



**Ithili (Suing as the Legal Representative of the Estate of Elijah Mithire - Deceased) v John & 12 others (Environment & Land Case 23 of 2022) [2023] KEELC 15866 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15866 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 23 OF 2022  
CK NZILI, J  
MARCH 1, 2023**

**BETWEEN**

**MARITHA KIELU ITHILI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ELIJAH MITHIRE - DECEASED) ..... PLAINTIFF**

**AND**

**NEWTON THURANIRA JOHN ..... 1<sup>ST</sup> DEFENDANT**  
**MONICA MUKIRI ..... 2<sup>ND</sup> DEFENDANT**  
**MUTABARIS JOHN ELIJAH MIRIANGA ..... 3<sup>RD</sup> DEFENDANT**  
**MOSES MUTUA GITONGA ..... 4<sup>TH</sup> DEFENDANT**  
**MWITI ROGERS ..... 5<sup>TH</sup> DEFENDANT**  
**MATHIU ELIJAH SOLOMON ..... 6<sup>TH</sup> DEFENDANT**  
**KABERIA KEN MUTABARI ..... 7<sup>TH</sup> DEFENDANT**  
**GRACE KAGENDO KAUMBUTHU ..... 8<sup>TH</sup> DEFENDANT**  
**LAND REGISTRAR URUU LAND REGISTRY ..... 9<sup>TH</sup> DEFENDANT**  
**LAND SURVEYOR URUU LAND REGISTRY ..... 10<sup>TH</sup> DEFENDANT**  
**LAND REGISTRAR ISIOLO LAND REGISTRY ..... 11<sup>TH</sup> DEFENDANT**  
**LAND SURVEYOR ISIOLO LAND REGISTRY ..... 12<sup>TH</sup> DEFENDANT**  
**THE ATTORNEY GENERAL ..... 13<sup>TH</sup> DEFENDANT**



## RULING

1. The plaintiff through a notice of motion dated 8.12.2022 seeking; -a) inhibition orders against LR No's Kianjai/Mituntu/97 and 701, 702, 703, 704, 905 & 906 and property known as Isiolo Township block 4/586 pending the hearing and determination of this suit (hereinafter the suit premises).
2. A temporary order of injunction barring and restricting the defendants, their agents, servants, or its employees from trespassing into, entering, building in, subdividing, selling, leasing, or in any way whatsoever interfering with the suit premises pending hearing and determination of the suit.
3. The application is based on the grounds on its face, the affidavit in support sworn by Martha Kielu Ithili on the even date. In the said affidavit, the applicant stated that she is the legal representative of the late Elijah Mithire who passed on in August 2018 and was the registered owner of Parcel No. 97 as per the attached grant and a green card marked as annexure MK "1" & "2" respectively.
4. The applicant averred that in August 2022, it came to her knowledge that the defendants had affected some illegal sub-divisions and or transfers based on alleged forged documents. She attached the green cards and certificates of official search as MK "4" and "5" respectively. Further, the applicant averred that she was aged 88 years and sickly. On 30.9.2022, the 2<sup>nd</sup> defendant who is her daughter-in-law had issued threats to her while claiming that she was a squatter and or trespasser on the land where she has lived all her life. To her shock, she established through her lawyers a network of fraud hence the request for information by a letter attached as MK "7" from the lands office. The applicant also attached copies of a pending criminal case over the issue in Tigania as annexures marked MK "2" & "8", respectively. The applicant averred that whereas her late husband was terminally ill before he passed on, the 2<sup>nd</sup> respondent appears to have conspired with the 11<sup>th</sup> and 12<sup>th</sup> defendants to unlawfully transfer the Isiolo property in 2020 as per the attached green card marked MK "11" by forging the grant of letters of administration, Form 41 RL 19, RL 7 and a land control board consent to cause transfer of the land. She attached the same as annexures marked MK "12" & "13" respectively. The applicant averred that the defendants appears to have managed to remove the name of the deceased, subdivided and transferred the land without letters of administration hence the need to safeguard the properties by way of interim orders.
5. The application was opposed by the 2<sup>nd</sup> defendant through a replying affidavit sworn on 30.2.2023. The 1<sup>st</sup> ground is that the 6<sup>th</sup> respondent was her late husband but now deceased while the applicant is her mother-in-law who lives in her compound had no intention of evicting her from the land.
6. The 2<sup>nd</sup> defendant averred that all the respondents were the beneficiaries of the deceased the late Elijah Mithire who shared LR No. Kianjai/Mituntu/97 during his lifetime at a family meeting attended by the area local administration and caused transfers to each of the beneficiaries.
7. Further the 2<sup>nd</sup> respondent averred that her share was lawfully acquired through the 6<sup>th</sup> defendant with no alleged fraud since the deceased father-in-law was sharp, focused and willingly signed all the subdivisions and transfer forms for each of the beneficiaries to his land.
8. It was averred by the 2<sup>nd</sup> defendant that the 1<sup>st</sup> respondent and others cut down trees on her share without her permission, thereafter she reported the matter to the police who arrested the culprits and charged them in Tigania court. Similarly, the 2<sup>nd</sup> defendant averred the applicant had no right to claim land belonging to her late husband since she was privy to the distribution agreement and she never



