



REPUBLIC OF KENYA



KENYA LAW
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**Rama v Roria & another (Land Case E505 of 2024)
[2025] KEELC 1257 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1257 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E505 OF 2024
JG KEMEI, J
MARCH 6, 2025**

BETWEEN

ANNA NGIANA RAMA PLAINTIFF

AND

GRACE RORIA 1ST DEFENDANT

THOME FARMERS CO LTD 2ND DEFENDANT

RULING

(In respect of the Plaintiff's application dated 4/12/24)

1. This Ruling is in respect of the Plaintiff's application dated 4/12/24 expressed to be brought under the provisions Section 3 (a) and 63 of the [Civil Procedure Act](#) and Order 40, Rule 1 (a) of the Civil Procedure Rules seeking the following orders;
 - a. Spent
 - b. The Honourable Court do grant leave to the Plaintiff to forthwith enter upon and repossess the suit premises, being Land Reference Nairobi/Block 110/360 within Thome Estate.
 - c. The costs and expenses occasioned by and incidental to the Plaintiff entry and repossession of the suit premises be borne by the 1st Defendant.
2. The application is premised on the grounds annexed thereto and the Supporting Affidavit of Anna Ngiana Rama, the Plaintiff herein sworn on even. The Applicant avers that she purchased Land Reference Nairobi/Block 110/360, the suit property herein, by public Auction on the 19/12/13.
3. That upon payment of the auction price, the prohibition that had been placed thereon was removed on 24/6/21 pursuant to a Court order. Eventually, she was issued with a Vesting Order on the 18/6/18. However, the Nairobi City County failed to execute a transfer in her favour forcing her to seek the



intervention of the court which directed the Executive Officer to sign the requisite Forms in her name and was issued with a Certificate of Title on the 18/7/24. She also annexed an Official Search confirming her registration status.

4. The Applicant avers that, on 29/11/24, the 1st Defendant deployed some persons as watchmen to guard the suit property thus preventing her from developing and free access to the property. It is for this reason that she prays for her re-entry and total possession. She accuses the 2nd Defendant of refusing to intervene despite her production of the title documents.

1st Defendant's Replying Affidavit

5. The 1st Defendant, Grace Roria, opposed the application through her Replying Affidavit dated 5/2/25. She avers that she is the granddaughter of the late Karanja Roria and that the suit property has been in her continuous possession and occupation of the suit property since the year 2000. That her family has been residing thereon since their childhood and has built a home thereon and carrying on farming. She states that she is currently residing thereon with her brother since their parents are deceased.
6. The deponent avers that on 30/11/24, some goons descended on their property vandalizing their gate, the doors and windows to their house allegedly under the instructions of the 'owner'. She denies knowledge of any prior ownership. That the vandalism has since been reported and obtained an OB Number 09/30/10/2024. It is only after being served with the pleadings herein that she learnt that the Applicant's alleged claim to the suit property is based on a purported Public Auction conducted on 19/12/13.
7. That the alleged auction arose from proceedings and Judgment in Nairobi Magistrates Court, Civil Suit Number 5 of 2013; The City Council of Nairobi –vs- Karanja Roria, her Grandfather, allegedly for non-payment of rent. That the said proceedings were commenced when her grandfather was long dead back in the month of December 2002. Therefore, he could not have participated in the alleged proceedings. She avers that she now realizes that she has been in the premises during the entire pendency of the suit before the Magistrates' Court. However, they were never served with any notice or documents to the estate of their deceased grandfather.
8. She contends that any suit instituted against a deceased person is void ab initio and cannot stand in the eyes of the law. Therefore, the proceedings and decisions issued that culminated in the registration of the Applicant as a proprietor of the suit property should be set-aside. That to this end, she is in the process of obtaining Letters of Administration Ad Litem for her deceased grandfather to enable her institute proceedings on behalf of his Estate. Further, that efforts to trace the file in the Magistrates' Court to enable her file the relevant documents have proved futile. She avers that she has since filed an application for reconstruction of the lost file.
9. The deponent prays that the Court declines to grant the orders sought as they stand to suffer substantial loss and irreparable harm. In addition, that they risk losing their home and livelihood which cannot be compensated by way of damages. She maintains that she has been paying rates over the suit property as evidenced by the receipts attached to her response. However, she was never informed of any suit over the suit property.
10. The 2nd Defendant did not file any response to the application.



Court's directions

11. The parties elected by consent to canvass the application by way of written submissions. Both parties complied and filed their respective submissions both dated 10/2/25 which I have read and considered.

The Applicant's submission

12. The Plaintiff cites Section 20 (2) of the *Rating Act*, Cap. 267 Laws of Kenya and submits that she acquired the suit land lawfully by way of Public auction and is entitled to the full benefits of a land owner. She asserts that having acquired the land legally, her proprietary rights must be protected. Further she added that the 1st Defendant having admitted that she is a granddaughter of the late Karanja Roria, she has no capacity to defend this suit in that capacity. That she is a trespasser and ought to be forcefully evicted.

