



**Njeru v Munyi alias Cicily Gaturi & 9 others (Environment & Land Case  
E009 of 2024) [2024] KEELC 6533 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6533 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E009 OF 2024**

**JM MUTUNGI, J  
OCTOBER 8, 2024**

**BETWEEN**

**MURAGE NJERU ..... PLAINTIFF**

**AND**

**SICILIA GATURI MUNYI ALIAS CICILY GATURI ..... 1<sup>ST</sup> DEFENDANT**

**PAULINE WANGERWE NYAGA ..... 2<sup>ND</sup> DEFENDANT**

**JOHN MWENDIA GACHOKI ..... 3<sup>RD</sup> DEFENDANT**

**MARGARET WAWIRA MUGO ..... 4<sup>TH</sup> DEFENDANT**

**DANIEL NJINJU KITHAE ..... 5<sup>TH</sup> DEFENDANT**

**CYPRIAN GICOBI RUGURU ..... 6<sup>TH</sup> DEFENDANT**

**JANE WAIRIMU MWANGI ..... 7<sup>TH</sup> DEFENDANT**

**GERALD WANJOHI MWANGI ..... 8<sup>TH</sup> DEFENDANT**

**JUDY WAIRIMU WANJOHI ..... 9<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL (SUED ON BEHALF OF MINISTRY OF  
LANDS) ..... 10<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed the present suit vide a Plaint dated 26<sup>th</sup> April 2024 and inter alia sought an order for cancellation of land parcels Baragwe/Thumaita/4959, 4961, 5075, 5076 and 5077 being subdivisions from land parcel Number Baragwe/Thumaita/526 and for the original title to be reverted to the name of Linus Mbogo Njeru to facilitate the latter to transfer a portion of 3 Acres that he was occupying to him pursuant to orders issued in Kerugoya ELC No. 136 of 2013.



2. On 29<sup>th</sup> May 2024, the Plaintiff filed a Notice of Motion application under a certificate of Urgency praying for orders of temporary injunction. On considering the application at the ex parte stage, the Court directed a mention of the matter on 14/6/2024 for directions on the disposal of the application and in the meantime, and pending the hearing of the application inter parties, the Court ordered the parties to maintain and observe the prevailing status quo on the suit property.
3. On 14<sup>th</sup> June, 2024 when the matter came up for mention, possession and occupation of the suit land was strenuously contested as between the Plaintiff and the 3<sup>rd</sup> Defendant with each of them claiming to be in possession and occupation, and hence there was no clarity as to what the status quo on the ground was and specifically who between the Plaintiff and the 3<sup>rd</sup> Defendant was in actual occupation and possession. This prompted the Court acting suo moto to make a reference of the matter to the area Deputy County Commissioner for him to visit the suit land and do an inspection to verify the ground status. The order of reference was in the following terms:-
  1. That the Deputy County Commissioner Kirinyaga East Sub County to visit land parcel No. Baragwe/Thumaita/4959 and do an inspection and prepare a report as to who between the Plaintiff Murage Njeru and the 3<sup>rd</sup> Defendant John Mwendia Gachoki has been using the land and who between them is in occupation and possession and the nature of developments that have been made and by whom the developments have been made.
  2. The Deputy County Commissioner to prepare and file a report in Court within the next 30 days from today.
  3. Matter to be mentioned on 18<sup>th</sup> July, 2024 and pending the mention, the parties shall maintain and observe the prevailing status quo as of today's date (14.6.2024).
  4. The Deputy County Commissioner, Mr. James Chacha filed his report in Court on 17<sup>th</sup> July, 2024. As per the report the Deputy County Commissioner and his team visited the land on 3<sup>rd</sup> July, 2024 and members of the public were in attendance. Both the Plaintiff and the 3<sup>rd</sup> Defendant were present during the site visit. The key findings as per the report was that Murage Njeru had been using the land and that he had built his home on the disputed land Baragwe/Thumaita/4959. The Defendant, John Mwendia Gachoki had bought the land on 23<sup>rd</sup> August 2023. The Plaintiff had effected various developments as detailed in the report. As per the report the Defendant had claimed to have planted maize on a portion of 1 Acre and other crops which as noted in the report were all young and as there was contestation as to whose crops these were, the report noted it was not possible to determine who had planted them.
  5. On 18<sup>th</sup> July, 2024 when the matter came up for mention the Court noted the filing of the report by the Deputy County Commissioner and inter alia made the following orders:-
    1. That parties do maintain the prevailing status quo as captured in the Deputy County Commissioner's report meaning the Plaintiff should be allowed to remain in possession and to continue utilizing such portion as he has been utilizing.
    2. That he should be permitted to make use of his crops and plants until further orders of the Court.
6. The 3<sup>rd</sup> Defendant apparently being aggrieved by the orders issued by the Court on 3<sup>rd</sup> June, 2024 and on 18<sup>th</sup> July, 2024 filed the Notice of Motion application dated 22<sup>nd</sup> July, 2024 now the subject of this Ruling. By the application expressed to be brought under Order 45 of the Civil Procedure Rules and Sections 1A, 1B & 3A of the *Civil Procedure Act*, the 3<sup>rd</sup> Defendant/Applicant inter alia prays for orders that:-



