



**Rukaria v Kwaria & another (Environment & Land Case
E023 of 2024) [2025] KEELC 1118 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E023 OF 2024**

**BM EBOSO, J
MARCH 7, 2025**

BETWEEN

JULIUS MURIUNGI RUKARIA PLAINTIFF

AND

VICTOR MUGUTE KWARIA 1ST DEFENDANT

JULIUS MUTUA KWARIA 2ND DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated 23/8/2024. He sought: (i) a declaration that he has acquired the lawful ownership of land parcel number Abothuguchi/L- Kijja/670 and 671 by way of sale, adverse possession and through constructive trust; (ii) an order of permanent injunction restraining the defendants and their agents/servants against staking claim to, damaging any properties on or otherwise interfering with his possession, ownership and development of the two properties; and (iii) costs of the suit.
2. Together with the plaint, the plaintiff filed a notice of motion dated 23/8/2024, through which he sought an interlocutory injunction restraining the defendants, together with their agents/servants, against cutting down trees, invading or otherwise interfering with his peaceful occupation, use and development of the two parcels of land, pending the hearing and determination of this suit. The said application is the subject of this ruling.
3. The application was premised on the grounds outlined in the motion and in his supporting affidavit dated 23/8/2024. It was canvassed through written submissions dated 3/12/2024 and supplementary submissions dated 3/2/2025, both filed by M/s Gikunda Anampiu & Co Advocates.
4. The plaintiff's case is that, the two defendants are brothers. They are sons of the late M'Kwaria M'Kiambati [hereinafter referred to as "the deceased"] who died in 1992. Upon the deceased's demise, the 2nd defendant was appointed by the High Court as the Administrator of his estate vide a Grant



issued to him in March 1995 in Meru High Court Succession Cause No 230 of 1993. The Grant was confirmed in October 1995 through a process that saw the distribution of the estate of the deceased by the High Court in Meru High Court Succession Cause No 230 of 1993.

5. The plaintiff contends that during his lifetime, the deceased subdivided his land, parcel number Abothuguchi/L-Kijja/368 into five parcels, namely, Abothuguchi/L-Kijja/670; 671; 672; 673; and 674. He adds that in 1990, the deceased sold and transferred to him parcel number Abothuguchi/L-Kijja/670 [hereinafter referred to simply as parcel number 670] and gave him vacant possession. Subsequent to that, the deceased sold to him and gave him vacant possession of land parcel number Abothuguchi/L-Kijja/671. The deceased subsequently died while the transfer process relating to parcel number 671 was still ongoing.
6. The plaintiff adds that, the deceased's family subsequently initiated succession proceedings through which the 2nd defendant was appointed the Administrator of the deceased's estate and the estate was distributed vide a Certificate of Confirmation of Grant issued in October 1995 in Meru High Court Succession Cause No 230 of 1993. He was identified as a creditor/purchaser in the Succession Cause and parcel number 671 was vested in him through the Certificate of Confirmation of Grant. The land was subsequently registered in his name. He enjoyed quiet possession of the two properties for over 30 years until 2023 when the two defendants colluded to procure a revocation of the Grant that had been confirmed in October 1995 and started staking claim on his two parcels, contending that the two parcels were part of the estate of the deceased. He adds that the defendants are bent on including the two parcels in the deceased's list of free assets available for redistribution in the Succession Cause.
7. The plaintiff states that when he learnt about the revocation of the Grant, he filed an application in the Succession Court seeking a review of the revocation order but the Succession Court, through its ruling rendered on 23/5/2025, held that the proper court with jurisdiction to adjudicate his claim of ownership of the two parcels of land is the Environment and Land Court.
8. The plaintiff contends that, having purchased the two parcels and having taken possession and remained in possession of the two parcels for over 30 years, he acquired ownership of the two parcels through purchase, constructive trust and adverse possession. Lastly, the plaintiff avers that the defendants are interfering with his developments on the two parcels and are cutting his trees. He urges the Court to grant him the interlocutory injunction.
9. The defendants filed a statement of defence dated 9/9/2024. They opposed the application through a replying affidavit dated 22/1/2025 and written submissions dated 20/1/2025, filed by M/s Otieno C & Co Advocates. Their case is that the plea for an interlocutory injunction is an abuse of the process of the court. They contend that the plaintiff's application is res judicata because the plaintiff filed a similar application dated 18/9/2023 in Meru High Court Succession Cause No 230 of 1993.
10. The defendants contend that, together with their siblings, they have all their lives lived on parcel numbers Abothuguchi/L-Kijja/670; 671; 672; 673; and 674, adding that the plaintiff "stealthily and/or secretly moved the court by filing a succession cause in regard to the estate of the deceased without involving other family and/or beneficiaries" and "fraudulently obtained a certificate of confirmation of grant". They aver that when "other family members" learnt about it, the Grant was revoked by the court.
11. The defendants further contend that their late father sold and transferred to the plaintiff parcel number Abothuguchi/L-Kijja/370, a distinct parcel located far away from the suit properties. They urge the Court to stop the plaintiff from "gambling with justice, adding that "the courts are already clogged and overwhelmed"



