



**Mbugua v Mungau & 3 others (Land Case (Originating Summons)
2B of 2024) [2025] KEELC 1163 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1163 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE (ORIGINATING SUMMONS) 2B OF 2024
JM ONYANGO, J
MARCH 11, 2025**

BETWEEN

LYDIA MBUGUA PLAINTIFF

AND

ROY GACHUNGI MUNGAU 1ST DEFENDANT

GRACE WANJIRU MUTETI 2ND DEFENDANT

**THE DISTRICT LAND REGISTRAR RUIRU DISTRICT LANDS
REGISTRY 3RD DEFENDANT**

THE DISTRICT LAND SURVEYOR RUIRU DISTRICT 4TH DEFENDANT

RULING

1. The Plaintiff (Applicant) initiated this suit through Originating Summons dated 14/12/2023. Together with the Plaintiff, she filed a Notice of Motion application of even date, through which she seeks the following reliefs:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. That upon inter partes hearing and determination of this Application this honourable court directs that the 3rd Defendant/Respondent cancels the title deed for Ruiru/Ruiru East Block 2/5042 issued in favour of the 1st Defendant/Respondent.
 - v. That upon inter partes hearing of this Application this honourable court directs that the 3rd Defendant/Respondent cancels all sub-titles issued in relation to Ruiru/Ruiru East Block 2/5042.



- vi. That upon inter partes hearing of this Application this honourable court directs that the land records held by the 3rd Defendant/Respondent be amended to reflect the position as at the date of delivery of the court's judgment on the 21st November 2019.
 - vii. That upon inter partes hearing of this Application this honourable court issues a permanent injunction preventing the Defendants either by themselves or their agents from interfering with the Plaintiff/Applicant's quiet possession and enjoyment of the sub-plots of which she is in occupation of.
 - viii. That costs of the application be in the cause.
2. The Applicant contends that she is a beneficial owner of part of Land Parcel Number Ruiru/Ruiru East Block 2/5042 (hereinafter referred to as the "suit land").
 3. The Applicant claims ownership of the parcels of land she is in possession of vide operation of the doctrine of adverse possession having been in open, and uninterrupted occupation of part of the suit land since 2004.
 4. The Applicant depones that the 1st and 2nd Defendants (Respondents) have colluded to dispossess her of the suit land by instituting Ruiru Civil Suit ELC Number 153 of 2021 through which the 2nd Respondent claims ownership of the plots as a purchaser for value having purchased it from the 1st Respondent.
 5. The Applicant states that the suit land has previously been subject of litigation in Nairobi ELC Case No. 196 of 2012, where the court through its judgment dated 21/11/2019, made a determination that the 1st Respondent had failed to prove ownership of the suit land.
 6. It is the Applicant's contention that the 2nd Respondent could only have obtained ownership of the suit land by way of fraud and/or deceit given that the court had already determined that the 1st Respondent was not the owner thereof.
 7. The Applicant states that it is in the interest of justice and good order for the reliefs sought to be granted.
 8. During the hearing on 30/1/2025, Mr. Ng'ang'a, the Applicant's advocate, informed the court that the application was unopposed and sought an interpretation of Bor J's judgment dated 21/11/2019. Since the said judgment was not on the court record, this court directed that the matter be mentioned on 27/2/2025 to confirm that the same had been availed. On 27/2/2025, the court scheduled a ruling for 11/3/2025 upon confirming that the relevant judgment was in the court record.
 9. The Respondents neither filed a response to the application nor appeared during the hearing.
 10. Having carefully considered the application and judgment in Nairobi ELC Case No. 196 of 2012, I am of the view that the issue for determination is as follows:
 - i. Whether the reliefs sought can be issued at an interlocutory stage.

Whether the reliefs sought can issue at an interlocutory stage.

11. The Applicant seeks an order directing the 3rd Respondent to cancel the title deed to the suit land issued in the name of the 1st Respondent and all resultant sub-titles.
12. It is clear that the Applicant intends to challenge the 1st Respondent's title to the suit land. However, the Respondents have not yet filed their response to the suit and the only material before the court



is that exhibited by the Applicant. Furthermore, the decision as to whether or not to impeach the 1st Respondent's title can only be made after a full hearing.

13. The Applicant also seeks an order that the land records relating to the suit land held by the 3rd Respondent be amended to reflect the position as at the date of delivery of the judgment of 21/11/2019 and that a permanent injunction be issued against the Respondents preventing them from interfering with her quiet possession of the area of the suit property she occupies.
14. A permanent injunction cannot be granted at this interlocutory stage but can only be granted after hearing the case on merit. In the case of *Kenya Power & Lightning Company Ltd v Sheriff Molan Habib* [2018] eKLR, the court observed as follows with regard to a permanent injunction that:

“It determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merit 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.”
15. The court takes note that even though the Applicant has sought orders against Land Parcel Number Ruiru/Ruiru East Block 2/5042, the plots which the 2nd Respondent claims the Applicant has trespassed on and which are the subject of Ruiru Chief Magistrate Court ELC Case No. E153 of 2021, are Land Parcel Numbers Ruiru/Ruiru East Block 2/34837, 2/34838 and 2/34839. The said plots are subdivisions of Land Parcel Number Ruiru/Ruiru East Block 2/5042.
16. The court also takes note that the Applicant's claim is for adverse possession which will likely be her defence at the lower court. In view of the Court of Appeal's decision that Magistrates' courts lack jurisdiction to determine claims of adverse possession (see *Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others* [2024]eKLR,) this court is of the view that the proceedings in Ruiru Chief Magistrate Court ELC Case No. E153 of 2021 ought to be stayed, to allow this court to determine the issue of adverse possession. The Applicant had sought an order for stay of proceedings at the lower court at the ex parte stage; however, it was not granted.
17. Given the above circumstances, the court takes the view that the present application favours maintaining the obtaining status quo in terms of registration and occupancy of part of the suit land by the Applicant, for a period of 12 months.
18. The Applicant is expected to prosecute the suit herein and procure a determination within 12 months. Consequently, the application dated 14/12/2023 is disposed as follows:
 - a. Pending the hearing and determination of this suit, there shall be a stay of proceedings in Ruiru ELC Case Number E 153 of 2021: Grace Muteti vs Lydia Mbugua.
 - b. Pending the hearing and determination of this suit, there shall be no dealings in the land register relating to Land Parcel Numbers Ruiru/Ruiru East Block 2/34837, 2/34838 and 2/34839.
 - c. Pending the hearing and determination of this suit, the Applicant shall continue to be in occupation of Land Parcel Numbers Ruiru/Ruiru East Block 2/34837, 2/34838 and 2/34839.
 - d. Unless extended by the court, the above status quo orders shall expire after 12 months from today.
 - e. Costs of the application shall be in the cause.



DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 11TH DAY OF MARCH 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Mr. Kamau for the Applicant

No appearance for the Respondent

Court Assistant: Hinga

