



**Rithara v Rithara (Environmental and Land Originating Summons
E015 of 2023) [2024] KEELC 1741 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2023**

CK YANO, J

APRIL 11, 2024

BETWEEN

BENARD MIRITI RITHARA PLAINTIFF

AND

RUTERE RITHARA DEFENDANT

RULING

1. This ruling is in respect of the notice of motion application dated 14th December, 2023 by the plaintiff/applicant. The application is brought under Section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act, Order 40 Rules 1 & 2 and order 51 Rule 1 of the Civil Procedure Rules as well as Section 68 of the Land Registration Act. The application seeks orders of temporary injunction against the defendant, his family members, agents, employees, workers, servants any other person working at his behest restraining them from interfering with the plaintiff's occupation, utilization and user of 2 acres portion of land in land parcel No. Abogeta/U-Chure/469 and an order of inhibition, inhibiting registration of any dealings with the said land pending the hearing and determination of this suit.
2. The application is supported by the affidavit of Bernard Miriti Rithara, the applicant sworn on 14th December, 2023 and is premised on the grounds on the face of the motion. The applicant avers that he is the younger brother of the defendant/respondent. That in the year 1986, the respondent obtained a financial facility from the Agricultural Finance Corporation (AFC) and offered the suit land as security. That the respondent was unable to repay the loan and in the year 1992, the land was at the risk of being auctioned by AFC and the applicant paid the debt on behalf of the defendant to redeem the whole land and save it from being auctioned. The applicant avers that the respondent gave him 2 acres of the land as compensation and put the applicant into possession thereof since 1992.
3. The applicant states that he uprooted tree stumps, tilled the land and planted coffee, tea, bananas, nappier grass, trees and food crops among other developments. The applicant avers that the respondent had a change of heart and has now threatened to evict him from the said 2 acres. The applicant's case is



that he has occupied the said 2 acres of the suit land since 1992 continuously and uninterrupted which is a period of over 31 years. It is the applicant's contention that he has established a prima facie case with overwhelming chances of success, adding that if the orders sought are declined, the applicant will suffer irreparable damages and loss.

4. The applicant has reiterated the above grounds in his supporting affidavit and has annexed copies of the green card of the suit land, photographs and a land control board consent. Though the said affidavit refers to tea and Coffee membership number annexures "BMM 3" and "BMM 4" the same do not form part of the annexures.
5. The application is opposed by the respondent who filed an objection and a replying affidavit sworn by Rutere Ritara both dated 4th January, 2024. It is the respondent's contention that the application is totally defective and an abuse of the court process, that the respondent is unknown, and that the claim is defective and does not comply with the law, and ought to be dismissed.
6. The respondent deponed that his name is not M'rutere M'Kiambati and argued that the claim is directed to a wrong party. He also pointed out that the applicant did not exhibit any documents to prove payment of the loan to AFC. The respondent accused the applicant for coming to court with dirty hands. That the application and the whole suit is defective, null and void and ought to be dismissed. The respondent denied any legal dealings with the plaintiff.
7. The application was canvassed by way of written submissions. The applicant filed his submissions dated 20th February, 2024 through the firm of Gichunge Muthuri & Co. Advocates. The respondent's submissions dated 9th February, 2024 are filed by one Michael Kung'u Kigia who is not an advocate. I find that the respondent's submissions were drawn and filed by an unqualified person contrary to Section 33 of the Advocates Act and the regulations thereto and are void ab initio. The same are struck out from the record for having been filed by an unqualified person.
8. I have considered the application, the response and the submissions filed by the applicant. The application herein is for injunctive orders which are equitable reliefs granted at the discretion of the court. Further, the court will warn itself that at this stage, it is not dealing with the disputed facts to finality but only determining whether the applicant is deserving of injunctive orders as well as the order of inhibition. The court will also take into account that injunctive orders are issued whenever the suit property is in danger of disposition or alienation before the issues in dispute have been resolved. A party also seeks injunctive relief when he/she feels that his/her rights have been infringed. The principles upon which an interlocutory injunction may be granted are well settled in the famous case of *Giella V Cassman Brown & Co. Ltd* (1973) EA 358. One has to establish a prima facie case with a probability of success and an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. If in doubt, the court will decide the matter on a balance of convenience.
9. In this case, it is not in dispute that the suit property is registered in the name of the defendant. While the applicant's case is that he has occupied 2 acres out of the suit property for a period of over 12 years and therefore has acquired the same by way of adverse possession, the applicant at the same time seem to suggest that he was put into possession of the said 2 acres through the permission of the respondent who is his brother as compensation for repaying a loan that was allegedly due to AFC. The applicant has however, not exhibited any document in support of the said arrangement and or agreement.
10. Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, it is the view of this court that the applicant has not established a prima facie case with a probability of success against the respondent. As regards irreparable damage, I take the view that any damage suffered



by the applicant, if any can be quantified in damages. Furthermore, the applicant can still be registered as owner of 2 acres of the suit land if upon determination of the suit he is found to have acquired the same by adverse possession.

11. Arising from the above, I find that the notice of motion dated 14th December, 2023 lacks merit and the same is dismissed with costs.
12. It is so ordered.

DATED SIGNED AND DELIVERED AT MERU THIS 11TH DAY OF APRIL 2024

IN THE PRESENCE OF

Court Assistant – Tupet

Ms Mugo for plaintiff/applicant

No appearance for defendant

C.K YANO

JUDGE

