



**Kamau v Karanja (Environment & Land Case E030 of 2022)  
[2022] KEELC 14425 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14425 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E030 OF 2022**

**BM EBOSO, J  
OCTOBER 24, 2022**

**BETWEEN**

**PAUL KIBERA KAMAU ..... PLAINTIFF**

**AND**

**GEORGE KINYANJUI KARANJA ..... DEFENDANT**

**RULING**

1. The plaintiff initiated this suit through a plaint dated 23/3/2022. His case was that he was the registered proprietor of land parcel number Karai/Karai/1198, measuring approximately 4.429 hectares. He contended that the defendant had trespassed onto the said parcel of land and was extracting hardcore, building stones and ballast from the land, for sale to third parties. He prayed for a permanent injunction restraining the defendant against trespassing on the land and/or interfering with the land.
2. Together with the plaint, the plaintiff filed a notice of motion dated 23/3/2022, through which he sought an interlocutory injunctive order restraining the defendant against trespassing on, encroaching on, entering, accessing, interfering with, occupying, alienating or otherwise dealing in any other manner with land parcel number Karai/Karai/1198, pending the hearing and determination of this suit. The said application is the subject of this ruling.
3. The application was supported with the plaintiff's affidavit sworn on 23/3/2022 and further affidavit sworn on 9/6/2022. He outlined his case as summarized above. He exhibited a title deed dated 28/2/2019, showing that he was registered as proprietor of land parcel number Karai/Karai/1198, measuring approximately 4.429 hectares, on 28/2/2019, and he was issued with a title deed on the same day. He further exhibited an official search dated 28/2/2022, showing that he was the registered proprietor of the said land. In addition, he exhibited documents showing that the said land was originally allocated to one James Kamau, whom he described as his late father. The application was canvassed through written submissions dated 5/5/2022 and supplementary written submissions dated 27/6/2022, both filed through M/s Irungu Maina Advocates.



4. The defendant filed a statement of defence dated 18/5/2022 in which he contended that he was a total stranger to land parcel number Karai/Karai/1198. He denied trespassing on the said parcel of land. He added that he had all along been occupying and using land parcel number Karai/Karai/351, comprising of 5.0 acres, which was allocated to him by the County Council of Kiambu in 2003.
5. In response to the plaintiff's application dated 23/3/2022, the defendant filed a replying affidavit dated 18/5/2022 in which he reiterated the contention that he had been allocated land parcel number Karai/Karai/351 by the County Council of Kiambu in 2003. He added that the County Council allowed him to carry out quarrying operations on the said land. It was the defendant's case that the dispute in this suit can only be resolved by the court "appointing and instructing the District Land Registrar - Kiambu to visit the disputed two parcels of land and file a comprehensive report" addressing the issues in the dispute. Besides the replying affidavit, the defendant filed written submissions dated 9/6/2022 through M/s Kimbi Mwangi Ben & Co Advocates. Further, Mr Mworio who appeared for the defendant at the hearing of the application made brief oral highlights of the written submissions.
6. I have considered the application, the response to the application and the parties' rival submissions. The single question that falls for determination in this application is whether the plaintiff has satisfied the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs. I will make brief analysis and pronouncements on the issue.
7. The criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs was outlined in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that unless the interlocutory injunctive relief is granted, he would stand to suffer irreparable damage that may not be adequately indemnifiable through an award of damages. Third, where there is doubt on either of the above two limbs, the court is to determine the application based on the balance of convenience. Lastly, at the stage of disposing the plea for interlocutory injunctive relief, the court does not make conclusive or definitive findings or pronouncements on the key issues in the dispute
8. At this interlocutory stage, the plaintiff has presented evidence demonstrating that he is the registered proprietor of land parcel number Karai/Karai/1198, measuring 4.429 hectares. He has also presented evidence showing that the defendant has entered the said land and is carrying out quarrying activities on the land. He terms the defendant's activities as trespass. He has exhibited copy of a title deed bearing his name, issued to him on 28/2/2019. The title shows that his registration as proprietor of the land was made as a third entry in the relevant land register on 28/2/2019. It is his case that the said land was originally allocated to his late father, James Kamau, in 1971 by the County Council of Kiambu. He has exhibited various documents to support the above contention.
9. On his part, the defendant contends that he is a stranger to land parcel number Karai/Karai/1198 and that he is the lawful owner of land parcel number Karai/Karai/351, measuring approximately 5 acres. It is the defendant's case that land parcel number Karai/Karai/351 was allocated to him by the County Council of Kiambu in 1991. He has, however, not demonstrated why he has never processed a title relating to the said allocation, if indeed he was lawfully allocated a parcel of land that had already been surveyed as number Karai/Karai/351.
10. In opposing the plea for interlocutory relief, the defendant urged this court to compel the Land Registrar to resolve the dispute. This proposal would have made sense if the defendant held a registered title relating to what he describes as Karai/Karai/351. In the absence of evidence that Karai/Karai/351 exists as a registered parcel, there would be no basis for referring this dispute to the Land Registrar to



exercise jurisdiction under Sections 18, 19 and 20 of the [Land Registration Act](#) at this interlocutory stage.

11. The totality of the foregoing is that, prima facie, the court is satisfied that the plaintiff has, at this stage, satisfied the court that he holds a title relating to the suit land and that he is entitled to the protection secured under Article 40 of the Constitution and Sections 24 and 25 of the Land Registration Act. Put differently, the plaintiff has satisfied the first limb of *Giella v Cassman Brown & Co Ltd* [1973] EA 358.
12. On the second limb, the plaintiff exhibited photographs showing that the defendant is undertaking quarrying activities on his land, parcel number Karai/Karai/1198. Article 40 of the Constitution protects the rights of a registered proprietor of land. So do Sections 24 and 25 of the Land Registration Act. A violation of a right to property is conduct that calls for protection by the courts. There can be no justification for the court to allow the continuation of a violation of the right conferred under Article 40 of the [Constitution](#). The court is therefore similarly convinced that the plaintiff has satisfied the second limb of *Giella v Cassman Brown & Co Ltd* [1973] EA 358.
13. In the absence of doubt on the first and second limbs of *Giella v Cassman Brown & Co Ltd* [1973] EA 358, the court is satisfied that the plaintiff has met the criteria for grant of interlocutory injunctive relief. Consequently, the plaintiff's notice of motion dated 23/3/2022 is allowed in terms of prayers 2 and 3. The defendant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 24TH DAY OF OCTOBER 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Kuria for the Plaintiff

Mr Mworira [logged in as a guest under the name Duke Mworira but muted]

Court Assistant: Ms Osodo

