



**Chesilut v Kipkorir (Environment & Land Case E016 of 2022)
[2022] KEELC 13395 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13395 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E016 OF 2022
MN MWANYALE, J
OCTOBER 6, 2022**

BETWEEN

WILLIAM CHESILUT PLAINTIFF

AND

EZEKIEL KIPKORIR DEFENDANT

RULING

1. Coming up for determination is the notice of motion application dated June 16, 2022 seeking the following orders: -
 - i. Spent
 - ii. That, Dorcas Lelei Be granted leave to be joined as an interested party in this suit.
 - iii. Spent
 - iv. That, pending the hearing and determination of this suit there be a temporary order of injunction restraining the plaintiff/applicant by himself, his agents, servants, or anybody claiming from him from harassing, evicting, and/or interfering with the proposed interested party’s actual occupation, possession and use, wasting, damaging, alienating and/or partitioning, causing registration and/or dealing in any manner, whatsoever with the proposed interested party’s portion in occupation, of herself to wit; 10 acres or thereabout out of Nandi/ Mutwot/325 the subject matter of the suit herein.
 - v. That, the OCS Mosoriot police station to effect the orders.
 - vi. That, cost of this application to be provided for.
2. The application is premised on fifteen grounds set out on the face of it and supported by affidavit of Dorcas Lelei sworn on June 16, 2022.



3. The applicant has deponed that;-
 - i. She is the spouse to the plaintiff hence her beneficial interest over the suit land.
 - ii. She enjoys actual possession and occupation as well as use of 10 acres out of Nandi/Mutwot/325.
 - iii. The defendant is her son and was sued by the plaintiff in order to evict her.
 - iv. Serious developments have been made on suit land hence any orders to be made will greatly affect the applicant.
 - v. No prejudice will be suffered by plaintiff and defendant if orders sought are granted.
4. The defendant on his part filed an affidavit dated July 7, 2022. In the said affidavit, the defendant deponed that he was not opposed to the instant application.
5. The plaintiff filed a replying affidavit in opposition to the application. The same is sworn by William Chesilut and dated July 22, 2022. He deponed that;
 - i. He has never contracted any kind of marriage with the applicant
 - ii. The applicant was an employee of the plaintiff since 1971 and lived in the suit land during her employment.
 - iii. As a show of appreciation she was gifted a parcel of land to settle in the year 1986 where the applicant has been residing.
 - iv. It was not until plaintiff became sickly that the defendant trespassed the suit land.
 - v. That in the event any kind of marriage existed between plaintiff and applicant, the same was allegedly contracted after purchase of suit land. Hence the said property is not matrimonial property.
6. When the matter came up for directions on July 5, 2022 it was directed that the application be canvassed by way of written submissions. These directions were complied with by all parties.
7. Counsel for the applicant submitted that the applicant will be affected by the decision of this court since she is in occupation and actual possession of the suit land hence the instant applicant on for joinder as interested party. To buttress this position they relied in the case of *Yusuf Abdi Adan & Another vs Hussein Ahmed Farah & 3 others*, Civil Case No 100 of 2016.
8. It was also submitted that the applicant's application meets the threshold for grant of temporary injunction as set out in the celebrated case of *Giella vs Cassman Brown* (1973) EA 358. They urged this court to allow the instant application.
9. On their part, counsel for the 1st respondent/plaintiff submitted that this suit was as a result of acts of trespass committed by the 2nd respondent/defendant and not matrimonial proceedings which a party alleging existence of marriage is entitled to be enjoined.
10. It was further submitted that the prayers for injunctive orders were an afterthought and immature since the Applicant is not yet a party to the suit. That the Application does not meet the test for grant of temporary injunctive orders set out in the case of *Giella vs Cassman Brown* (1973) E A 358.



Analysis And Determination: -

11. The guiding principles governing the enjoinder of an interested party to a suit such as this were articulated by the Supreme Court in the case of *Raila Amolo Odinga & Another vs IEBC and 2 Others & Michael Wainaina Mwaura* (2017) eKLR as follows:
- “One must move the court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the court; hence sufficient grounds must be laid before the court, on the basis of the following elements: -
- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
 - ii. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
 - iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”
12. Under the first principle in the *Raila case* (2017) and upon considering the position of the intended interested party vis a vis the plaintiff and defendant’s case, I am of the view that the applicant has sufficiently demonstrated an identifiable personal interest and stake in this proceedings. First, is the fact that parties to this suit have not dispute that the applicant is the biological mother to the defendant. Secondly, annexure marked DL 5 a – b being copies of photographs of applicant’s dwelling house demonstrate and confirm that indeed the applicant was in occupation of the suit land.
13. On the second principle of prejudice to be suffered by applicant. This court is equally satisfied that the same has been clearly outlined and demonstrated in the application *vide* the photographs annexed to the application. The applicant has demonstrated that her enjoinder to the suit is crucial since she stands to lose her dwelling house in the event adverse orders are issued against her without her participation in the suit.
14. Lastly, the applicant has demonstrated that her case is not a mere replica of defendant’s case rather that her interest in the suit land stems from her alleged marriage to the plaintiff.
15. In the premises, the applicant is a necessary party to this suit for the court to determine all issued in dispute relating to the suit property. I therefore proceed to grant prayer 2 in the instant application.
16. In respect to prayer 4 on temporary injunction pending hearing and determination of the suit, a similar prayer was sought by the plaintiff/1st respondent *vide* notice of motion application dated May 24, 2022 and the court granted an order for *status quo* to be maintained on May 25, 2022.
17. This order was issued by the court to preserve the substratum of the subject matter, in this case sit property, pursuant to paragraph 28 (k) practice directions in Gazette Notice No 5178/2014. The



Court of Appeal in the case of Mugah vs Kunga (1988) KLR 748 upheld the practice of issued *status quo* orders in land matters. The court stated as follows:

“Status quo orders should always be issued for purposes of preserving the subject matter. This court’s practice direction *vide* Gazette Notice No 5178/2014 have followed suit. Practice direction No 28 (k) is relatively clear. It gives the court the leeway and discretion to male an order for *status quo* to be maintained until determination of the case.”

18. Apart from preserving the substratum of subject matters, courts have found this order as a case management strategy to prevent prejudice as between the parties to a matter. In the case of Texaco Ltd vs Mulberry Ltd (1972) 1 WLR 814, it was held thus:

“The end result is that *status quo* orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders, but also when the court is of the view that as a case management strategy it would be more proportionate and appropriate without prejudicing one party to issue a ‘*status quo*’ order.”

19. This court, in exercise of its general jurisdiction and discretion is of the view that an order of *status quo in lieu* of temporary injunction sought by the parties herein will suffice to preserve the suit property without prejudicing any party.

20. Consequently, the court issues an order for *status quo* to be maintained by the parties pending hearing and determination of this suit.

21. The interested party is hereby enjoined in the suit.

22. Orders accordingly.

DATED AND DELIVERED IN KAPSABET THIS 6TH DAY OF OCTOBER, 2022.

Hon. M. N. Mwanyale,

JUDGE

In the presence of;

Mr. Ngarngar for Plaintiff

Mr. Kiprono for the Interested Party.

No appearance for the Defendant

