



**Kiarie & another v Ireri & another (Environment & Land Case  
E008 of 2023) [2024] KEELC 7536 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7536 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE E008 OF 2023  
A KANIARU, J  
OCTOBER 2, 2024**

**BETWEEN**

**EPHANTUS IRERI KIARIE ..... 1<sup>ST</sup> APPLICANT**

**IRENE MUTHONI KIARII ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DAVID NJERU IRERI ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR EMBU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me for determination is a Notice of Motion dated 09.10.2023 brought under Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedures Rules, Sections 1A and 3A of the *Civil Procedure Act*. The motion has been filed by the 1<sup>st</sup> and 2<sup>nd</sup> Applicants – Ephantus Ireri Kiarie and Irene Muthoni Kiarii - and they are seeking two substantive orders being; an order of inhibition on property no. LR Gaturi/Nembure/10404, L.R Gaturi/Nembure/14953 and 14954 to preserve the properties pending hearing and determination of this suit. The other is an order of temporary injunction restraining the 1<sup>st</sup> respondent from evicting them from the property pending hearing and determination of the suit.
2. The motion is premised on the grounds on the face of it and on the supporting affidavit by the 1<sup>st</sup> applicant sworn on 09.10.2023 where he deposed inter alia, that at all times he was the registered owner of LR Gaturi/Nembure/10404 which he subdivided into LR Gaturi/Nembure/17454 and 17455 and title deeds were issued. That without his knowledge, the 2<sup>nd</sup> respondent cancelled the said titles and issued new numbers LR Gaturi/Nembure/14953 and 14954 and subsequently registered title 14953 in the name of the 1<sup>st</sup> respondent.
3. That the respondents have conspired and made fraudulent entries in the green card for the said property without the applicants' knowledge. Further that the 1<sup>st</sup> respondent is now threatening to evict



the applicants' from the said property and they are reasonably apprehensive that the 1<sup>st</sup> respondent intends to sell it to other parties. That unless the respondents are restrained from their impending actions, the applicants stand to suffer grave and irreparable harm and loss. It is urged that it is in the interest of justice that the application be allowed.

4. The application was opposed by the 1<sup>st</sup> respondent by way of a replying affidavit. He deposed that he was the registered and absolute owner of land parcel 14953 having purchased the same from the 1<sup>st</sup> applicant for valuable consideration. That the initial land parcel Gaturi/Nembure/10404 was subdivided and gave rise to land parcels Nos Gaturi/Nembure/14953 and 14954. He purchased parcel 14953 after the said subdivision. That he has nothing to do with all the other parcels of land mentioned by the 1<sup>st</sup> applicant, that is land parcel 17454 and 17455. That his parcel of land purchased from the 1<sup>st</sup> applicant was transferred to him after a lengthy dispute in court and he took possession of the same many years ago.
5. The application was canvassed via written submissions. Only the applicants filed submissions and they submitted that they had proved their case to the required standard as set out in the case of *Giella v Cassman Brown* (1973) EA 358. That they have provided documents including title deeds, mutation forms and green cards indicating that the records of the suit parcels of land were altered without their knowledge thus raising concerns of fraud and procedural irregularity. That the 1<sup>st</sup> Respondent claims ownership of LR Gaturi Nembure/14953 through a disputed sale agreement and title deed.
6. It was submitted further that there are significant discrepancies including differences in land measurements and a nine year gap between the sale agreement and the date of issue of the title deed. These inconsistencies suggest possible fraudulent activity. That the 1<sup>st</sup> Respondent also made reference to a case which the applicants were unaware of and that the attached plaint does not constitute a conclusive court order or judgement rendering it inadmissible as evidence to prove ownership. It was submitted that given the evidence, the applicants demonstrated a prima facie case.
7. It was also submitted that the 1<sup>st</sup> respondent's actions, including the threats of eviction and possible sale of the suit property, pose a substantial risk of irreparable harm to the applicants as the loss of property and eviction cannot adequately be remedied by monetary compensation. That the apparent discrepancies in the 1<sup>st</sup> respondent's evidence, the significant risk of irreparable harm to the applicants, and the strong prima facie presented, all support the granting of the orders sought. It was urged that the court safeguards the suit property against any potential alienation by invoking section 68(1) of the [Land registration Act](#) and issue an order of inhibition.
8. I have considered the application, the response made to it, rival submissions, and the entire court record in general. The issues for determination are whether the applicants are entitled to an order of:
  - a. Inhibition
  - b. A temporary injunction restraining the 1<sup>st</sup> respondent from evicting them from the suit property.
9. The law on inhibitions is found in Section 68(1) of the [Land Registration Act](#) which provides that: -

