



Ng'ang'a & another v Munene (Environment and Land Case Civil Suit E022 of 2021) [2022] KEELC 13719 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT E022 OF 2021
MN GICHERU, J
OCTOBER 25, 2022**

BETWEEN

JAMES NG'ANG'A 1ST PLAINTIFF

LOISE MURUGI MAINA 2ND PLAINTIFF

AND

SAMUEL MUNENE DEFENDANT

RULING

1. This ruling is on the notice of motion dated 14/3/2022.

The said motion seeks the following orders.

- a. That a temporary injunction do issue restraining the Respondent whether by himself, his servants or agents from trespassing into KJD/Kitengela/8240 and 8241 pending the hearing and determination of this suit.
- b. A temporary injunction do issue directed against the Registrar of Lands Kajiado restraining any transfer or charge on the suit parcels.
- c. That an order do issue to the Defendant to furnish the court with a bank guarantee to prove that he can furnish the Kshs. Forty Million (40,000,000/-) charge that is fraudulently secured by the subject matter of this suit.
- d. That the OCS Kitengela Police Station do ensure compliance with the orders.
- e. That the costs of this application be provided for.

The application is supported by six grounds and a nine (9) paragraph affidavit. A summary of the grounds and the deposition is that the suit property was purchased by the Plaintiff.



It has now been transferred to New Dawn Academy which is a privately owned institution. It has also been charged to secure a loan of Kshs. 40,000,000/=. There is a real risk of the suit land being alienated which will be detrimental to the Plaintiffs in the event that they succeed in the suit.

Annexed to the affidavit is a copy of certificate of official search dated 8/3/2021 showing that L.R. No. 8241 was charged to Trinity Surveyors Limited to secure Kshs. 40 million and a certificate of lease showing that the suit land has already been registered in the name of New Dawn Academy Kitengela Limited. The other annexure is not clear at all.

2. The application is opposed by the Respondent whose counsel has filed a notice of preliminary objection dated 22/4/2022 in which he raises four issues.

Firstly, it is urged that this court has no jurisdiction to hear and determine this matter.

Secondly, the Defendant urges that the application is res judicata.

Thirdly, the Plaintiffs are said not to have exploited the available legal mechanisms and procedures, before coming to court and should not therefore be given audience by this court.

Finally, it is said that the application is defective and an abuse of the court process.

3. I have carefully considered the application in its entirety including the affidavits, the annexures, the grounds and the submissions and I make the following findings.

Firstly, on 28/7/2021, this court delivered a ruling in which an application for injunction in respect of the same property was dismissed. No application was ever made to set aside or review the said ruling.

Secondly, it is clear from the Plaintiffs' annexures JMN2, JMN3 and JMN4 that the suit property is registered in the name of an entity which is not a party to this suit. When this suit was filed on 14/4/2021, the suit property was already registered in the name of this entity namely, New Dawn Academy Kitengela Limited.

Thirdly, it is neither fair nor just to require a party to furnish security for the due performance of a decree at an interlocutory stage unless it is proved that such party is about to leave the jurisdiction of the court and that the Applicant has a good case.

The Defendant has not been proved to have done anything to delay the case or abscond or leave the jurisdiction of the court.

Instead, it is the Plaintiffs who are yet to close the pleadings more than one and half years since filing of the suit. It was incumbent upon the Plaintiffs to join the right parties to this suit. It would not be proper to make orders adverse to an entity that is not a party in this case.

Finally, the suit property is already registered in the name of an entity that is not a party to this suit. The transfer is already complete.

For the above stated reasons, I dismiss the notice of motion dated 14/3/2022. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

