



**Kuria v Kamau (Environment and Land Appeal E167 of 2024)  
[2025] KEELC 1156 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1156 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E167 OF 2024**

**JG KEMEI, J**

**MARCH 6, 2025**

**BETWEEN**

**REGINA KURIA ..... APPELLANT**

**AND**

**JOSEPH MIRO KAMAU ..... RESPONDENT**

**RULING**

**(In respect of the Appellant's application dated 13/11/24)**

1. This Ruling is in respect of the Appellant's application dated 13/11/24 expressed under the provisions Section 3A of the *Civil Procedure Act* and Order 40, Rule 1 (a) of the Civil Procedure Rules seeking orders for:
  - a. Spent
  - b. Spent
  - c. Pending the hearing and determination of this appeal, the Respondent, his servants and agents be stopped and restrained from evicting, attempting to evict, or in any manner interfere with the Appellant's occupation and enjoyment of the property Title No. Nairobi/ Block 136/2815.
  - d. The Officer Commanding Ruai Police Station do oversee and supervise the enforcement of this order.
  - e. That Costs of the application be provided for.
2. The application is premised on the grounds on the face of it and the Applicant's Supporting Affidavit of even date. The Applicant avers that in the year 1985, she became a shareholder and member of Embakasi Ranching Company Limited. That by virtue of her membership, she was entitled to a plot



in the company's land. That the company's land was surveyed in the year 1991 and she was allocated a plot and she took possession since then to date.

3. The deponent avers that surprisingly, in the year 2014, the Respondent went to suit property demanding eviction of all the occupants on the basis that he had purchased it. Upon resistance from the attempts to evict her, the Respondent filed a suit being Nairobi ELC Case No. 575 of 2014 seeking eviction orders against her. However, during the pendency of the said case, the Respondent obtained a title to the suit property being Nairobi Block 136/2815. That eventually the suit was dismissed for want of prosecution but she remained in possession of the suit property.
4. The Appellant avers the Respondent later tried to evict her forcing her to file the case Nairobi CM ELC Case No. E240 of 2022 seeking to stop the eviction. She avers that the said suit was heard and a Judgement entered on 17/10/24 in favour of the Respondent dismissing her suit. Being aggrieved by the said Judgment, she has preferred the appeal herein. She further contends that she is now at the risk of being evicted from a parcel of land she has occupied for over 32 years. She argues that her appeal is arguable and if the eviction is not stopped, the appeal shall be rendered nugatory. She therefore prays that the orders sought be granted.

### **Respondent's Replying Affidavit**

5. The application is opposed by the Respondent herein, Joseph Miro Kamau through the Replying Affidavit sworn on the 22/11/24. The Respondent contends that the orders sought are not enforceable since he is the one who has always been in occupation of the suit property hence cannot evict the Appellant. Further, that the Appellant has not sought stay orders either before this court or the lower Court, therefore the application herein is a mere tactic to obtain an injunction using an orthodox means. He asserts that the Appellant's suit in the magistrate's Court having been dismissed and Judgement entered in his favour, the Appellant cannot stop him from enjoying the fruits of the Judgment
6. He argues that the Appellant stands to suffer no loss since she has never been in occupation of the suit property. That the Appellant has never constructed any structure on the suit property as alleged. He avers that it is in fact the Appellant who hired goons who have been disturbing his quiet possession of the suit property.
7. In reference to ELC 575 of 2014, the Respondent confirms instituting the said suit and that he indeed obtained an injunction deterring the Appellant from interfering with the suit property, contrary to the allegation that he sought eviction orders therein. The Respondent contends that he sought a permanent injunction restraining the Appellant from interfering with his property as is evident from the attached Plaintiff.
8. He asserts that he is the sole allottee of the suit property by Embakasi Ranching Company Limited and has been in occupation since then. That the Appellants assertion that she has been in occupation is unfounded and intended to mislead the court. That the Surveyor's Report adduced during the trial affirms his ownership and occupation of the suit property. The court was urged to dismiss the application with costs.

### **Appellant's Supplementary Affidavit**

9. The Appellant filed a Supplementary Affidavit sworn on 28/11/24 where she maintained that she is the one in physical occupation of the suit property to which the Respondent obtained title on 28/3/20. She asserts that the Respondent has never been in physical possession of the suit property. That in fact it is the Respondent's attempt to evict her that prompted her to file the suit in the Magistrate's Court



which is the subject of this Appeal. That in the said suit, she sought an injunction to stop and restrain the Respondent from evicting her from the land.

