



Ruigu & 2 others v Tanui & 5 others (Environment & Land Case E013 of 2023) [2024] KEELC 5996 (KLR) (17 September 2024) (Ruling)

Neutral citation: [2024] KEELC 5996 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E013 OF 2023
CA OCHIENG, J
SEPTEMBER 17, 2024**

BETWEEN

**MARTIN RUIGU 1ST PLAINTIFF
NICHOLAS NJOROGE NJENGA 2ND PLAINTIFF
JENNIFER WANGUI NJENGA 3RD PLAINTIFF**

AND

**SOLOMON K TANUI 1ST DEFENDANT
WILSON I KIMANI 2ND DEFENDANT
JIMMY KIMARU 3RD DEFENDANT
MOSES K SAINA 4TH DEFENDANT
REGISTRAR OF TITLES (NAIROBI REGISTRY) 5TH DEFENDANT
THE ATTORNEY GENERAL 6TH DEFENDANT**

RULING

1. What is before Court for determination is the Plaintiffs’ Notice of Motion Application dated the 22nd August, 2023 brought pursuant to Order 40 Rules 1 and 2 of the *Civil Procedure Act*, where they seek the following Orders:-
 - a. Spent
 - b. Spent
 - c. That upon hearing this application inter partes, this Honourable Court be and is hereby pleased to issue and order of injunction restraining the Defendant/Respondent either by himself, servant, agents and/or any person acting through her from trespassing on, the



Plaintiff's land offering it for sale, selling and/or in any other manner interfering with the Plaintiff's quiet and peaceful occupation of the land known as

- i. LR No. 7340/471
- ii. LR No. 7340/472
- iii. LR No. 7340/473
- iv. LR No. 7340/474

Pending the hearing and determination of the suit herein.

- d. That the Defendant's agents, servants, purchasers and employees be evicted from:
 - i. LR No. 7340/471
 - ii. LR No. 7340/472
 - iii. LR No. 7340/473
 - iv. LR No. 7340/474
 - e. That the Plaintiff be granted leave to demolish all the structures illegally raised on the parcel of land in issue, the OCS Muungano Police Station-Utawala to supervise the demolition.
 - f. That the costs of this Application be provided for.
2. The Application was premised on the grounds on the face of it and the Supporting Affidavit of Nicholas Njoroge Njenga, the 2nd Plaintiff herein, where he deposes that together with the other Plaintiffs, they are the registered owner of land parcel LR Nos. 7340/471; 7340/472; 7340/473 and 7340/474 respectively, hereinafter referred to as the 'suit lands'. He claims they have been in quiet and peaceful possession of the suit lands until the 1st to 4th Defendants' trespassed thereon and commenced fencing the said lands. He avers that they purchased the suit lands from some of the beneficiaries of the Estate of the late Kiarie Kirimire called David Njenga Kiarie and Simon Njenga Kiarie. Further, at that time it was one block known as 7340/58 which was subdivided into LR Nos. 7340/471; 7340/472; 7340/473 and 7340/474 respectively. He reiterates that they have suffered loss and damage due to the Defendants' acts of trespass since they cannot utilize their land. He explains that they have seen documents being flagged by the 1st to 4th Defendants that they own the suit land, which is an amalgamation of their four plots and this is pure forgery.
3. The 1st to 4th Defendants opposed the instant Application by filing a Replying Affidavit sworn by the 2nd Defendant Wilson Irungu Kimani where he deposes that this suit is res judicata by dint of the Judgment in Mavoko CM ELC No. 6 of 2019 *Ngelauta Self Help Group Vs Nicholas Njenga & Another*, where the 2nd Plaintiff was the Defendant. Further, that the said Judgment was not reviewed and appealed against. He reiterates that it is actually the Plaintiffs' who have trespassed on the suit land.

Analysis and Determination

- 4. Upon consideration of the instant Notice of Motion Application including the respective Affidavits and annexures, at this juncture the only issue for determination is whether the Plaintiff are entitled to orders of interlocutory injunction restraining the Defendants from interfering with the suit land pending the outcome of this suit.
- 5. In line with the principles established in the case of *Giella Vs Cassman Brown* (1973) EA 358 as well as the description of a prima facie case as espoused in the case of *Mrao Ltd vs First American Bank*



Ltd, I will proceed to decipher whether the Plaintiffs' have established a prima facie case to warrant the orders of temporary injunction as sought.

6. The Plaintiffs claim they are the registered owners of the suit lands and have been in quiet and peaceful possession thereon, until the 1st to 4th Defendants trespassed thereon and commenced fencing the said lands. It was their contention that they purchased the suit lands from some of the beneficiaries of the Estate of the late Kiarie Kirimire called David Njenga Kiarie and Simon Njenga Kiarie. They aver that at the time of purchase it was one block known as 7340/58 which was subdivided into LR Nos. 7340/471; 7340/472; 7340/473 and 7340/474 respectively. They insist that they have suffered loss and damage as a result of the Defendants acts of trespass. They reiterate that the documents of title in possession of the 1st to 4th Defendants are a forgery.
7. The Defendants opposed the instant Application and insist that this suit is res judicata by dint of the Judgment in Mavoko CM ELC No. 6 of 2019 *Ngelauta Self Help Group Vs Nicholas Njenga & Another*, where the 2nd Plaintiff was the Defendant. They argue that the said Judgment was never reviewed nor appealed from. They contend that it is actually the Plaintiffs who have trespassed on the suit lands.
8. Looking at the documents presented, including the Complaint, other Affidavits of Nicholas Njenga Njoroge and Wilson Kimani which are part of the court record, I note both the Plaintiffs and the 1st to 4th Defendants have titles to the suit lands. I note in the Judgment in Mavoko CM ELC No. 6 of 2019 *Ngelauta Self Help Group Vs Nicholas Njenga & Another*, trial court vide its Judgment delivered on 30th March, 2022 observed that the Plaintiffs' therein including the 1st Defendant who is the 2nd Plaintiff herein did not own land parcel number 7340/58 where the suit lands emanated from. In this instance, the 2nd Plaintiff herein is part of the Plaintiff's claiming ownership of the suit lands. From these facts alone, I opine that all the Plaintiffs' herein, should have sought to join the aforementioned proceedings in Mavoko CM's Court and not file a fresh suit. From the facts before me, noting that there are two competing titles herein, it is pertinent if both parties herein demonstrate how each acquired titles to the suit lands.
9. In the foregoing, at this juncture, I find that the Plaintiffs have not established a prima facie case to warrant the orders of temporary injunction as sought.
10. Further, based on the principles established in the case of *Nguruman Limited v Jan Bonde Nielsen* where the Court of Appeal held that in instances where the Plaintiff has not established a prima facie case, the court need not proceed to deal with the other two limbs on injunction, and will I decline to do so.
11. In the foregoing, I find the instant Notice of Motion Application unmerited and will dismiss it but make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 17TH DAY OF SEPTEMBER, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Kaveke for 1st, 2nd, 3rd and 4th Defendants

Ms. Nyambura for Plaintiff

Court Assistant – Simon/Ashley

