



**Karuri v Wairegi & 4 others (Environment and Land Case
E073 of 2024) [2025] KEELC 4182 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E073 OF 2024**

MAO ODENY, J

MAY 30, 2025

BETWEEN

JELIOTH WANJIRA KARURI PLAINTIFF

AND

JOHN GAKURE WAIREGI 1ST DEFENDANT

BETTY NJOKI WANYOIKE 2ND DEFENDANT

JOSEPH KARURI ALIAS WACHIRA MURIAMBU 3RD DEFENDANT

PETER WAIREGI 4TH DEFENDANT

PETER WAIREGI ALIAS KABUE 5TH DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion application dated 25th October, 2024 filed by the Plaintiff/Applicant seeking the following orders:
 - a. Spent
 - b. Spent
 - c. Pending the hearing the main suit, this court do issue a permanent injunction restraining the defendants, their servants and/or agents from entering, trespassing, remaining, or interfering in any manner whatsoever with the plaintiff's peaceful and quiet enjoyment of the possession, occupation and development of the whole of all that piece or parcel of land known as Number IR 34270/10 Situate South of Njoro Town, Nakuru District Containing by measurement nought decimal two nought two three (0.2023) hectares or thereabouts being Land Reference Number 12431/51 (Original Number 12431/19/7 Survey Plan Number 164359 registered in the name of the plaintiff. (sic)



- d. The defendants be condemned jointly and severally to meet the costs of the application.
2. The application was supported by the annexed affidavit of Jelieth Wanjira Karuri, the Plaintiff/Applicant sworn on 25th October, 2024 where she deponed that she is the registered proprietor of the land known as Number IR 34270/10 situated in South of Njoro Town Nakuru District which she bought together with her husband, one Francis Kibuba Lelo. She further stated that her husband transferred the same to her on 23rd October, 2017 and took possession of the same. It was her deposition that after the death of her husband, the defendants have been trying to throw her out of the suit land claiming the same belongs to her mother in-law.
 3. John Gakure Wairegi filed a Replying Affidavit dated 22nd November, 2024 and deponed that he has the authority of the other Defendants to make depositions. He deponed that the entire suit is res-judicata as the issues are substantially the same as those in Nakuru CM ELC No 101 of 2018 John Gakure Wairegi vs Jelieth Wanjira Karuri (Formerly Nakuru HC ELC No 93 of 2016).
 4. He deponed that they have not interfered with the Plaintiff's possession of land Reference No 12431/51 (Original 12431/19/7) as their mother does not live there and they only visit her on NJORO/NJORO BLOCK 5/309. It was his evidence that the Plaintiff's claim does not disclose any reasonable cause of action against them.

Plaintiff/Applicant's Submissions

5. Counsel for the Plaintiff/Applicant filed submissions dated 5th February, 2025 and submitted that the suit is not res-judicata as it is between the Plaintiff and her brothers and sister in law. Counsel submitted that the parcels of land mentioned by the parties are different. Counsel submitted that the property in NKU CMCC NO 93 of 2016 is Njoro/Njoro/Block 5/309. Counsel further submitted that in that concluded suit, the 1st Defendant filed the same on behalf of her mother through a power of attorney and that Plaintiff did not file a defence.
6. Counsel relied on the cases of Edward *Muriga vs Nathaniel D. Schutter Civil Appeal No 23 of 1997* and Motex Knitwear Limited vs Copitexnitwear mills Ltd, Nbi Milimani HCC No 834 of 2002 and submitted that NKU CM ELC NO 93 of 2016 is irrelevant for the purposes of this suit and has a judgment that is not practically enforceable. Counsel relied on Section 26 (1) (a) and (b) of the *Land Registration Act*, 2012.
7. Mr. Mwangi submitted that the Plaintiff is likely to lose her property through an illegal acquisition by the Defendants hence she will be subjected to irreparable injury and loss and relied on the cases of *Kennedy Mokuva Ongiri vs John Nyasende Mosloma & Florence Nyamoita Nyasende* [2022] eKLR, *Nguruman Limited vs Jan Bonde Nielson & 2 others* [2014] eKLR and *Abongo vs Abongo (Suing on Behalf of the Estate of Erasto Abongo Okode); Abongo & Another (Interested Parties)* (Environment and Land Appeal E083 of 2024).