10. The Appellant further avers that the Respondent in his Defence before the Magistrate's Court never claimed that he is in possession. He only sought the dismissal of the suit but never raised a Counterclaim. The Appellant further argues that since her suit was dismissed in the Lower Court, there is no Decree in favour of the Respondent that can be stayed. It is for that reason that she prays for an injunction to stop the Respondent from evicting her rather than a stay of execution.
11. The Appellant further disputes the photographs attached to the Respondent's Replying Affidavit. She contends that the photos are not of the suit property and maintains that she is the one in occupation of the suit property.
12. By consent, the parties elected to canvass the application by way written submissions. Both parties complied and filed their respective submissions dated 11/2/25 and 10/2/25 respectively.
13. The Court has had a chance to read through the submissions and considered them in its determination.

### **Analysis and Determination**

14. Having considered the application in totality, the key issue for determination is whether the applicant has met the threshold for grant of temporary injunction pending hearing and determination of the appeal herein.
15. This court in the exercise of its appellate jurisdiction has power to grant a temporary injunction pending appeal, where the ends of justice demand so, and where the procedure for instituting an appeal has been complied with.
16. Order 42 Rule 6(6) of the Civil procedure Rules (CPR) provides as follows;  

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
17. The principles for grant of temporary injunction pending appeal are settled. In the case of Patricia Njeri & 3 Others v National Museum of Kenya [2004] eKLR, the court gave the following principles as governing grant of temporary injunction pending appeal;
  - a. “An order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous.
  - b. The discretion should be refused where it would inflict great hardship than it would avoid.
  - c. The applicant must show that to refuse the injunction would render the appeal nugatory.
  - d. The court should also be guided by the principles in *Giella v Cassman Brown* [1973] EA 358.”
18. It is important to note that this court is yet to hear and determine the appeal. The court will exercise caution so as not to prejudice the outcome of the appeal and/or embarrass the appeal.
19. In the instant case, the Appellant/Applicant argues that she has raised a prima facie case and has an arguable appeal on the basis that she has been in possession and occupation of the suit property for



over 32 years. The Appellant argues that the Lower Court did not determine the issue of issuance a title over a property which was subject of court proceedings.

20. The question of possession has been made a subject of contestation by both parties, the applicant claiming to be in possession while the respondent staking the same position.
21. However, from the evidence adduced before me, I am convinced that it is the Applicant who is in possession of the suit property. From the Amended Plaintiff dated 27/7/22 paragraphs 6 and 9 confirms the Applicant has been in possession thereof since 1992. Although the Respondent herein filed a Defence in the Lower Court, he did not controvert the assertion, save the allegation that the Applicant had trespassed on the suit property.
22. Further, the Respondent did not challenge the injunctive orders issued on 28/11/22 in which he was restrained from trespassing or interfering with the Applicants possession pending the hearing and determination of the appeal. If at all the Respondent herein was in possession, he would have sought a review or appealed against it. The orders would have meant evicting him from the suit property before determining the suit on its own merit.
23. Therefore, the Appellant being in possession and occupation of the suit property, stands to suffer irreparable injury if the temporary injunction sought is not granted. The Applicant risks being evicted from the suit property such loss cannot be compensated by way of damages.
24. I agree with the dicta of Justice Hoffman in the case of *Films Rover International Ltd v Cannon Film Sales Ltd* [1986] e All ER 772 at page 780 – 781, where the Learned Judge stated;  

“A fundamental principle is .... That the court should take whichever course that appears to carry the lower risk of injustice if it should turn out to be wrong.”
25. To that end, as to which party in whose favour the balance of convenience tilts, I find that the balance of convenience tilts in favor of granting the injunction rather than denying it.
26. Final orders for disposal
  - a. The application dated 13/11/2024 has merit. It is allowed.
  - b. Pending the hearing and determination of this appeal, the Respondent, his servants and agents be stopped and restrained from evicting, attempting to evict, or in any manner interfere with the Appellant's occupation and enjoyment of the property Title No. Nairobi/ Block 136/2815.
  - c. The orders shall subsist for a period of One Hundred and Eighty (180) days within which the applicant ought to file her Record of Appeal and prosecute her appeal.
  - d. The Officer Commanding Ruai Police Station do oversee and supervise the enforcement of this order.
  - e. Costs shall abide the appeal
27. It is so ordered

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH 2025 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**



Delivered Online in the presence of:

Ms Khadija holding brief for Dr. Chokaa for the Applicant

Mogendi holding brief for Macharia for the Respondent

CA – Ms Yvette

