



REPUBLIC OF KENYA



Super Drill International Limited v Mapi & 3 others (Environment and Land Appeal E024 of 2022) [2024] KEELC 6506 (KLR) (7 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6506 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E024 OF 2022
MN GICHERU, J
OCTOBER 7, 2024**

BETWEEN

SUPER DRILL INTERNATIONAL LIMITED APPELLANT

AND

VIOLET TURSO MAPI 1ST RESPONDENT

PAULINE WAIRIMU TONKEI 2ND RESPONDENT

JIMMY SAVANNAH 3RD RESPONDENT

ANTHONY SAVANNAH 4TH RESPONDENT

RULING

1. This Ruling relates to the appeal by the Appellant dated 24/5/2022. The appeal is against the decision by the Learned Senior Principal Magistrate Ngong in ELC Case No. E050 of 2021 where she discharged an Order of Injunction in her Ruling dated 23/5/2022.
2. Dissatisfied with the decision of the Learned Magistrate, the Appellant filed a Memorandum of Appeal in which he seeks the following Orders;
 1. That the Appeal be allowed.
 2. That the Ruling delivered on 23rd May 2022 by Honourable P. Achieng, SPM, and Orders thereof be set aside and the Orders of Injunction issued protecting the property be reinstated.
 3. That the Costs of the Appeal be awarded to the Appellant
3. There are eight grounds of appeal which are as follows.

The Learned Trial Magistrate erred in law and/or in fact by;

 - i. issuing Orders that took away Interim Orders despite dismissing the Preliminary Objection,



- ii. in proceeding to issue other Orders and determine an application that was not before her and without considering the Appellant's response thereto,
 - iii. in failing to appreciate that LR Nos Kajiado/Ntashart/22550 and Ngong/Ngong/14384 did not share a boundary and as such no dispute between them could exist,
 - iv. in failing to appreciate that the suit parcels did not even fall under the same administration and could not share a boundary and thus bring out a dispute,
 - v. by ignoring the submissions and evidence of the Appellant that the Respondents were trespassers on its land and not persons sharing a boundary with the Appellant,
 - vi. by failing to appreciate that the 1st and 2nd Respondents could not front a claim over an estate of a deceased person without Letters of Administration,
 - vii. by mis-interpreting the Provision of Section 18 (2) of the *Land Registration Act*,
 - viii. by discharging the Interim Orders when the court was still seized with the matter and left the Appellant exposed.
4. I have carefully considered the Appeal in its entirety including the Ruling dated 23/5/2022, the Plaintiff, the Witness Statement, the Written Submission and the issues raised therein together with the grounds of Appeal. I will treat the grounds of Appeal as the issues and make a finding on each one of them.
5. On the 1st ground, I find that the trial Magistrate did not err in discharging the Interim Order of Injunction. She gave a reason for discharging the Interim Orders which was to facilitate the boundary determination exercise. I find that to be a good reason for discharging the Order so that the two parties could be at par. Secondly, Interim Injunctions are not expected to last for more than a year by dint of Order 40 Rule 6 of the *Civil Procedure Rules* which provides as follows;

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise. “

Since the Injunction was issued on 14/10/2021 and it is almost three (3) years since then, it would not be proper for this Court to reinstate it as per prayer 2 of this Appeal because it would be contrary, to Order 40 Rule 6 *Civil Procedure Rule*.

6. As for the second ground, I find no error on the part of the Learned Magistrate. Upon realizing that she had no jurisdiction, she referred the dispute to the body with jurisdiction, in this case the District Land Registrar. The suit could no longer be sustained in Court and the Appellant's application could not be sustained either since the Magistrate did not have jurisdiction.
7. On the third ground, the Appellant is being inconsistent in saying that LR No.22550 and 14384 do not share a boundary. This is so because in paragraph 5 of the Plaintiff it is averred as follows;
5. Some of the Defendants are persons living in properties neighbouring that of the Plaintiff.

“ The same statement is repeated in paragraph 4 of the witness statement by Joshua Kimaita dated 22/9/2021. This finding also covers the 4th ground which says that the two parcels are in different administrations. The fifth ground is the same with the 3rd and 4th and this finding covers it as well.”



8. It is premature to reach any conclusion on the sixth issue because even if this were not just a boundary dispute, the pleadings are not closed and the Defendants have not filed their defence, witness statements and documents. We do not know what kind of defence they will come up with and it might as well include Letters of Administration. I therefore find no merit in the 6th ground.
9. The seventh ground is covered by my finding on the third, fourth and fifth grounds because I have already found that the Appellant's land borders the land of some of the Respondents as per the Appellant's own pleadings by which he is bound.
10. The eighth ground is covered by my finding on the first ground because the Injunction could only be sustained if it was anchored on a suit where the Trial Magistrate had jurisdiction and she rightly found that she had none.
11. For the above stated reasons, I find no error on the part of the Learned Magistrate and I dismiss the Appeal with costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF OCTOBER 2024.

M.N.GICHERU

JUDGE

In the presence of:

Miss Swaka for the Appellant.

Mr. Ochieng for the Respondent.

Mpoye – Court Assistant.

