



REPUBLIC OF KENYA



**Lekuam v Gichohi & another (Environment and Land Appeal  
E020 of 2021) [2022] KEELC 13623 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13623 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT AND LAND APPEAL E020 OF 2021  
YM ANGIMA, J  
OCTOBER 13, 2022**

**BETWEEN**

**CECILIA LEKUAM ..... APPELLANT**

**AND**

**VIRGINIA MUTHONI GICHOHI ..... 1<sup>ST</sup> RESPONDENT**

**ANDREW AKOLI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. INTRODUCTION AND BACKGROUND**

1. The material on record shows that on January 20, 2021 the Appellant sued the Respondents herein before the trial court seeking recovery of Parcel No. Laikipia/Uaso Narok B/1378 (the suit property) on the basis that she was the rightful owner thereof and that the Respondents had fraudulently deprived her of the suit property. The citation of the said case was Nyahururu CM ELC No. E005/2021 – Cecilia Lekuam –vs- Virginia Muthoni Gichohi & Andrew Akoli.
2. It would appear that the Respondents raised a preliminary objection to the suit to the effect that the suit was time barred under Section 7 of the *Limitation of Actions Act* (Cap.22) since the same had been filed after the expiry of 12 years from the date of the accrual of the cause of action. Consequently, they asked the trial court to dismiss the suit with costs.
3. The material on record shows that vide a ruling dated and delivered on September 23, 2021, the trial court upheld the Respondents' preliminary objection and struck out the Appellant's suit for being statute barred.
4. Being aggrieved by the said ruling and order the Appellant filed a memorandum of appeal dated October 22, 2021 challenging the same on the 6 grounds stated on the face thereof.



## **B. THE APPELLANT'S INSTANT APPLICATION**

5. During the pendency of the appeal the Appellant filed a notice of motion dated March 15, 2022 under Section 63(e) of the *Civil Procedure Act* (Cap.21), Order 42 rule 6(6) of the *Civil Procedure Rules, 2010* and all other enabling provisions of the law seeking a temporary injunction to restrain the Respondents from entering, using, occupying, developing, trespassing, leasing, charging, mortgaging, assigning or dealing in any manner whatsoever with the suit property pending the hearing and determination of the appeal.
6. The said application was based upon the grounds enumerated on the face of the motion and the contents of the supporting affidavit sworn by the Appellant on March 15, 2022 and the exhibits thereto. It was contended that unless the interim injunction sought was granted the Appellant stood to suffer irreparable loss and damage. It was further contended that the appeal had high chances of success and that it was necessary to preserve the substratum of the appeal in the absence of which the appeal might be rendered nugatory.

## **C. THE RESPONDENTS' RESPONSE**

7. The respondents entered appearance and filed a notice of preliminary objection dated March 30, 2022 in which it was contended that this court lacked jurisdiction because the suit before the trial court was time-barred under Section 7 of the *Limitation of Actions Act*. It was contended that both the appeal and the instant application were bad in law since lack of jurisdiction could not be cured through an appeal. The court was consequently urged to dismiss the appeal and application with costs.

## **D. DIRECTIONS ON SUBMISSIONS**

8. When the application was listed for inter partes hearing it was directed that the Appellant's application shall be canvassed through written submissions whereas it was directed the respondents' preliminary objection shall be canvassed during the hearing of the main appeal. The parties were granted timelines within which to file and exchange their respective submissions. The record shows that the appellant filed her submissions on June 6, 2022 whereas the Respondents' submission were not on record by the time of preparation of the ruling.

## **E. ANALYSIS AND DETERMINATION**

9. The court has considered the submissions and material on record. The court is of the opinion that the main question for determination herein is whether or not the Appellant has satisfied the requirements for the grant of an interim injunction pending the hearing and determination of the appeal.
10. The court has noted that the Respondents did not file any affidavit to refute the Appellant's allegations as contained in her supporting affidavit. The principles for the grant of an injunction at the appellate stage still remain the same as envisaged in the case of *Giella -vs-Cassman Brown & Co. Ltd* [1973] EA 358. The court is satisfied on the basis of the material on record that the Appellant has demonstrated a prima facie case with a probability of success. The material on record shows that the appellant's claim was based upon a letter of allotment and that upon criminal investigations being undertaken, the respondents were arrested and charged with some criminal offences in relation to their dealings with the suit property.
11. The court is further of the opinion that the Appellant may suffer irreparable loss should the suit property be alienated during the pendency of the appeal. The Appellant may well find herself with



victory of no practical importance if the suit property were to be alienated or dealt with during the pendency of the appeal. Accordingly, the court is inclined to grant the interim order sought.

## **F. CONCLUSION AND DISPOSAL**

12. The upshot of the foregoing is that the court finds merit in the Appellant's application for interim orders. Accordingly, the notice of motion dated March 15, 2022 is hereby allowed in the following terms.

- a. A temporary injunction be and is hereby granted restraining the Respondents, their agents, servants, employees or any other persons acting through or under them from entering, using, occupying, developing, transferring, leasing, charging, mortgaging, letting, assigning and dealing in any manner whatsoever with Title No. Laikipia/Uaso Narok B/1378 pending the hearing and determination of the appeal.
- b. Costs of the application shall be in the appeal.

Orders accordingly.

**RULING DATED AND SIGNED AT NYAHURURU THIS 13<sup>TH</sup> DAY OF OCTOBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

Mr. Nderitu Komu for the Appellant

Ms. Wangare Wangechi for the Respondents

**C/A - Carol**

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**Y. M. ANGIMA**

**JUDGE**