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”



10. The court in the case of Japhet Kaimenyi M’ndatho V M’ndathoM’mbwiria [2012] eKLR as cited in Nrb ELC No. 383 of 2012 Rosemary Wanjiku Njigi vs Nancy Munjiru Ngigi outlined the conditions that an applicant must satisfy in an application for orders of inhibition.

“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-

- a) That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.
  - b) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.
  - c) That the applicant has arguable case.”
11. The applicants’ case is that the respondents have committed acts of fraud and had title to their land parcels LR Gaturi/Nembure/17454 and 17455 cancelled and new numbers LR Gaturi/Nembure/14953 and 14954 were issued, and subsequently title no. 14953 fraudulently registered in the name of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent denies any allegations of fraud and says that he purchased land parcel 14953 from the applicants for valuable consideration and provided evidence of a sale agreement entered into between himself and the applicants. He also says that after purchasing the said property, he took possession of it, a fact which was not disputed by the applicants.
12. Even though the applicants claim that they are apprehensive that the 1<sup>st</sup> respondent intends to dispose of the suit property, there has been no evidence of such intention made available to this court. And as seen above, in order for a party to succeed in application for an order of inhibition, they must demonstrate to the satisfaction of the court that the suit property is at the risk of being disposed, alienated or transferred to another party. They must also demonstrate that the refusal to grant an inhibition would render their suit nugatory. This court is not persuaded that there is any real risk or threat of the suit land being disposed of. Neither is it persuaded that there is any risk of the applicant’s suit being rendered nugatory. The court is therefore not satisfied that the applicants are entitled to an order of inhibition and it consequently declines to grant that order.
13. The applicants have also made an application for an order of temporary injunction restraining the 1<sup>st</sup> respondent from evicting them from the suit land. The principles in granting a temporary injunction are well settled in the case of Giella Vs Cassman Brown (1973) EA 358 where it was held that-;
- “First, an applicant must show a prima facie case with a probability of success. Secondly, 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, and thirdly if the court is in doubt, it will decide an application on the balance of convenience.”
14. The applicant’s case is based on fraud. They attached to their application a copy of a green card of the suit property which shows that there was indeed cancellation of titles no. 17454-17455 and issuance of new titles 14953-14954. The 1<sup>st</sup> respondent also produced a copy of his title to land parcel 14953, which he says he acquired after purchasing the suit land from the applicants for valuable consideration. Whether or not there was fraud involved in the cancellation of the titles and issuance of the title in dispute to the 1<sup>st</sup> respondent or whether there was sale of the land is a matter that can only be



determined during a full trial and not at this stage. This court is therefore persuaded that the applicants have demonstrated a prima facie case with the probability of success.

15. The applicants also have a duty to demonstrate they stand to suffer irreparable harm should the orders sought not be granted. They claim that they have been threatened with eviction by the 1<sup>st</sup> respondent and that there is risk of possible sale of the suit land. However for there to be a threat of eviction, a party must be in possession or occupation of the suit land, something which the applicants have not been able to prove. In fact it is the 1<sup>st</sup> respondent who says he has been in possession of the suit land, a fact which was not disputed by the applicants. The court also observed above that the applicants did not demonstrate any real threat of the land being sold. This court is therefore not satisfied that they stand to suffer any irreparable harm that cannot be compensated by way of damages should an injunction not be issued.
16. The upshot of the foregoing is that the court finds that the applicants have not discharged the burden required of them for the orders sought to be granted. Consequently, their notice of motion dated 09.10.2023 is hereby dismissed in its entirety.
17. Costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 2<sup>ND</sup> DAY OF OCTOBER, 2024.**

**A. KANIARU**

**JUDGE – ELC, EMBU**

In the presence of Njiru Mbogo for 1<sup>st</sup> Respondent, Mureithi for applicants and Gitahi for Kiongo for 2<sup>nd</sup> Respondent.

2. 10.2024

