



**Wanyoike v Muchoki (Enviromental and Land Originating Summons
E003 of 2023) [2024] KEELC 13664 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13664 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2023
LN GACHERU, J
DECEMBER 5, 2024**

BETWEEN

TERESIAH WANJIRA WANYOIKE APPLICANT

AND

ALEXANDER WANYOIKE MUCHOKI RESPONDENT

RULING

1. The Notice of Motion Application for determination is the one dated 31st July 2024, which is premised under Order 42 Rule 6 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). The Applicant/Intended Appellant has sought for these orders;-
 - (b) That the Honourable Court be pleased to issue orders against the Respondent, his servants, agents, employees and/or anybody acting under him from interfering with the Applicant's occupation and use of land parcel LOC.17/Sabasaba/386 pending the hearing and determination of an Intended Appeal to the Court of Appeal.
 - (c) That alternatively the Honourable Court be pleased to order the maintenance of the status quo as to occupation and use of land parcel LOC.17/Sabasaba/386 pending the hearing and determination of an Intended Appeal to the Court of Appeal.
 - (d) the costs of this application be provided for.
2. The Application is premised on grounds stated on its face as well as the Supporting Affidavit sworn by Teresiah Wanjira Wanyoike, (the Applicant herein) on 31st July, 2024. The Applicant averred that she filed instant suit against the Respondent seeking ownership of a portion of land parcel number LOC.17/Sabasaba/386 (the suit land) measuring 0.87 Acres on the basis of Adverse Possession and Customary Trust, which suit was dismissed by this Court vide a Judgment dated 18th July, 2024.



3. The Applicant being dissatisfied with the said Judgment of the Court applied for certified typed copies of the proceedings vide a letter dated 19th July 2024, and thereafter lodged a Notice of Appeal before this Court on 30th July, 2024. It was the Applicant's contention that while her Appeal before the Court of Appeal was pending determination, the Respondent has forcefully invaded, occupied and committed acts of waste on that portion of 0.87 Acres of the suit land, which the Applicant laid claim to in the dismissed suit. Further, that the Respondent has threatened to evict the Applicant and her family from the suit property following delivery of this Court's Judgment dated 18th July, 2024.
4. It was the Applicant's further contention that her family has been in occupation of the above mentioned portion of the suit property measuring 0.87 Acres since 1982, and her family and herself do not have any other means of livelihood part from the mentioned parcel of land. Further, that the intended Appeal before the Court of Appeal is meritorious with very high chances of success.

The Respondent's Response

5. The Respondent opposed the instant Application through the Replying Affidavit sworn by Alexander Wanyoike Muchoki (the Respondent herein) on 13th August 2024. He averred that the instant Application was not brought with clean hands, and accused the Applicant of lying to the Court on oath by stating that she does not have any other place to reside in, yet the Applicant has been residing on land parcel no. LOC.17/Sabasaba/1334, which parcel of land is registered in her name as attested to by the Green card thereto marked as the Respondent's exhibit AMW-1.
6. It was further contended that the Court in Thika Succession Cause No. 272 of 2014, issued an Order restraining any person including the Applicant from accessing the suit property; furthermore, that the foregoing decision is in tandem with the Judgment of this Court dated 18th July 2024, of disallowing the Applicant's claim over the suit property.
7. The Respondent described the Applicant as a distant relative who is intent on presenting herself as a member of the Respondent's immediate family. The Court was urged to dismiss the instant Application with costs to the Respondent as it is devoid of merit.
8. The Court directed that the Application be canvassed by way of written submissions.

The Applicant's Submissions

9. The Applicant filed written submissions through the Law Firm of Kirubi, Mwangi Ben & Company Advocates. After setting out the history of the dispute with the Respondent culminating in the holding of this Court rendered on 18th July, 2024, the Applicant asserted her constitutional right to lodge an appeal against the foregoing decision of this Court before the Court of Appeal; which appeal, she submitted, was her last resort.
10. It was further submitted that following delivery of this Court's Judgment dated 18th July 2024, the Respondent took steps to have the Respondent and her family evicted out of the suit land. The Respondent argued that as the Respondent did not file a Counter-claim for the Applicant's eviction from the suit property in the suit eventuating in the decision dated 18th July 2024, any attempt to forcefully evict the Applicant from the portion of the suit land in contention is necessarily unlawful and illegal. Furthermore, the Respondent in his Replying Affidavit dated 13th August 2024, failed to deny having attempted to evict the Applicant from the suit land unlawfully.
12. The Applicant explained that the instant Application is preservative in nature and is meant to maintain the status quo related to the occupation of the suit property so that her appeal before the Court of



Appeal is not rendered nugatory. It was further submitted that the Court is invested with unfettered jurisdiction to either grant or disallow the prayers set out in the present Application. She urged the Court to exercise its discretion judiciously taking into account that the Applicant stands to suffer great prejudice if the Application is not allowed, whereas the Respondent will not be prejudiced if the Court were to grant the Orders of status quo prayed for.

