



**Gitau v Agricultural Finance Corporation & 4 others (Environment & Land
Case E002 of 2023) [2023] KEELC 16102 (KLR) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16102 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E002 OF 2023**

**LN GACHERU, J
MARCH 6, 2023**

BETWEEN

DANSON MURIGI GITAU PLAINTIFF

AND

AGRICULTURAL FINANCE CORPORATION 1ST DEFENDANT

HEZRON MBUGUA 2ND DEFENDANT

DIGIT AUCTIONEERS 3RD DEFENDANT

MICHAEL KAGAYA NORU 4TH DEFENDANT

LAND REGISTRAR MURANG'A 5TH DEFENDANT

RULING

1. The plaintiff herein filed a plaint dated January 27, 2023, wherein he claimed that he is the owner of the suit property Loc 2/Gacharage/3215, which is approximately 2.468 ha. That he was registered the owner on April 27, 2007, and he remained the owner in active possession until December 7, 2022, when the said suit property was allegedly sold to the 4th defendant by the 1st defendant through public auction conducted by the 3rd defendant. He alleged that the public auction carried out by the 3rd defendant on behalf of the 1st defendant was tainted with irregularities, fraud and collusion between the 1st to 4th defendants in a bid to unjustly deprive the plaintiff of any plausible remedy prescribed under the law in respect of the suit property. That as a result of the actions and omissions of the 1st to 4th defendants, the suit property was eventually sold to the 4th defendant who has entered possession of the said land and has created havoc and untold destruction of the improvements and crops thereon to the detrimental of the plaintiff.
2. Further that the 1st and 4th defendants have committed fraud and or dealt in fraudulent, irregular and illegal manner in selling the suit property in a public auction held on December 7, 2022.



3. Contemporaneously to the plaint, the plaintiff filed a notice of motion application dated January 27, 2023, and sought for various interlocutory prayers.
4. Among the prayers sought is an order of injunction to restrain the 5th defendant from registering any instrument of transfer in respect of title No Loc 2/ Gacharage/3215, and also an order of *status quo* in respect of the entire suit property.
5. The prayers as sought are basically orders that could determine the main suit.
6. This notice of motion application is opposed vide the replying affidavits of Michael Kigaya Noru the 4th defendant and Margaret Mutsila, the Legal Officer of the 1st defendant.
7. The court has noted that the bone of contention is the sale of the suit property to the 4th defendant by the 1st defendant through public auction. It is evident that the suit property was sold to the 4th defendant on December 7, 2022, through public auction.
8. The plaintiff claims that the said sale was tainted with irregularities. The issue of whether the said land was sold irregularly or not can only be determined by calling of evidence in the main suit.
9. Being guided by sections 3 & 3A of the [Civil Procedure Act](#) which gives court power to issue orders that are necessary for the end of justice and to prevent abuse of the court process. Taking into consideration the overriding objective of the Act as provided in sections 1 A & 1 B of the [Civil Procedure Act](#) on the need to hear matters of Civil nature in an expeditious manner and also being guided by ELC Practice Direction dated July 25, 2014, wherein in rule No 32 it states as follows:

“During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain *status quo*. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for *status quo* pending the hearing and determination of the suit bearing in mind the overriding interests of justice.”

10. The Court finds that; for the expeditious disposal of this matter, the court directs the parties to maintain the *status quo*. The *status quo* herein is that though the suit property has been sold to the 4th defendant, it shall not be registered in his name until the main suit is heard and determined. The *status quo* on the registration of the suit property should remain as it was before the public auction took place on December 7, 2022.
11. The parties are directed to file all the necessary pleadings within the next 14 days from the date hereof.
12. Further the parties to comply with order 11 of the [Civil Procedure Rules](#) within a period of 21 days after close of pleadings.
13. Matter will be mentioned before the Deputy Registrar on 10/5/2023, for pre trial conference and for further directions.
It is so directed, dated and signed at Murang'a this March 6, 2022.
14. Further for avoidance of doubt, the above direction on *status quo* do not compromise the notice of motion application dated January 27, 2023.
 - (ii) The 4th defendant to serve the plaintiff with the filed defence by close of business today.

DATED SIGNED AND DELIVERED AT MURANG'A THIS 6TH DAY OF MARCH, 2023.

L. GACHERU



JUDGE

In the presence; -

Online via Ms. teams

Court assistant: Njonjo

Plaintiff: Mrs Mureithi

- 1.
2. Mr. Mutuma holding brief Mr. Mambonga
- 3.
4. Mr. Baragu
5. Absent

L. GACHERU

JUDGE

6/3/2023

