



REPUBLIC OF KENYA



KENYA LAW
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**Ondieki v Gitiera (Environment and Land Appeal E007 of 2022)
[2022] KEELC 14579 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14579 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E007 OF 2022**

JM KAMAU, J

OCTOBER 31, 2022

BETWEEN

ZADRACK WERE ONDIEKI APPELLANT

AND

PETER OMENTA GITIERA RESPONDENT

(An Appeal against the Judgment of Honourable M C Nyigei Principal Magistrate, Nyamira dated and delivered on July 13, 2022 by Hon M C Nyigei – PM in the original Nyamira PMC ELC Case No E011 of 2022)

RULING

1. The respondent, Peter Omenta Gitiera filed suit against Zadrack Were Ondieki alias Were Nyandiri. The same is dated March 16, 2022. The respondents' claim emanates from the fact as he avers that he is the beneficial owner of West Mugirango/Siamani/3440 which was closed after sub-divisions into West Mugirango/Siamani/8340 and 8341 respectively. He avers that the sub-division of the land was fraudulent after intermeddling with the estate of a deceased person. The respondent pleaded that his quiet possession of the suit land has been interfered with since the appellant has started erecting posts and structures on the plot. The respondent prays for a permanent injunction restraining the appellant from entering into, occupying, interrupting, transferring, wasting, encroaching and/or in any way dealing with the respondent's quiet possession, use and enjoyment of the suit land, doing any acts inconsistent with the respondent's right as the legal and/or rightful owner of all the parcel of land known as West Mugirango/Siamani/3440. He also sought a declaration that he is the lawful beneficiary of the parcel of land LR West Mugirango/Siamani 3440 and that the appellant is not entitled to dispossess him of his property. The respondent also sought for the cancellation of the subsequent Titles i.e. West Mugirango/Siamani/8340 and 8341 respectively. The respondent has in his possession letters of administration *ad litem* in respect of the estate of Gitiera Omenta who died on July 7, 2020 issued to him on August 30, 2021. The respondent pleads that the land registrar, Nyamira registered



the sub-divisions illegally and unlawfully since the letters of administration presented to him dated September 10, 2019 and October 31, 2019 respectively were irregularly obtained. In his defence dated July 17, 2022, the appellant denied the respondent's averments and claim as contained in the Plaint. The appellant averred that he is the sole registered owner of West Mugirango/Siamani/8341 and that he has been in actual occupation, possession and use of the parcel of land since 2004 and has developed it since the said year to date. The appellant proceeded to aver that West Mugirango/ Siamani/ 3440 is no longer in existence as it was closed upon sub-division. On March 16, 2022 the respondent made an application with the following prayers: -

1. That this application be certified as urgent and service of this application be dispensed with in the first instance.
 2. The court be pleased to grant a temporary injunction restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being Title Number Deed West Mugirango/Siamani/8340 and 8341 pending the Hearing and determination of this application.
 3. The court be pleased to grant an injunction restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being Title Number West Mugirango/ Siamani/ 8340 and 8341 pending the hearing and determination of this suit.
 4. The court be pleased to grant an order reverting the subsequent number Titles West Mugirango/Siamani/8340 and 8341 to the mother Title West Mugirango/Siamani/3440 pending Hearing and determination of the main suit.
 5. The Officer Commanding Nyamira Police Station do enforce compliance of the orders above.
 6. The costs of this application be provided for.
 7. The honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. He supported his application with the grounds that he is the legal beneficiary of the suit land, LR Nos West Mugirango/Siamani/8340 and 8341 respectively and did not understand how the appellant got a Title Deed in respect of West Mugirango/Siamani/8341. He demonstrated by way of letters of administration *ad litem* obtained from the Chief Magistrate's Court Kisii on 30/08/2021 that he is the legal representative of the estate of his father, Gitiera Omenta who died on July 7, 2020. He also exhibited a copy of a letter dated September 10, 2019 from the Senior Land Registrar, Nyamira addressed to the appellant to surrender the Title Deed in respect of the parcel of land known as West Mugirango/Siamani/8341 within 21 days which according to the land registrar, the addressee obtained from his office fraudulently. He was directed to surrender the said Title Deed "immediately" on October 31, 2019. The land registrar also sought the assistance of the DCI, Nyamira South to establish how the appellant obtained the aforesaid title deed. This was after the appellant failed to turn up at the land registrar's office even after seeking the help of the ACC Nyamira South. The appellant opposed the application by way of Grounds of Opposition dated June 7, 2022 by stating that the respondent obtained the *ad litem* grant from a court that lacked jurisdiction to issue one, that the respondent annexed a copy of a title in his (respondent's) name and that he can therefore not ask for injunctive orders from his own land, the respondent did not annex an extract/register of LR Nos West Mugirango/Siamani/8341, mutation forms for the sub-division of LR No West Mugirango/Siamani/3440 and that the pleadings in the case are fatally and incurably defective and should be



struck out with costs. The trial court heard the application and rendered its decision on the same on July 13, 2022 in favour of the respondent on the ground that the respondent had established that he is the legal representative of the registered owner of LR No West Mugirango/ Siamani/3440 before its sub-division into LR West Mugirango/Siamani Nos 8340 and 8341 respectively. He obtained the grant procedurally. The trial magistrate further held that since the late Gitiera Omenta, the registered owner of the suit land died, the property has changed hands yet the letters of administration have not been issued to date. The court further ruled that the appellant did not demonstrate that should the injunction be denied there would be no other remedy open to him and that the appellant did not attach documents to show how he came to obtain the ownership documents of West Mugirango/ Siamani/8341 yet it was not through transmission. The learned trial magistrate found that the deceased's estate would suffer irreparable injury that cannot be adequately compensated by way of payment of damages. The court therefore granted the orders of injunction sought as follows: -

- a. A grant of injunction restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being Title Number West Mugirango/Siamani/8340 and 8341 pending the Hearing and determination of this suit.
3. This was on July 13, 2022 and this order is the subject of this appeal. In the meantime, the appellant has sought a stay of execution of the aforesaid orders and a stay of proceedings in Nyamira Chief Magistrate's Court Environment and Land Case No E011 of 2022. I asked parties to file their submissions and come for the highlighting of the same on October 19, 2022. Only Mr Momanyi Aunga, for the appellant complied. I have gone through the appellant's application as well as the response thereof and the written submissions and order that the application dated July 14, 22 is hereby declined. I will reserve my reasons for the dismissal until after hearing the substantive appeal. Costs shall abide the outcome of the appeal. In the meantime, this appeal shall be set down for hearing to be disposed of forthwith with the appellant filing and serving his written submissions in respect to the substantive appeal within the next 10 days and the respondent do file his written submissions and serve them within 10 days after service.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF OCTOBER, 2022.

MUGO KAMAU

JUDGE

In the presence of:-

Court assistant: Sibota

Appellant: present in person

Respondent: N/A