The Respondent's Submissions

13. The Respondent filed his written submissions dated 23rd September 2024, drawn under his own hand, and disclaimed knowledge as to the nature of the status quo which the Applicant seeks to be maintained through an Order of this Court. The Respondent submitted that he executed both the Judgment of this Court dated 18th July 2024, and the Certificate of Confirmation of Grant issued in Thika Succession Cause No. 272 of 2016, whereupon, he caused the suit property to be subdivided as per the schedule of the Confirmation of grant dated 26th April 2024.
14. It was further submitted that following delivery of this Court's Judgment dated 18th July, 2024, the Applicant retreated to land parcel no. LOC.17.Sabasaba/1334, which is registered in her name, and wherein she has been residing including during the time of the institution of the suit which was dismissed on 18th July, 2024.
15. The Respondent refuted the claim that the Applicant has been living on the suit property, terming it as a falsehood being fronted by appellant's counsel, who was promised that he would be paid for his services through a sub-division of the suit land in his favour. It was submitted that the instant Application merely recapitulates the averments set out in the Applicant's suit dated 16th February 2023, which was found unmerited by the Court and should be dismissed with costs to the Respondent.
16. This court has considered the instant Application, relevant provisions of the law, the rival written submissions, and the court record in general and finds the issues for determination are; -
 - i) Whether the Applicant/Intended Appellant is entitled to the Orders sought.
 - ii. Who shall bear the cost of the application?

i). Whether the Applicant entitled to the Orders sought.

17. The Applicant is seeking for status quo to be maintained in respect of that portion of the suit property measuring 0.87 Acres, which she has claimed, pending her intended appeal filed before the Court of Appeal.
18. The meaning of status quo was defined by the Court in Nairobi Civil Appeal No. 33 of 2012 *Shimmers Plaza Limited Vs National Bank of Kenya Limited* [2015] eKLR, as follows:

“the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events”. The purpose of which is to maintain the substratum of the suit.
19. In the case of *Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & Another* [2020] eKLR, the purpose of a status quo order was explained as follows: -

“By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed



or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

19. Further, in the case of *Bakari Shaban Gakere vs Mwana Idd Guchu & 3 others* [2022] eKLR, the Court addressed prayers for status quo Orders as follows:

“The Applicant attached a letter dated 16th August, 2021, from Ministry of Agriculture, Livestock and Fisheries from Murang’a County. Flowing from the said letter, this Court draws a conclusion that the 1st Defendant has begun the process of executing the Decree and it is right to conclude that the land is currently in his possession. The position as it is right now is that the land is in possession of the 1st Defendant and should remain so pending the filing of the intended appeal.”

20. The Applicant herein argued and submitted that the Respondent is engaged in executing the decision of this Court dated 18th July 2024, by evicting her family from the section of the suit land in contention, notwithstanding the absence of any Counter-claim seeking the eviction of the Applicant’s family in the main suit.

21. It is trite that the execution of the Orders issued by a competent Court is a lawful process. In the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the Court reasoned as follows:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

21. In the Applicant’s suit dated 16th February 2023, which was dismissed by the Court on 18th July, 2024, she contended that the late Muchoki Kinyenje, was registered as the proprietor of the suit land to hold it in trust for himself and the Applicant’s husband, said to be his younger brother. The Applicant urged the Court to dissolve the trust inhering in the suit property, and declare her the proprietor of 0.87 Acres from the suit land, and which she has exclusively possessed, cultivated and utilized for more than 40 years.

19. In dismissing her suit, the Court on 18th July 2024, ruled that the Applicant failed to prove the necessary elements entitling her to the portion of the suit land, which she claimed by way of Adverse Possession.

20. . With regard to the Applicant’s (then Plaintiff) claim founded on customary trust, the Court determined that on the basis of the evidence adduced by the parties, the Applicant’s husband was not a brother to the original registered proprietor of the suit property, but a cousin and beneficiary of a separate parcel of land, being ancestral land.

21. On paragraphs 144, 145 and 146 of the said Court’s Judgement, dated 18th July 2024, the Court addressed the question of the Applicant’s occupation of the suit property conclusively and determined that her occupation of the portion of the suit land claimed was not sufficiently proven.



22. Among the grounds relied upon by the Applicant in support of the instant Application is that her family derives its livelihood from the suit property, and stands to be rendered destitute if the prayers sought herein are not granted.
23. To the extent that the Applicant has reiterated the claim that her family derives its livelihood from the section of the suit property in question, which issue the Court pronounced itself in the alleged appealed against Judgment, the Applicant through the instant application is asking this Court to sit on appeal against its own holding. For the avoidance of doubt, this Court is not mandated to entertain an appeal against its own decision.
24. In the circumstances, the Court is therefore persuaded that only the Court of Appeal is a more suitable forum for the Applicant to ventilate the prayers for status quo to be maintained with respect to the suit property pending the hearing and determination of the alleged Appeal.
25. Having regard to the foregoing this court finds and holds that the current Application is not merited. Accordingly, the Applicant/Intended Appellant's Notice of Motion Application dated 31st July 2024, is found not merited and the same is hereby dismissed entirely.
26. The Court being cognizant of the that the dispute herein is between parties who are members of the same extended family, directs that each party to bear his/ her own costs in respect of the instant Application.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER, 2024

L. GACHERU

JUDGE

5/12/2024

Delivered online in the presence of:

Joel Njonjo – Court Assistant

Mr Kirubi for the Applicant.

N/A for the Respondent.} though aware of the Ruling date.

L. GACHERU

JUDGE

5/12/2024.

