



**Julius & another v Marete & another (Environment & Land Case  
E011 of 2022) [2023] KEELC 15954 (KLR) (8 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15954 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E011 OF 2022**

**CK YANO, J  
MARCH 8, 2023**

**BETWEEN**

**JAMES MWITI JULIUS ..... 1<sup>ST</sup> PLAINTIFF**

**ANALD ALLAN MURIUKI MUTHURI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JUDITH KAROKI MARETE ..... 1<sup>ST</sup> DEFENDANT**

**GLADYS NCHECE KATHURIMA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application for consideration is the notice of motion dated September 16, 2022 expressed to be brought under order 40 rule 1, order 51 rule 1 of the *Civil Procedure Rules*, section 1A, 1B of the *Civil Procedure Act* and section 68 of the *Land Registration Act* and all other enabling powers and provisions of the law. The applicants mainly seek for orders of temporary injunction and inhibition pending the hearing and determination of this application and pending hearing and determination of the suit.
2. The application is supported by the affidavit of James Mwiti Julius sworn on September 16, 2022 and is based on the grounds thereon. Briefly, the applicants claim for adverse possession over land parcel No LR Abothuguchi/Kitheri/177 which is currently registered in the names of Julius Muriithi Marete and Judith Karoki M'Marete as administrators of the estate of Marete Kiunga alias Marete s/o Kiunga deceased who died on June 4, 1961.
3. The applicants aver that they were brought up on the suit land and after attaining the age of majority they have built and farmed on the said land to date. That their occupation and possession took place with the full knowledge of the 1<sup>st</sup> defendant. The applicants state that the defendants are now making attempts to evict them from the land with a view to disposing off the land to third parties. That the applicants will suffer irreparably if the orders sought are not granted as the respondents are in the



process of sub-dividing and or disposing the suit land illegally. The applicants aver that the orders sought herein are meant to preserve the subject matter of the suit.

4. In the affidavit in support of the application, the applicants have exhibited a copy of the official search of the suit land in the names of the respondent, and photographs showing their farming activities and other developments undertaken on the land.
5. In opposing the application, the respondents filed a replying affidavit sworn by Judith Karoki Marete, the 1<sup>st</sup> respondent on October 14, 2022 wherein she has deposed inter alia, that the applicants are their nephews being sons of her brother Julius Muthuri M'Marete who is also her co-administrator in the estate of their late father Marete Kiunga alias Ikiugu Kiunga and that the applicants have been living on part of LR Abothuguchi/Katheri/177 with the consent of their father and being beneficiaries of Marete Kiunga alias Ikiugu Kiunga.
6. The respondents aver that the suit land was subject of High Court at Meru Succession cause No 3 of 1978 in which judgment was delivered on September 12, 2019 wherein the court ordered that the land be shared equally among the beneficiaries who include the applicants and the respondents. Copies of the pleadings and judgment in the said succession cause have been exhibited.
7. That the applicants tried to appeal to the Court of Appeal in Nyeri Civil Application No E 025 of 2021 but the application was dismissed with costs on August 26, 2022. A copy of the court of appeal ruling has been annexed. The respondents aver that the applicants are abusing the legal process by trying to challenge the said decision of the Court of Appeal.
8. The respondents pointed out that the judgment of the High Court in the succession cause No 3 of 1978 has been implemented and the land distributed to the parties herein. The certificate of confirmation of grant has also been annexed. The respondents contend that the applicants have sworn that the respondents who are sisters of their father do not benefit from the suit land by filing several cases and taking advantage of the respondents' old age.
9. I have considered the application, the affidavit in support and against. The principles to be applied when considering an application for temporary injunction are well settled. In the famous case of *Giella v Cassman Brown & Co* [1973] EA 358, the conditions were laid and they are:  
  
    ' First the applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. And thirdly, if the court is in doubt, it will decide an application on a balance of convenience'.
10. In this case, there is no dispute that the suit land has been a subject matter in other previous cases between the parties herein. The respondents have exhibited a judgment in Meru High Court Succession No 3 of 1978 delivered on February 12, 2019, a certificate of confirmation of a grant in the same case dated March 12, 2019, and a ruling delivered on August 26, 2022 by the Court of Appeal at Nyeri in Civil Application No E025 of 2021. There was no affidavit filed by the applicants to contradict the averments made by the 1<sup>st</sup> respondent.
11. From the evidence on record, I find that the applicants have not established a prima facie case with a probability of success. Secondly the applicants have not shown that they stand to suffer irreparable harm not compensable in damages. The balance of convenience, if I had doubt, vests in the respondents who have a judgment in their fair in respect of the suit property.



12. The upshot is that the notice of motion dated September 16, 2022 is without merit and the same is hereby dismissed with costs to the respondents.
13. It is so ordered.

**DATED SIGNED AND DELIVERED AT MERU THIS 8<sup>TH</sup> DAY OF MARCH 2023**

**In the presence of**

**C.a Kibagendi**

**Kaimenyi for respondent**

**Karatu for applicants.**

**C.K YANO**

**JUDGE**

