



REPUBLIC OF KENYA



KENYA LAW
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**Karuri v Chege (Environment & Land Case E335 of 2022)
[2023] KEELC 515 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E335 OF 2022
LN MBUGUA, J
FEBRUARY 2, 2023**

BETWEEN

SILAS IRUNGU KARURI PLAINTIFF

AND

PETER NGANGA CHEGE DEFENDANT

RULING

1. Coming up for determination is the plaintiff's Notice of Motion application dated October 11, 2022 seeking an order of injunction restraining the defendant whether by himself or through any person from interfering with the land known as title number IR 177391/1 on LR no 15400/317 by surveying, sale, transfer, construction, wastage, subdivision, disposal, cultivation, taking occupation, leasing out or by any other means whatsoever and howsoever pending the hearing and determination of the suit.
2. The application is founded on grounds on its face and on the plaintiff's supporting and further affidavits. He deposes that he bought the suit property from Amboseli court limited vide a sale agreement dated December 30, 2015 for ksh 1.8 million which he paid over a duration of 4 years and completed paying on or about June 2018.
3. The suit property was then transferred to him vide a transfer dated September 7, 2017 and was registered on February 19, 2021. He then took possession of the property though it remained vacant as he was not in a position to develop it.
4. The plaintiff further states that on October 2, 2022, he was called by a neighbor who has a residential home in the adjacent parcel who informed him that someone had invaded the property and was in the process of constructing a permanent building. He reported the matter to Soweto police station and when the defendant was summoned, he claimed to have purchased the suit property from one Boniface Njiri. The plaintiff urged the court to restrain the defendant from continuing with the construction until ownership is determined by the court.



5. In response to the application, the defendant filed a replying affidavit sworn on November 24, 2022. He deposes that he is the owner of the parcel of land known as Nairobi Block 173 (Sosian)/525 having purchased it from one Boniface Njiru as 2 separate plots being plot no 498 and 535 in Zone II which were hived from a larger parcel known as LR no 11379/3. He further deposes that prior to the purchase, he conducted due diligence which showed that the larger parcel LR no 11379/3 is owned by Kiambu Dandora farmers Company Limited which was issued with a certificate of title I R no 23514 for LR no 11370/3 on April 8, 1970. He added that upon purchase, he was registered as a shareholder in Kiambu Dandora Farmers Company Limited who are the owners of LR no 11379/3 and was issued with share certificates no 4226 for plot no 498 Zone 11.
6. The defendant also avers that subdivision of LR no 11370/3 has been going on for a while and plot no 525 on Zone 11 was allocated land reference number Nairobi Block 173 (Sosiani) 525 by the Ministry of Lands and Physical Planning.
7. He further avers that he received a letter from the Ministry of Lands and Physical Planning dated June 3, 2022 informing him that the lease for his plot no Nairobi Block 173 was about to be undertaken as soon as they received his formal written acceptance and payment of the charges prescribed, of which he paid the said charges. While awaiting completion of issuance of the title document, he applied for permission to develop Nairobi Block 173 and commenced construction of a 4 bedroomed residential house in September, 2022.
8. He avers that on October 5, 2022, he received a phone call from one of his workers on site who informed him that police officers had gone to the site and claimed that the land belonged to the plaintiff. He reported the incident at Soweto police station and produced ownership documents of the suit land to the satisfaction of the police. He adds that the plaintiff's claim must be in reference to a different parcel of land but not the one known as Nairobi Block 173 (Sosian) 525.
9. I have considered all the issues raised herein and the submissions filed thereof. The issue for determination is whether the plaintiff has satisfied the test for grant of interlocutory injunctions. The threshold for grant of injunctions was set in *Giella v Cassman Brown* (1973) EA 358 and reiterated by the Court of Appeal in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal no 77 of 2012 [2014] eKLR.
10. In the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR, the court held that;

“An injunction is an equitable remedy, meaning the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration.”
11. The plaintiff has availed ownership documents in relation to the suit properties, but so has the defendant. No evidence has been availed so far to indicate that the developments are being undertaken on plot 15400/317 or 173. Since both parties possess ownership documents, then none should have undue advantage over the other during the subsistence of the suit. After all, the plaintiff had not developed the property while there is no evidence at all as to when the defendant took possession of that land. The defendant simply states that he started developing the land after he got the building approvals in year 2022.



12. In the circumstances, I find that the appropriate orders to give is that of maintenance of status quo; See- *John Obare v Moses Adagala* [2016] eKLR, *Bakari Shaban Gakere v Mwana Idd Guchu & 3 others* [2022] eKLR. I therefore proceed to give orders as follows;
- i. An order for maintenance of status quo is hereby issued and for the avoidance of doubts, the same shall entail that there shall be no further constructions or developments on the disputed parcel. The constructions which are ongoing to shall cease forthwith.
 - ii. The suit land shall not be alienated; meaning there shall be no charging or transferring of the proprietary interest of the land, be it parcel L R15400/317 or Nairobi Block 173 (Sosian) 525.
 - iii. The said status quo to remain in force pending the hearing and determination of this suit.
 - iv. The cost shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N MBUGUA

JUDGE

In the presence of:-

Ruto holding brief for Macharia for plaintiff / applicant

Ms Awondu holding brief for Were for defendant

Court assistant: Eddel