Defendant/Respondents Submissions

8. Counsel for the Defendant/Respondent filed submissions dated 4th February, 2025 and identified the issue for determination as to whether the Plaintiff/Applicant has met the legal threshold for granting an injunction having regard to the circumstances of the instant suit. Counsel submitted that the Applicant has failed to produce the surveyor's report in regard to the alleged suit property or even the executed sale agreement.
9. Counsel submitted that the Respondents on the other hand have produced an affidavit by the vendor Prof. Francis Lelo Kibuba, showing land bought for the benefit of the Applicant's mother. Counsel



submitted that the instant suit is res-judicata and the Applicant has not established a prima facie case. Counsel relied on the cases of *Giella vs Cassman Brown [1973] EA 358*, *Mrao vs First Community Bank of Kenya and 2 others* Civil Appeal No 39 of 2002 and *Francis Jumba Enziano & Others vs Bishop Philip Okeyo & 2 others*, Nairobi HCCC No 1178 of 2007.

10. Mr. Matiri submitted that the Applicant is not and has never been in possession of the suit parcel and that any loss or damage that the Applicant alleges she may suffer can be compensated by an award of damages. Counsel also cited the cases of *Stanely Kirui vs Westlands Pride Ltd [2013] eKLR*, *Ripples Limited vs Kamau Mucuha* Nairobi High Court Civil Case No 4522 of 1992, *Wilfred Oanda Kirochi vs David Pius Magambi* Civil Appeal No 76 of 1995 (1995) LLR 5259, *James Kipruto Lagat and Another vs Family Bank Limited and Another* ELC No 121 of 2015 (Eldoret) and *Lameck Mbaka Motegi vs Bank of Baroda (Kenya) Limited and Another H.C.C No 8 of 2016* (Nakuru).
11. Counsel further relied on the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR* and submitted that the Applicant's application has failed to meet the threshold for grant of an injunction and urged the court to dismiss the application.

Analysis and Determination

12. The issue for determination is whether the Plaintiff/Applicant is entitled to an order of permanent injunction pending the hearing of the main suit. In the case of *Kenya Power & Lighting Co. Limited - Versus - Sheriff Molana Habib [2018] eKLR*, the court held as follows:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected...”

13. The court notes that the Plaintiff vide Plaint dated 25th October, 2024 is seeking the following orders:
 - a. A permanent injunction restraining the defendants by themselves their servants and/or agents jointly and severally from trespassing, entering, remaining or the interfering with the plaintiff's quiet, peaceful, enjoyment, occupation, possession and development of the whole of all that piece or parcel of land known as IR 34270/10 Situate South of Njoro Town In Nakuru District Containing by measurement nought decimal two nought two three (0.2023) hectares or thereabouts being Land Reference Number 12431/51 (original No 12431/19/7 as delineated on Land Survey Plan No. 164359. (sic)
 - b. A declaration that all that piece and/or parcel known IR 34270/10 Situate South of Njoro Town, Nakuru District Containing by measurement nought decimal two nought two three (0.2023) hectares or thereabouts and being LR NUMBER 12431/51 (Original Number 12431/19/7 as delineated on Land Survey Plan Number 164359 is the exclusive registered property of the plaintiff.
 - c. Any other relief this court deems fit and just to grant to avoid miscarriage of justice.
 - d. Costs of and incidental to this suit.
14. The order of permanent injunction sought in the Notice of Motion Application dated 25th October, 2024 is identical to the one sought in the Plaint dated 25th October, 2024. The matter is yet to be heard and thus this court cannot determine the issues at this preliminary stage.



15. In the case of *Njau v Chege* [2025] KEELC 3210 (KLR), the court held as follows:

“.....I have no doubt that prayer 4 cannot be allowed because it seeks an “order of permanent injunction” This cannot happen at the interlocutory stage....”

16. The Notice of Motion Application dated 25th October, 2024 is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