1. That this Honourable Court be pleased to review and/or set aside the orders issued on 3<sup>rd</sup> June, 2024 and further on 18<sup>th</sup> July, 2024.
2. That this Honourable Court be pleased to schedule a site visit to the subject land parcel No. Baragwe/Thumaita/4959.
7. The application was supported on the grounds set out on the body of the application and on the Affidavit sworn in support by the 3<sup>rd</sup> Defendant/Applicant. The contestation by the Applicant was that the report furnished by the Deputy County Commissioner was biased and was politically instigated and was prejudicial to the Applicant who was the current registered owner of the disputed property. The Applicant faulted the process through which the information that informed the report was collected.
8. The Plaintiff/Respondent filed a Replying Affidavit sworn on 15<sup>th</sup> August, 2024 in opposition to the application. Basically the Plaintiff's position was that the Deputy County Commissioner's report was factual and reflected the status on the ground. The Plaintiff averred that the 3<sup>rd</sup> Defendant/Applicant did not dispute that he (the Plaintiff) was in possession and in occupation of the disputed land as the 3<sup>rd</sup> Defendant had even sued him at Gichugu Law Courts vide MC ELC No. E050 of 2023 where the 3<sup>rd</sup> Defendant was seeking an order of eviction against the Plaintiff.
9. I am conscious that the application before me is one for review and that the conditions that may warrant a review are where, firstly there has been a discovery of new and important matter or evidence that was unavailable at the time of making the order; Secondly, if there was some mistake or error apparent on the face of the record; and Thirdly, if there was some sufficient reason and finally in all the instances the application for review must be made without unreasonable delay.
10. In the present case, the Court upon considering the averments by the parties was of the view that the issue as to who was in possession and occupation of the disputed land as between the Plaintiff and the 3<sup>rd</sup> Defendant was strenuously contested. In the wisdom of the Court the surest way of getting a status report was to get a neutral party in this case the area Deputy County Commissioner to visit the disputed land and to prepare a status report in terms of the directions given. The report furnished by the Deputy County Commissioner conformed to the directions given to him. I am unable to appreciate how the presence of members of the public could have compromised the report in favour of the Plaintiff; Principally both the Plaintiff and the 3<sup>rd</sup> Defendant were present and each could point to what he claimed to be his developments.
11. From the report the only dispute appears to have been in regard to the freshly cultivated area where there was maize and other crops that were freshly planted. It is noteworthy that the 3<sup>rd</sup> Defendant purchased the disputed land on 23<sup>rd</sup> August, 2023 for the consideration of Kshs 5,000,000/-. I believe after making the purchase he must have entered onto the land somehow and I am constrained to accept that the 3<sup>rd</sup> Defendant/Applicant planted the fresh crops referred to in the Deputy County Commissioner's report and is therefore deemed to be in occupation of the portion where these young crops were. Understandably by the Plaintiff may have resisted the entry and occupation by the 3<sup>rd</sup> Defendant but the reality is he may be in occupation of a portion, extending to no more than 1 ¼ acres. He should be allowed to exercise occupation and possessory rights of such portion pending the determination of the suit.
12. I should however hasten to add that possession and occupation will have no bearing on the outcome of the case and the determination of the case finally will be on the basis of the evidence adduced by the parties in support of their respective cases. I note the Deputy County Commissioner's report sought



clarification of “status quo” given that both parties were allegedly using the land. The essence of the status quo order was firstly to preserve the land the subject matter of the suit in the condition it was pending the hearing and determination, and secondly to ensure, tranquility was maintained pending the resolution of the dispute.

13. Given the nature of the dispute the parties should be keen to have the matter determined on merits so that the issue of ownership is finally settled since the titles obtained by the Defendants including the 3<sup>rd</sup> Defendant are under challenge on the ground that they were unlawfully and illegally obtained. I hope the parties will focus on the matter being progressed to trial to expedite finalization.
14. Though the 3<sup>rd</sup> Defendant prays that the Court do visit the site to ascertain the status for itself, I do not consider any purpose will be served by such endeavor. The report by the Deputy County Commissioner in my considered view adequately dealt with the aspect of the status quo on the ground. The status quo shall be as expressed in the Deputy County Commissioner’s report with the clarification that the 3<sup>rd</sup> Defendant shall be deemed to have occupation and possession where the maize crop (one acre) and the other young crops were planted and that will be deemed to be the portion the 3<sup>rd</sup> Defendant was utilizing and will continue to utilize until the suit is heard and determined.
15. The order for status quo will therefore be varied to denote that the 3<sup>rd</sup> Defendant shall continue to utilize a portion not exceeding 1 ¼ Acres located at the site where there was a young maize crop at the time of the Deputy County Commissioner’s visit on 3<sup>rd</sup> July, 2024.
16. The costs for the interlocutory applications which are now deemed dispensed with shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 8TH DAY OF OCTOBER 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