1st Defendant's Submissions

13. The 1st Defendant submitted that to the extent that the root of the applicant's title is traceable to Nairobi Magistrate's Court Civil Suit Number 5 of 2013 in which Karanja Roria, her grandfather was sued, the same is not sustainable. That at the time of the alleged proceedings and the public auction, the suit property was still registered in the name of the late Karanja Roria, who had passed away in December 2002. Therefore, any legal proceedings or transactions conducted without the proper legal representative of the deceased's estate are/were null and void. A suit filed against a deceased person, such as in Nairobi Magistrate's Court Civil Suit No. 5 of 2013 and all other subsequent suits instituted by the applicant against the said Karanja Roria lacks legal validity, and any judgment arising therefrom cannot confer legal ownership. On this ground alone, she reiterates that the application must fail. She implored the court to take evidence to substantiate each party's position on the validity of the title in each party's possession.
14. In addition, she submitted that the court must also consider the nature of the irreparable damage that will be occasioned upon the Respondent who currently resides on the property and has done so for over 25 years. That no amount of damages can compensate one evicted from their dwelling home of 25 years, being unaware of any proceedings against her and her family and indeed not being accorded an opportunity to challenge the validity of the evictor's title. She urged the court to dismiss the application with costs.

Analysis and Determination

15. Having considered the application, the reply thereto and the parties' submissions and authorities cited, the key issue for determination is whether the application is merited.
16. The Applicant seeks for leave of Court to enter upon and repossess the suit property. She argues that the 1st Defendant has refused to vacate and that unless restricted, she intends to continue remaining in the wrongful occupation of the suit property. The Applicant argues that she is the registered proprietor of suit property having purchased it by public Auction on the 19/12/13
17. On the other hand, the 1st Defendant contends that the title held by the applicant if any is tainted with illegality since the owner of the suit land being Karanja Roria was long dead in 2002 before the suit in CMCC No 5 of 2013 was initiated and that neither he nor his estate were notified of the proceedings. She also averred that she and her family have lived on the suit land for the last 25 years and continues to meet the rating obligations.



18. From the affidavit facts laid before the court, it is evident that the 1st Defendant is in possession of the suit property which the Plaintiff/ Applicant seeks to be allowed to forcefully repossess.
19. In her Plaint dated the 4/12/25, the applicant sought the following orders;
- a. An order of eviction against the 1st Defendant her servants' agents and all illegal occupants of Land Nbi/Block110/360.
 - b. An injunction against the 1st Defendant her servants' agents and all illegal trespassers on the suit land
 - c. An order of injunction against the 2nd Defendant stopping its collusion /and connivance with the 1st Defendant in her activities of erecting structures on the suit land
 - d. General damages for trespass against the Defendants
 - e. Interest on damages
 - f. Costs of the suit
20. The orders sought in this application therefore are by and large similar to the orders sought in the Plaint. If the court were to grant the orders of entry and repossession of the suit land, it will be tantamount to granting a permanent injunction thus evicting the 1st Defendant from the subject property in a summary manner without affording her the right to be heard.
21. The applicant has not demonstrated special circumstances that would permit the court to grant final orders in an interlocutory application like the one before court.
22. Further Sections 152B, 152E and 152F of the Land Laws (Amendment) Act No. 28 of 2016 provides for eviction of persons in unlawful occupation of another's land. The eviction of persons from private land can take either of the following routes: -
1.
 2. By the land owner filing a suit for the eviction of a person who is occupying his land without consent. The Court, after hearing both the land owner and the occupier of the land may issue an order for eviction of the person who is unlawfully occupying the land.
23. The Plaintiff herein chose the second route by filing the instant suit seeking among other orders, eviction of the 1st Defendant from the suit property currently registered in her name. Therefore, the matter has to proceed to trial for the court to consider evidence from both parties before determining the parties' proprietary rights over the suit property.
24. The right to fair hearing is a principle of Natural Justice and the same cannot be limited and or derogated as per the provisions of Article 25 of the Constitution of Kenya 2010. The Constitution, at Article 50(1), provides for fair hearing with regard to any dispute that has to be resolved in accordance with the law. It states as follows:

“ 50.

- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body.”



25. The Court, in Pinnacle Projects Limited vs. Presbyterian Church of East Africa, Ngong Parish & another [2018] eKLR, had the following to say on Article 50, with respect to fair trial principles in civil cases:

“.....it is important that in any judicial process adjudication parties involved be given opportunity to present their case and have a fair hearing before the decision against them is made by the respective judge or magistrate. It is not lost that procedural fairness is deeply ingrained in our administration of justice system”

26. In James Kanyita Nderitu –vs- Maries Philotas Ghika & Another [2016] eKLR, the Court of Appeal again stated that the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system.

27. The jurisprudence in the above decision makes the point that the right to a hearing is a fundamental right that should not be derogated from whenever the decision to be made would affect a person’s rights. Therefore, this Court in the interest of justice will therefore shy away from condemning the 1st Defendant unheard and driving her away from the seat of justice.

28. Final orders for disposal

- a. Ultimately the application dated the 4/12/24 is devoid of merit.
- b. It is dismissed with costs in favour of the 1st Respondent

29. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF MARCH 2025 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered Online in the presence of:

1. Ms. Kasamani for Applicant
2. Ms. Njoroge for 1st Respondent
3. N/A for the 2nd Respondent
4. CA - Yvette