- complained over disinheritance. She therefore urged the court not to grant the orders sought otherwise they would impend on her constitutional rights to own and exclusively enjoy the property.
9. By an affidavit of service filed on 16.1.2023 and sworn by Joel Maitethia M'Rukunga, the 1<sup>st</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> & 13<sup>th</sup> defendants were served with the application but none of them opposed the application or filed a defense to the suit at the time of writing this ruling.
  10. The primary documents in this suit are the plaint dated 8.12.2022 and the 2<sup>nd</sup> defendant's defense dated 3.2.2023.
  11. The plaintiff pleaded that her late husband was the owner of the suit premises before he passed on on 16.8.2018, which were allegedly subdivided and transferred between 2017 and 2022 fraudulently and illegally. She averred that she discovered recently, the alleged changes as per a list of documents dated 8.12.2022 containing inter alia, copies of a green card for LR No. Kianjai/Mituntu/99. Entry No. 1 on the green card indicates that the property came under the name of Elijah Ithiri Mirianga on 25.10.1965, while entry No. 11 shows that the file was closed for sub-divisions on 15.1.2018. Concerning Isiolo Township Block (10), the register was opened on 18.8.2020, and a certificate of the lease was issued in favor of the 2<sup>nd</sup> & 3<sup>rd</sup> defendants. The applicant has also included copies of an official search for sub No. 698 in favor of the 7<sup>th</sup> defendant, L.R No. L.R No. 700 in favor of her late husband, LR No. 701 in favor of the 8<sup>th</sup> defendant, 702 in the name of her late husband, and LR 906 in favor of 5<sup>th</sup> defendant. These were new titles registered on 14.1.2020, 15.1.2018, 12.10.2018, 25.5.2018, 15.1.2018, 15.1.2018 and 25.8.2022 respectively.
  12. Additionally, the plaintiff applicant attached a copy of the mutation for Serial No. 04311562 allegedly signed by her late husband, approved on 30.11.2017 and registered on 15.1.2018. Similarly, she attached a letter of grant issued to the 5<sup>th</sup> defendant in Meru HCC No. 78 of 2021 dated 4.1.2022, RL 7 dated 23.8.2022 and an undated letter of consent. A copy of a certificate of death listed as document no. 2 indicates that Elijah Mithire passed on on 16.8.2018. Therefore, the entries to the copy of the green card for LR Kianjai/Mituntu/97 as per entry No. 11 made on 15.1.2018 and the closure of the title for subdivisions to create LR No's 698 – 804 were made during the lifetime of the deceased.
  13. There is no indication by way of allotment letters for Isiolo Township Block Iv in the name of the deceased before he passed on. No transfer form or letters of consent to transfer the same to the defendants have been supplied to this court before or after 16.8.2018. What is clear however is that land Parcels No. 700, 701 & 906 were registered in the names of the respective beneficiaries after 16.8.2018.
  14. Having set the facts before this court, a party seeking both inhibition and temporary injunction must establish a prima facie case with a probability of success. Secondly, an applicant must demonstrate irreparable loss and damage which may not be compensated by way of damages if the injunction is not issued. Thirdly, the balance of convenience must tilt in favour of granting the injunction. A prima facie suit was defined in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* (2003) eKLR, as established where on the material placed before the court there is a right that has been infringed calling for a rebuttal by the opposite party.
  15. In determining whether such a right is established the court in *Nguruman Limited vs Jan Bonde Nielsen & 2 others* (2014) eKLR held that the court is not called upon to hold a minitrial but has to weigh the material before it and make a finding on whether there is a prima facie case. The court held that what amounts to irreparable loss and damage must be more than mere fear, apprehension or speculation. The damages the court said to the right of the applicant must be apparent. Similarly, the court held that a party whose rights have crystallized should not be made to take up compensation by way of damages simply because the offending party is capable of paying the same.



16. Applying the foregoing principles to this suit, the applicant averred that no letters of administration were issued for the estate of the deceased between 2018 and 2021 except the limited grant in her favour to enable any of the respondents to affect the alleged subdivisions, transfers and registrations.
17. The copies of the green card attached indicate that several entries were made after the deceased passed on. They were not accompanied by or executed by a known legal administrator in line with sections 47, 54 and 82 of the *Law of Succession Act*. What the applicant is raising as a beneficiary to the estate of the deceased are in my view, protectable rights and issues bordering on an alleged intermeddling of the estate of the deceased. The applicant has expressed fear that she is likely to be evicted. Some of the properties such as LR No's 701 & 703 are in the names of her deceased husband. My finding therefore, is that the applicant has established a prima facie case on her protectable rights.
18. As regards irreparable loss and damage the fear expressed by the applicant is apparent, genuine and real. The applicant has said she is in fear of eviction and or disinheritance by people close to her. The 2<sup>nd</sup> defendant has admitted that the applicant is residing in her compound which parcels of land allegedly belonged to the 2<sup>nd</sup> defendant's late husband. It is not clear whether the residence of the deceased Elijah Mithire is situated amongst the subdivisions to the original LR No. Kianjai/Mituntu/97.
19. Be that as it may, my finding guided by the case law of Nguruman (supra) is that the applicant has established likely irreparable loss and damage which may not be compensated by way of damages. The balance of convenience also tilts in favor of granting a temporary injunction against the 1<sup>st</sup> – 8<sup>th</sup> defendants. This does not cover the rest of the defendants since an injunction cannot issue against the 9<sup>th</sup> -11<sup>th</sup> defendants in law. The same shall subsist for a period of one year.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 1<sup>ST</sup> DAY OF MARCH, 2023**

In presence of:

C/A: Kananu

Thangicia for plaintiff

**HON. C.K. NZILI**

**ELC JUDGE**

