



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mboroki v M'Laikuru & 3 others (Environment & Land Case  
E009 of 2022) [2022] KEELC 14929 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14929 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E009 OF 2022  
CK YANO, J  
NOVEMBER 23, 2022**

**BETWEEN**

**JEREMY KILEMI MBOROKI ..... PLAINTIFF**

**AND**

**JOHN KIRIABU M'LAIKURU ..... 1<sup>ST</sup> DEFENDANT**

**SIMEON M'MWONGO ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR EAST AND WEST ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of an application dated June 3, 2022 by the plaintiff/applicant seeking for the following orders:-
  1. Spent
  2. Spent
  3. That this Honourable court be pleased to grant a temporary injunction restraining the 2<sup>nd</sup> defendant whether by himself, his agents, his servants or anyone acting on his behest from trespassing on, wasting, hiving the applicant's portion or otherwise interfering or dealing with the plaintiff's property being title number Nyambene/Uringu1/17 pending the hearing and determination of the main suit.
  4. That this Honourable court be pleased to grant interim orders inhibiting and or restraining the 2<sup>nd</sup> defendant whether by himself, his agents, his servants or anyone acting on his behest to sell, transfer or interfere with the title deed Nyambene/uringu 1/711 pending the hearing and determination of this application and the main suit.



5. That this Honourable court be pleased to grant interim orders inhibiting and restraining the 2<sup>nd</sup> defendant whether by himself, his agents, his servants or anyone acting on his behest from entering into the plaintiff's parcel of land Nyambene/uringu 1/17 pending the hearing and determination of this application and the main suit.
  6. That the order issued herein by this Honourable court be served upon the O.C.S Tigania Police station for compliance.
  7. That the Honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
  8. That costs of this application be provided for.
2. The application is premised on the grounds on the face of the motion and supported by the affidavit of Jeremy Kilemi Mboroki, the applicant. The applicant's case is that he purchased a parcel of land measuring approximately 0.70 acres from the 1<sup>st</sup> defendant who had in turn purchased the same from the 2<sup>nd</sup> defendant. The applicant avers that he took possession of the said parcel of land in the year 1996 after purchasing it and undertook construction as well as farming on the land and that he has been in occupation peacefully since then together with his family.
  3. The applicant avers that later he was issued with a title deed for parcel Nyambene/uringu 1/17 on 12<sup>th</sup> January, 2014 but realized that the acreage indicated was less than what he had purchased from the 1<sup>st</sup> defendant. The applicant states that he then followed up the matter with the 3<sup>rd</sup> defendant and even wrote letters asking for the error to be corrected. Copies of the letters marked "JKMI" are annexed.
  4. The applicant states that the land was surveyed by the land surveyor who noted that the 2<sup>nd</sup> defendant's parcel of land was combined with the applicants parcel measuring 0.70 acres which the applicant had purchased from the 1<sup>st</sup> defendant. The letter to the Land Registrar and the report by the County Surveyor have been annexed and marked "JKM 2".
  5. The applicant avers that he was surprised to see the 2<sup>nd</sup> defendant fencing off a portion of his parcel of land Nyambene/uringu 1/17 in the year 2021 and he reported the matter to the area chief who summoned the 2<sup>nd</sup> defendant but the 2<sup>nd</sup> defendant refused to vacate from the applicant's land. A copy of the letter from the chief marked "JKM 3" has been annexed. The applicant avers that the 2<sup>nd</sup> defendant alleged to have a title deed which was issued by the 3<sup>rd</sup> defendant in the year 2021.
  6. The applicant's case is that the 2<sup>nd</sup> defendant has continued to trespass on his portion of land and even uprooted flowers and bananas, and that despite the applicant's complaints the 2<sup>nd</sup> defendant has ignored and or refused to desist from his actions. The applicant states that unless the court intervenes there is a likelihood of a breach of peace and that the 2<sup>nd</sup> defendant's actions are causing the applicant damage, adding that he is bound to suffer irreparable damage should the 2<sup>nd</sup> defendant be left to continue trespassing on the applicant's property.
  7. The 2<sup>nd</sup> defendant opposed the application vide a replying affidavit sworn on July 19, 2022. He claims that the applicant does not live on his land as alleged but that the defendant/respondent lives on his land Nyambene/uringu 1/711 which he utilizes. The 2<sup>nd</sup> defendant avers that the applicant cannot be granted the orders sought because there is a criminal case pending at Tigania where the plaintiff/applicant and the 2<sup>nd</sup> defendant/respondent are parties. The 2<sup>nd</sup> respondent asks that if the applicant claims to have bought land from the 1<sup>st</sup> respondent, then he wonders why the court can issue inhibition to be placed over the 2<sup>nd</sup> respondent's land Nyambene/uringu 1/711. He stated that the surveyor visited the land and separated the two parcels Nyambene Uringu 1/711 And Nyambene/uringu 1/17



