



**Mwangi v Njoroge & 4 others (Environment & Land Case  
E011 of 2023) [2023] KEELC 16294 (KLR) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16294 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E011 OF 2023  
FM NJOROGE, J  
MARCH 15, 2023**

**BETWEEN**

**SUSAN WANJIRU MWANGI ..... PLAINTIFF**

**AND**

**STEPHEN KIMANI NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH WAGEMBA ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 3<sup>RD</sup> DEFENDANT**

**NAIVASHA DISTRICT LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**SUB-COUNTY LAND ADJUDICATION AND SETTLEMENT OFFICER,  
NAIVASHA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the plaintiff's Notice of Motion application dated February 23, 2023 brought under Section 19(2) of the [Environment and Land Court Act](#), Order 40 Rule 1, 2 and 3 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#) which sought for the following orders;
  - a. Spent
  - b. Spent
  - c. Spent
  - d. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents either by themselves, their servants, employees and/or agents be restrained from entering, occupying, cultivating, taking possession, remaining on, alienating and/or in any manner dealing with Land Reference Number Naivasha/Kiambogo Scheme/623 pending the hearing and determination of this suit.



- e. An inhibitory order be and is hereby granted restraining the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from effecting any changes to the records pertaining to the parcel of land Naivasha/Kiambogo Scheme/623 pending the hearing and determination of this suit.
  - f. That the costs of this application be provided for.
2. The application is supported by the affidavit of Susan Wanjiru Mwangi sworn on February 23, 2023. The grounds on the face of the application and the supporting affidavit are that the plaintiff is the registered owner of land parcel No Naivasha/Kiambogo Scheme/623; that she was allocated the suit property on October 29, 1983 by the Settlement Officer, Nakuru; that upon allocation, she was shown the parcel with the demarcations and the relevant beacons; that upon allocation, the suit property was charged to the Settlement Fund Trustees for Kshs 6,102 and she was to clear the amount as per the charge document; that she paid the amount in full; that she was issued with a title deed that had an error on the acreage; that because of her age she did not realize the error immediately; that she has been in occupation since the land was allocated to her; that on February 02, 2023, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered the suit property and started to erect a fence; that when she called for help they ran away; that they came back on February 11, 2023 with a group of ten people and fenced off a portion of the suit property by force; that she tried to protest but was threatened with machetes and clubs among other crude objects; that she has been in occupation since the year 1983 and she prays for the orders sought in the application to protect her land and for her own safety.
  3. Neither of the defendants filed a response to the application and none of the parties filed their submissions.

#### **Analysis and Determination**

4. After considering the application, the only issue that arises for determination is whether the plaintiff has met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.
5. The Court of Appeal in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No 77 of 2012* (2014) eKLR restated the principles for the grant of orders of temporary injunction as was set out in the case of *Giella Versus Cassman Brown* (1973) EA 358 as follows: -

“In an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a *prima facie* level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.
6. The plaintiff in this matter has to prove that she has a *prima facie case*. The Court in the case of *Mrao Ltd Versus First American Bank of Kenya Ltd* (2003) stated as follows on what constitutes a *prima facie case*: -

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”



7. In support of her application, the plaintiff has annexed a copy of the title deed of the suit property which is registered in her name. It is my view therefore, that the plaintiff has established a *prima facie* case.

8. Secondly, the plaintiff must demonstrate that she will suffer irreparable injury if the order of temporary injunction is not granted. The court in the case of *Pius Kipchirchir Kogo Vs Frank Kimeli Tenai* [2018] eKLR stated as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a *prima facie* case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

9. The plaintiff alleges that she has been in occupation of the suit property since the year 1983 and that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have fenced off a portion of her land. That when she protested against the fencing of the suit property, the defendants and the people accompanying them threatened her with crude weapons. It is my view that the plaintiff has not demonstrated that irreparable loss will be occasioned to her if the orders sought are not granted.

10. I must therefore apply the third test, namely, whether the plaintiff has demonstrated that the balance of convenience tilts in her favour. The court in the case of *Paul Gitonga Wanjau Vs Gathuthi Tea Factory Company Ltd & 2 others* (2016) eKLR held as follows;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

11. It is my view that in this matter, the balance of convenience tilts in favour of the plaintiff. Consequently, the application dated February 23, 2023 has merit and it is hereby allowed in terms of prayers No 4 and 5 thereof. The costs of the application shall be borne by the defendants in any event.

12. This suit shall be mentioned on April 27, 2023 to confirm compliance and for the issuing of a hearing date.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 15<sup>TH</sup> DAY OF MARCH 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

