



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Ngaine (Suing as a Legal Representative of the Estate of John Mbeti Muriithi-Deceased) v Kamau & 5 others (Environment and Land Case Civil Suit E339 of 2022) [2023] KEELC 598 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 598 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E339 OF 2022
LN MBUGUA, J
FEBRUARY 9, 2023

BETWEEN

STELLA MARIS KAREGI NGAINE (SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN MBETI MURIITHI-DECEASED) PLAINTIFF

AND

JENIFER WANGARI KAMAU 1ST DEFENDANT
LUKE KIPCHUMBA METTO 2ND DEFENDANT
ERIC AGBEKO 3RD DEFENDANT
THE LAND REGISTRAR, NAIROBI 4TH DEFENDANT
THE CHIEF LAND REGISTRAR NAIROBI 5TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. Before me are two applications filed by the plaintiff, one dated October 13, 2022 seeking injunction orders, the other dated 27.10.2022 for consolidation of this file with ELC 284 of 2022. The 1st defendant herein has also filed a Preliminary Objection dated 25.10.2022.

The Application dated 27/10/2022 (Consolidation) and the Preliminary Objection dated 25.10.2022

2. The Plaintiff is seeking orders for consolidation of this suit with ELCC/E284/2022 *Jenifer Wangari Kamau v Stella Maris Karegi Ngaine* and that the current suit be the lead file. The application is premised on the grounds on its face and on the Plaintiffs supporting affidavit of even date. She deposes that she filed the instant suit on October 14, 2022. That on October 17, 2022, the Honourable Judge



granted interim orders for injunction against the Defendants with respect to the suit property known as Title No. Nairobi/Block 110/234. Upon being served with the orders and the application, the 1st Defendant served her advocates with a notice of preliminary objection indicating that there is in existence another suit being ELCC/E284/2022 Jenifer Wangari Kamau VS Stella Maris Karegi Ngaine.

3. She further deposes that she was not served with the pleadings in ELCC/E284/2022 but upon notification of the same, she has done so. No interim order of injunction has been issued by the Court in ELCC/E284/2022 but both suits relate to the same property known as Title No. Nairobi/Block 110/234 in which both the Plaintiff herein and the 1st Defendant have laid claim. She adds that both matters have been filed in the same Court although this matter has other additional parties apart from the 1st Defendant and the 1st Defendant does not stand to suffer any prejudice if the two matters are consolidated.
4. The 1st Defendant filed a Preliminary Objection dated 25th October 2022 stating that the entire suit is an abuse of the court process as there exist another suit being Nairobi ELC No. E284 of 2022 filed earlier in respect to the suit property, and where the matter for determination is directly and substantially the same.
5. The Hon Attorney General appearing for the 4th, 5th and 6th Defendants did not oppose the application for consolidation.
6. The issue for determination is whether this suit should be struck out in light of the doctrine of *resjudicata* or be consolidated with ELCC /E284 / 2022 *Jenifer Wangari Kamau v Stella Maris Karegi Ngaine*. There is no controversy that the subject matter in both suits is the same; it concerns ownership of the suit land as between the two plaintiffs in the two mentioned suits, ELC 339 of 2022 and ELC 284 of 2022. The parties are also the same save that there are 6 more Defendants in this case who are not parties in ELCC/E284/2022. It follows that an order to strike out the instant suit will be prejudicial to the Plaintiff herein as the other 5 other Defendants are not parties in ELCC /E284/2022.
7. In Mombasa HCCC No. 992 of 1994 *Nyati Security Guards and Services v Municipal Council of Mombasa* cited in Nairobi ELC Suit No. 1000 of 2012 *Joseph Okoyo v Edwin Dickson Wasunna* [2014] eKLR, the court stated that;

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-(a) Some common question of law or fact arises in both or all of them; or(b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or(c) For some other reason it is desirable to make an order for consolidating them.”

8. I find that in the interest of justice, the two files should be handled together. I have taken into consideration that the two files were filed just about one month apart. The case ELC 284 /2022 was filed earlier, but ELC No. 339/2022 contains more parties. In that regard, the said file ELC 339/2022 should be the lead suit. The Preliminary Objection is therefore subsumed in these directions.

Application dated 13/10/2022 (Injunction application)

9. The Plaintiff seeks an interlocutory injunction order restraining the Defendants/Respondents, their agents, servants, employees or any other person acting through them from trespassing, transferring, selling, charging, leasing, disposing of, alienating or in any other manner interfering with the suit property known as Title No. Nairobi/Block 110/234 pending hearing of the suit.