- by showing the boundaries, and that if the applicant's land is less, he cannot claim to have a portion of the respondent's land added to it. He has attached the letter marked "SMMI"
8. The 2<sup>nd</sup> respondent avers that he inherited his land Nyambene/uringu 1/711 from his ancestral grandfather and that they border with the family of the plaintiff/applicant herein, adding that he never sold any portion of his land to the applicant. A copy of a title deed marked "SMM 2" and gathering book marked "SMM3" have been annexed. The 2<sup>nd</sup> respondent states that the sketch map annexed and marked "SMM4" shows properly the two parcels Nyambene/uringu 1 /711 And Nyambene/uringu 1/17 are bordering each other and that one cannot be issued with a title deed for land that he or she does not have. He argues that his title deed is absolutely his and that after adjudication was gazetted it was issued by the government. That even some people in the Nyambene Uringu Adjudication section have not gone for their title deeds. He stated that he was born on his father's land that is adjacent to the land his grandfather was buried and that the applicant and the 2<sup>nd</sup> respondent do not belong to the same clan. He states that the orders sought herein cannot be granted since the same are sought in the plaint.
  9. The application was not opposed by 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.
  10. The application was canvassed by way of written submissions but only the plaintiff/applicant filed his submissions on September 1, 2022. The applicant submits that he is entitled to an order of inhibition to preserve the status quo of the suit land and cited section 68 of the *Land Registration Act* 2012 and relied on the case of *Dorcas Muthoni & 2 others Vs Michael Ileri Ngari* [2016] eKLR, and *Victoria Wangui Oganga Ogada Vs Mwangi Kihara & 2 others* [2018] eKLR.
  11. The applicant further submits that the 2<sup>nd</sup> respondent has not disputed the averments made by the applicant on how he continues to destroy and trespass on the applicant's parcel of land. The applicant submits that he would suffer irreparable loss and damages if the orders sought are not allowed and at the conclusion of the main suit, the subject matter will already have been disposed off by the 2<sup>nd</sup> respondent. To buttress this argument, the applicant relied on the case of *Joel Kipkurui Arap Koech V Alice Wambui Magandu & 3 others* [2018] eKLR and urged the court to issue orders sought herein to preserve the suit land pending the determination of the main suit.

### **Analysis and Determination**

12. I have considered the application herein, the response and the submissions. The issue for determination is whether the applicant is entitled to orders of injunction and inhibition to preserve the status of the suit land.
13. Temporary injunctions that are granted by court under order 40 rule 1 and 2 of the *Civil Procedure Rules* are discretionary in nature. The three requirements that need to be established were laid down in *Giella V Cassman Brown* case. An applicant must establish that he or she has a prima facie case with a probability of success, that he or she is likely to suffer irreparable harm if an injunction is not granted, and finally where the balance of convenience tilts if the court is in doubt.
14. In addition, section 68 of the *Land Registration Act*, 2012 provides as follows;
  1. The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.
  2. A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the registrar, who shall register it in the appropriate register.



3. An inhibition shall not bind or affect the land, lease or charge until it has been registered, when there is good reason to preserve or stay the registration of dealings, with respect to a particular parcel of land for a temporary period.
15. In the present case, the applicant has stated that he purchased land measuring 0.70 acres from the 1<sup>st</sup> respondent who had in turn bought it from the 2<sup>nd</sup> respondent. The applicant states that the title deed that was issued to him was less than what it should be and that after following up the matter, it was confirmed by a Land Surveyor that the 2<sup>nd</sup> respondent's parcel also comprises the applicant's portion. In the plaint, the applicant is seeking among others, an order for rectification so as to correct the acreage each party is entitled to.
16. The applicant has exhibited a surveyor's report to support the application. The 2<sup>nd</sup> respondent on his part has not disputed that the applicant parcel of land is sharing a boundary with that of the applicant. Instead, the 2<sup>nd</sup> respondent claims that the land he occupies and which he holds title was inherited from his ancestral grandfather. The 2<sup>nd</sup> respondent further alludes that there is a criminal case pending at Tigania Law Courts between him and the applicant.
17. What has emerged from the facts of this case is that there appears to be a boundary dispute between the applicant and the 2<sup>nd</sup> respondent over their respective parcels of land which are adjoining each other. The issue at hand can only be determined at the trial. However, from the material on record, I am satisfied that the applicant has made out a prima facie case. I am also persuaded that the applicant will suffer irreparable harm if the orders sought are not granted and the 2<sup>nd</sup> respondent goes ahead to dispose off the land which may include a portion claimed by the applicant. The balance of convenience would tilt in favour of the applicant to safeguard the subject matter of the suit pending hearing and determination. On the issue of maintenance of quo to preserve the property it was held in the case of *Joel Mugambi Mukira & 2 others v County Government of Nyeri* [2019]eKLR that;
- “In land matters the maintenance of status quo order is now synonymous with the proceedings. As was held by the court of appeal in the case of *Mugah V Kunga* (1988) KLR 748, in land matters status quo should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 practice directions No. 28 (K) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case”
18. Further in the case of *Joel Kipkurui Arap Koech V Alice Wambui Magandu & 3 others* (supra) the court held;
- “In that case, the court granted an injunction on the general principle that it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting an interlocutory injunction and after hearing the case, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.
- Both the plaintiff and the 1<sup>st</sup> defendant are claiming the suit property. In my view, it is only fair to make orders that safeguard and maintain the status quo until the suit is heard and determined.”
19. For the foregoing reasons, this court finds that the applicant's notice of motion dated June 3, 2022 is merited. The application is therefore allowed as prayed with costs to the applicant.



20. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2022**

**In the presence of:**

Court Assistant – Mwenda

No appearance for plaintiff

No appearance for defendant

**C.K. YANO**

**ELC JUDGE**

