



REPUBLIC OF KENYA



KENYA LAW
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Kariuki v Mukora & 3 others (Environment and Land Case Civil Suit E061 of 2021) [2022] KEELC 13554 (KLR) (17 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13554 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT E061 OF 2021
MN GICHERU, J
OCTOBER 17, 2022

BETWEEN

DAVID NG'ANG'A KARIUKI PLAINTIFF

AND

PATRICK MUKORA 1ST DEFENDANT

ROSE WANJIRU MBUGUA 2ND DEFENDANT

INTER ACTIVE WORLD LIMITED 3RD DEFENDANT

LAND REGISTRAR, KAJIADO NORTH DISTRICT 4TH DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated 30/9/2021. The said motion which is by the Plaintiff David Ng'ang'a seeks the following orders,
 - (i) That a temporary injunction be issued restraining the first, second and third Defendants being Patrick Mukora, Rose Wanjiru Mbugua, and Inter Active World Limited, their agents, servants, workers, employees or anybody working under their instructions from trespassing, entering, constructing, cultivating, wasting, or in any way interfering with the Applicant's ownership rights on land parcels Ngong/Ngong/928, 1216 and 1663 pending the hearing and determination of this suit.
 - (ii) That the fourth Defendant, Land Registrar Kajiado North District be ordered to avail certified copies of green cards for the three land parcels above mentioned.
 - (iii) That the OCS Ngong Police Station be authorized to ensure that peace prevails during the enforcement of the orders of this court.
 - (iv) That the costs of this application be paid by the Respondent.



2. The motion is supported by an affidavit sworn by the Applicant dated 30/9/2021 in which he states as follows.

He is the registered owner of the three parcels which he inherited from his father the late Francis Kariuki Kuria. He lived peacefully on the suit land until the year 2018 when the three Defendants trespassed therein.

They have persisted in the illegal occupation and only an order of injunction would save his land from the Defendants' illegal occupation.

3. In further support of the motion, the Applicant has filed the following documents namely, copies of title deeds for the three parcels, copy of certificate of death of the late Simon Kariuki Kuria and copies of sketch maps for the area in which the suit and is situated.
4. The application by the Plaintiff is opposed by the second Defendant, Rose Wanjiru Mbugua, who has sworn a replying affidavit dated 11th February, 2022 in which she deposes that she has not trespassed on land reference Ngong/Ngong/928, 1216 or 1663 because she occupies L.R. Ngong/Ngong/32156 and she has no interest whatsoever in the Plaintiff's land parcels. She prays that the Applicant's application be dismissed.
5. I have carefully considered the application in its entirety including the affidavits and annexures. I have also considered the prerequisites to the grant of an order of injunction as per the case of *Giella –versus- Cassman Brown* (1973) EA 358 namely prima facie case with a probability of success and irreparable loss that cannot be adequately compensated by an award of damages.

If the court is not sure of the above two, then it looks at the balance of convenience.

I find that it is too early to determine if the Applicant has established a prima facie case with a probability of success because he could still amend his pleadings and even adduce more evidence.

On the second limb, I find that the Applicant has not proved that he stands to suffer irreparable loss that cannot be adequately compensated by an award of damages. He has not explained why it took him about three years from 2018 to file this suit.

Having found against the Applicant on the second limb of the prerequisites to the grant of an order of injunction, I need not consider the third prerequisite.

For the above reasons, I dismiss the application for injunction as I find that it has not merit.

I hasten to add that the prayer for availing of the certified copies of green cards for the three (3 parcels) is well deserved for the following reasons.

Firstly, under Section 9 of the *Land Registration Act* (Act No. 3 of 2012), it is the duty of fourth Defendant to maintain the register and any document required to be kept under the Act in a secure, accessible and reliable format.

Secondly, under Article 35 of *the Constitution* of Kenya, every citizen has the right of access to information held by the state.

The Plaintiff is therefore entitled to copies of the green cards for the suit parcels as a matter of right.

The notice of motion dated 30th September, 2021 is therefore dismissed in all respects except as regards prayer 4 which is allowed.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER, 2022.



M.N. GICHERU

JUDGE

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