibirichia/3966 since 2009.
8. The respondent in his reply has denied ownership of the parcel No 6775 and states his parcel No is LR Kibirichia/Kibirichia/3966 and that the applicant is a daughter of a former intended purchaser of the suit land.
9. A prohibition has been termed as in the nature of a prohibitory injunction.
10. An applicant to be entitled to an injunction must establish a *prima facie* case with a probability of success; that he shall suffer irreparable loss and damage if the injunction is not granted and lastly, the balance of convenience tilts in favour of granting the injunction.
11. In *Mrao vs first American Bank of Kenya Ltd & 2 others* (2003) KLR 125, a *prima facie* case was defined as established if looking at the material before the court a right has been established which has been infringed so as to call for a rebuttal from the opposite side.
12. In this suit the rights of the applicant are yet to be established through a declaration of adverse possession.
13. Similarly, the applicant says she merely plants crops on the suit land. Such a loss is quantifiable and can be compensated by way of damages.
14. Further, in *Nguruman Ltd v Jan Bonde Nielsen & 2 others* (2014) eKLR, the court held that the *Giella v Cassman Brown & Co Ltd* (1973) EA 358 principles must be established conjunctively.
15. The defendant has stated that he holds a title deed to the suit land through transmission and that the entry of the plaintiff to the suit land was with a consent due to an aborted sale agreement with his late father. I am therefore not convinced the plaintiff deserves the orders sought.
16. In the circumstances, I find the applicant does not deserve the prayers sought at this juncture.
17. The application is dismissed with costs to the suit. Parties to comply with order 11 *Civil Procedure Rules* within 48 days from the date hereof and list the suit for hearing.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 28TH DAY OF SEPTEMBER, 2022

In presence of:

C/A: Kananu

Kaimenyi for applicant



Anampiu for respondent

HON. C.K. NZILI

ELC JUDGE