10. She also seeks an order of inhibition inhibiting the registration of any dealings on the title to the suit land without her consent and that the Officer Commanding station, Kasarani Police station be ordered to ensure compliance with the orders.
11. The application is based on grounds on its face and on the Plaintiff's supporting affidavit sworn on 13th day of October, 2022. She deposes that her husband who died on 15th June 2004 is the registered and legal proprietor of the property known as Title No. Nairobi/Block 110/234 which she administers pursuant to letters of administration intestate issued on 13th March 2021 and confirmed on 8th March 2022 naming her the sole beneficiary of the suit property in whole.
12. She further deposes that on August 31, 2022, she was erecting a perimeter wall in order to commence the process of construction but it was interrupted by goons. She reported the incident at Marurui Police Station. On September 4, 2022, more goons accompanied by the 1st defendant disrupted the process, pelted the watchman on site with stones and damaged part of the wall. She reported the incident at the DCI headquarters where she learnt that the 2nd and 3rd Defendants had also claimed ownership of the suit property and fraudulently attempted to dispose of the suit property to 3rd parties.
13. She avers that her late husband has never transferred the suit property to anyone and she still holds his original title which has a transfer dated 19th March 2003.
14. The 2nd and 3rd Defendants neither entered appearance nor participated in the proceedings herein. On December 9, 2022, The Attorney General appearing for the 4th, 5th and 6th Defendants informed the court that they will not participate in the application for injunction.
15. The 1st Defendant herein did not file a response to this application. However in view of the order for consolidation, I have taken into account that the said party is the plaintiff in ELC 284/2022. To this end, I perused the file ELC No. 284/2022 and found that the same was filed contemporaneously with an Application dated 7.9.2022 by Jeniffer Wangari Kamau where she was seeking injunctive orders against Stella Maris Karegi, (plaintiff in ELC 339 of 2022). When that application was presented before a Judge on 9/9/2022, the directions given were; "That the application be served for interparties hearing on 3.11.2022". That event never happened because of the proceedings in ELC 339/2022 which was filed about a month after the filing of the case ELC 284 of 2022. In that regard, this court will deal with the issue of injunctions in both suits at once.
16. This is a situation where by each party (Plaintiffs in both suits) are seeking injunctive orders against each other. The issue for determination is who as between the two protagonists deserves the injunctive orders, or which relief is appropriate in such circumstances.
17. In *National Bank of Kenya Ltd & 2 others v Sam-Con Ltd* [2003] KLR 462, the Court of Appeal adopted with approval the conditions set for grant of interlocutory orders in *Giella v Cassman Brown & Co Ltd* [1973] EA.
18. The plaintiff in ELC 339/2022 has annexed a copy of title to the property known as Title No. Nairobi/Block 110/234 in the name of her husband John Mbeti Muriithi (deceased) She has also demonstrated capacity to represent the estate of John Mbeti. She traces her claim of ownership of the suit land from one Njenga who sold the said land to her husband. Similarly, the Plaintiff in ELC 284/2022 is also claiming land through purchase from the same person known as Njenga.
19. At this interlocutory stage, the court is not expected to make conclusive findings of facts and law on the question of ownership. That issue can only be dealt with at the trial. It follows that the appropriate orders herein should relate to preservation of the suit property by maintenance of status quo- see. *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] e K.L.R.



20. It is noted that nothing much appears to have been done on the land. In her own words, the plaintiff in ELC 339 of 2022 was commencing erection of a fence when the interference commenced, while in ELC 284/2022, that plaintiff was depositing building materials. Considering that there are competing claims, and two suits, now consolidated, the court proceeds to give the following orders;
- 1) The Application dated 27.10.2022 is hereby allowed only to the extent that the two suits ELC 339/2022 and 284/2022 are hereby consolidated; The suit 339/2022 shall be the lead suit.
 - 2) The preliminary objection dated October 25, 2022 is hereby marked as spent.
 - 3) The *ex parte* orders of injunction given in ELC 339 of 2022 on October 17, 2022 are hereby discharged.
 - 4) The applications for injunction orders dated September 7, 2022 in ELC 284/2022 and the one dated 13.10.2022 in ELC 339/2022 are hereby marked as spent in lieu of an order of maintenance of status quo issued to both the plaintiffs in the two respective suits restraining them from any dealings with the suit land. No construction of whichever nature shall be undertaken on the suit land by either of the two plaintiffs.
 - 5) An order of inhibition is hereby issued in respect of the suit land (Nairobi/Block 110/234).
 - 6) Each party is to bear their own costs of the applications and the Preliminary Objection.
 - 7) A copy of this ruling is to be placed in the file ELC 284/2022.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muesia for plaintiff

Mugo for 1st Defendant

M/s Ndundu holding brief for Motari for 4th – 6th Defendants

Court assistant: Eddel

