



**Mbui v Mbui (Environment & Land Case E005 of 2024)  
[2024] KEELC 5086 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5086 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E005 OF 2024**

**CK NZILI, J  
JULY 3, 2024**

**BETWEEN**

**JACOB KINYUA MBUI ..... PLAINTIFF**

**AND**

**PAUL MURIUKI MBUI ..... DEFENDANT**

**RULING**

1. The court is asked to issue a temporary injunction barring and restraining the defendant, his servants, or agents from evicting, entering, or in any way whatsoever interfering with the applicant's use and occupation of L.R No. Ntima/Igoki/5542. The second prayer is for the court to issue an inhibition order stopping any dealing over the suit land pending the hearing and determination of this suit. The reasons are contained on the face of the application and in the supporting affidavit of Jacob Kinyua Mbui. It is averred that the suit land, though registered in the name of the respondents in ancestral or family land, held in trust for the applicant.
2. The applicant avers that the respondent has purported to sell the land to a third party without consulting him and has threatened to evict him. He attached copies of the official search green card and a sale agreement as JKM 1-3, respectively. Similarly, he avers that he has permanent houses on the suit land, which he has extensively developed and hence risks suffering irreparable loss and damage, including his source of livelihood.
3. The application is opposed by a replying affidavit sworn by Paul Muriuki Mbui on 21.5.2024. It is averred that the land was transferred to him by his father in 1995 as a trust. The respondent avers that the land has been in dispute for 25 years in CC No. 717 of 1995, between Jacob Mberia and his father, Mbui. He said that the plaintiff failed to assist him in defraying the expenses, even though he settled on the land after school in 2000, after catering for his education and support since childhood.



4. The respondent avers that his brother should vacate the land, for he has never bothered to contribute anything towards fighting for the land other than saying that it belonged to his father and, therefore, it was an ancestral right.
5. The applicant relied on written submissions dated 2.5.2024. Reliance was placed on *Giella vs Cassman Brown* (1973) EA 358 and *Mrao vs First American Bank of (K) Ltd & 2 others* (2003) eKLR.
6. A party seeking a temporary injunction must establish a *prima facie* case, demonstrate there will be irreparable loss or damage and lastly; show that the balance of convenience tilts in favor of granting the orders sought. A *prima facie* case is established where, looking at the material before the court a right has been infringed to call the other side to rebut the claim see *Mrao Ltd vs First American Bank* (*supra*).
7. In *Nguruman Ltd vs. Jan Bonde Nielsen & others* (2014) eKLR, the court said that the three pillars have to be applied in a separate, distinct and logical manner. Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages.
8. The applicant has pleaded that he is in occupation of the suit land and has permanent developments thereon. His claim is based on ancestral or family trust. The respondent has admitted that the plaintiff/applicant and his brother have been in occupation of the suit land since 2000. The respondent has not denied that the suit land initially belonged to his father. Similarly, the respondent has not denied the existence of a sale agreement attached as JKM "3". If the land is sold to a third party and eviction occurs, there will be irreparable loss and damage to the applicant which may not be compensated by way of damages.
9. The applicant will also be inconvenienced if the injunction is not granted and should the suit be ultimately decided in his favor. I find the applicant will suffer more inconvenience than the respondent if the injunction is not granted and the suit is ultimately dismissed. See *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR.
10. In *Paul Gitonga Wanjau vs Gathuthis Tea Factory Co. Ltd & others* (2016) eKLR, the court said that if the right is not disputed. Its violation is denied, then the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury that the respondent would suffer. Further, the court considers that if the injunction were granted, he should ultimately turn out to be correct, and that which the applicant, on the other hand, might sustain if the injunction was refused and he ultimately turns out to be correct.
11. In this suit, I think the applicant's occupation is not disputed, hence, there is a need to preserve the suit land until the court determines the overriding rights if any of the plaintiff.
12. The upshot is that I allow both the injunction and inhibition orders as prayed, to last for one year.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 3<sup>RD</sup> DAY OF JULY, 2024**

**HON. C K NZILI**

**JUDGE**

In presence of;

C.A Kananu/Mukami

Parties

Mrs. Otieno for the plaintiff



Defendant

