



**Kariuki v Owino (Environment & Land Case 527 of 2013)
[2023] KEELC 16042 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16042 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 527 OF 2013
LN MBUGUA, J
MARCH 9, 2023**

BETWEEN

RICHMOND MACHARIA KARIUKI PLAINTIFF

AND

ALEX ACHOLA OWINO DEFENDANT

RULING

1. Judgement was entered for the plaintiff in this matter on October 5, 2021. The defendant's application dated October 13, 2022 is for determination before the court, where he seeks orders that the plaintiff herein be restrained by injunction from selling, dealing with or in any other way interfering with the property known as plot No C4 - 164 Kayole until the final determination of the suit herein. He also seeks an order directing the lands office to lodge a caveat/caution to preserve the suit property and an order that the OCS Kayole police station do assist in the enforcement of the orders.
2. The application is based on grounds on its face and on the defendant's supporting affidavit sworn on October 13, 2022. He deposes that the plot No C4 - 164 Kayole was allotted to him on November 6, 2012. He further deposes that that the court allowed his application to set aside the judgment dated October 5, 2021 but the respondent intends to sell the land before the matter is determined yet he has developed it.
3. The application is opposed by the plaintiff by way of grounds of opposition and notice of preliminary objection dated January 13, 2023. The plaintiff states that this honourable court is *functus officio* as the judgment delivered herein has not been set aside.
4. I have duly considered the arguments advanced herein. I find that judgement was entered in this matter on October 5, 2021. The said judgement has not been varied or set aside as claimed by the applicant. The defendant seeks an injunction restraining the plaintiff from dealing with the suit property pending hearing of the matter. However such orders cannot be granted in a none existent suit. I therefore find



that the application dated October 13, 2022 is frivolous, the same is hereby dismissed with costs to the plaintiff.

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

LUCY N. MBUGUA

JUDGE

In the presence of:-

Defendant

Githui for Plaintiff/Respondent

Court assistant: Vanilla