12. The court has considered the application, the response to the application, and the parties' respective submissions. The two key issues that emerge for determination in this ruling are: (i) Whether the application is res judicata; and (ii) Whether the criteria for grant of an ordinary interlocutory injunction has been satisfied. I will be brief in my analysis.
13. Is the application res judicata? The tenor and import of the doctrine of res judicata is that a cause of action or an issue may not be relitigated once it has been heard and determined on merits by a court or tribunal of competent jurisdiction. Kenya's Parliament codified the doctrine of res judicata through the enactment of Section 7 of the *Civil Procedure Act* which provides as follows:
 7. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially been in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
14. The Supreme Court of Kenya rendered itself on the tenor and import of the doctrine of res judicata in *Kenya Commercial Bank Vs Muiri Coffee Estate Limited & another* [2016] eKLR as follows:

“Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights”
15. The Supreme Court added thus:

“The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant or persons claiming under the same title from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily drag the courts, apart from occasioning unnecessary costs to the parties and it ensures that litigation comes to an end and the verdict duly translates into fruits for one party, and liability for another party conclusively.”
16. The defendants contend that the application is res judicata because “the plaintiff's similar application seeking same orders in Meru High Court Succession Cause No 230 of 1993 dated 18/9/2023 was found to lack merits and subsequently dismissed on 23/05/2024”. The Court has considered this ground of opposition. The Court has also perused the application dated 18/9/2023. The plaintiff confirms that when he learnt about the revocation order which had been procured by the defendants without any notice to him and which he felt affected him, he moved the Succession Court for a review of the revocation order. The Succession Court considered his application and rendered itself as follows:
 - “9. This court finds that the applicant has not demonstrated the necessary existence of any of the grounds of review as set out under Order 45 of the Civil Procedure Rules to warrant grant of the orders sought, on the evidence availed in the application.
 10. The applicant is at liberty to sue for determination of his claim to the ownership of the parcels of land the subject of the application in the appropriate forum of the Environment and Land Court.”



17. The plaintiff in this suit wants to be declared to have acquired the two parcels of land through purchase/sale, constructive trust and adverse possession. In the application under consideration, the plaintiff wants an interlocutory injunctive relief. Neither of the above reliefs were sought in the application that was before the Succession Court. The gist of the application dated 18/9/2023 was the plea for an order reviewing the order which had revoked the Grant. The issue relating to the plaintiff's ownership of the two titles was never determined by the Succession Court. Similarly, the plea for an injunction was neither presented to nor determined by Succession Court. Indeed, being alive to the fact that a Succession court does not have jurisdiction to adjudicate disputes relating to ownership of land and validity of land titles, the Succession Court properly held that the plaintiff was at liberty to move this Court to ventilate his claim. That is what the plaintiff has done through the present suit and through the application under consideration. For the above reasons, my finding is that, based on the ground advanced by the defendants, neither this suit nor the application under consideration is *res judicata*.
18. Does the application meet the criteria for grant of an ordinary interlocutory injunction? The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella Vs Cassman Brown & Co LTD 1973 EA 358*. First, the applicant is required to demonstrate a *prima facie* case with the probability of success. Secondly, the applicant is required to demonstrate that if the interlocutory injunction is declined, he will suffer damage that may not be adequately indemnifiable through an award of damages. Lastly, should the court have doubt on both or either of the above, the application is to be determined based on the balance of convenience.
19. Over the years, our superior courts have developed a fourth principle. At the stage of disposing the plea for an interlocutory injunction, the court does not make conclusive or definitive pronouncements on the key issues in the dispute. Conclusive and definitive pronouncements are reserved to be made in the judgment that follow trial or in any other final disposal of the dispute.
20. In the present application, the plaintiff/applicant holds titles to the two parcels of land. He contends that the first title was conveyed to him by the deceased after the deceased sold to him parcel number 670. He further contends that the second title was conveyed to him by the 2nd defendant after the deceased sold to him parcel number 671 and died while the transfer process was still ongoing. The evidence placed before this court at this stage reveals that transfer of parcel number 671 was sanctioned by a Succession Court in a cause in which the 2nd defendant was the sole Administrator of the estate of the deceased [the late M'Kwaria M'Kiambati]. The 2nd defendant has at this stage not controverted the plaintiff's interlocutory evidence to the above effect. The two plaintiffs have also not controverted the allegation that while aware that the revocation which they procured would adversely affect the plaintiff's title, they did not bother to join him as a party to the application. Based on the above interlocutory evidence, the court is satisfied that the plaintiff has demonstrated a *prima facie* case.
21. On irreparable damage, the applicant has demonstrated that he has had possession of the two parcels for over 30 years. He has demonstrated that upon procurement of revocation of Grant, the defendants embarked on felling his trees on the two parcels. Given the above evidence, the court is satisfied that damages would not be an adequate alternative in a scenario where a registered title holder's property rights are under attack in the manner demonstrated in the present application.
22. Lastly, the court has no doubt that the application has satisfied the first two requirements in *Giella Vs Cassman Brown (Supra)*
23. For the above reasons, the Court finds that the application dated 23/8/2024 has merit. The same is allowed in terms of prayer 3. Costs of the application shall be in the cause.



DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF MARCH 2025

B M EBOSO

JUDGE

In the Presence of

Mr Otieno C for the Defendants

Mr Gikunda Anampiu – present in the Lobby but muted

Mr.Tupet – Court Assistant

