



**Rwigi v Karuthu & another (Environment & Land Case  
E011 of 2022) [2023] KEELC 16127 (KLR) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16127 (KLR)

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

**CK YANO, J  
MARCH 15, 2023**

**BETWEEN**

**ROBERT NYAGA RWIGI ..... APPLICANT**

**AND**

**NAOMI KARUTHU SAMSON ALIAS NAOMI KARUTHU  
MWIRIGI ..... 1<sup>ST</sup> RESPONDENT**

**MARTIN KARANI IKIARA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of the notice of motion application dated June 10, 2022 in which the plaintiff/ applicant mainly seeks orders of temporary injunction and inhibition in respect of land Parcel No Nyayo Sirimoni Scheme 1081 pending the hearing and determination of this suit. The application is brought under Order 40 Rule 1(a), 2(1) & (2), 3(1) and 4 ( 1) of the Civil Procedure Rules, Section 63 (3) of the Civil Procedure Act, Section 68 (1) & (2) and 69 of the Land Registration Act No 3 of 2012.
2. The application is supported by the affidavit of Robert Nyaga Rwigi sworn on June 10, 2022 and supplementary affidavit sworn on October 10, 2022 and is premised on the grounds that the applicant bought the suit land from the 1<sup>st</sup> respondent vide a written sale agreement dated February 2, 2008 at an agreed price of Kshs 250,000/= which the applicant states he paid in full and was given vacant possession. The applicant avers that he has since extensively developed the property.
3. The applicant states that at the time they entered into the said sale agreement, the 1<sup>st</sup> respondent had already applied for the suit land to be transferred and registered in the name of the applicant, but instead, the 1<sup>st</sup> respondent registered the land in her name and subsequently sold the same to the 2<sup>nd</sup> respondent who is now threatening to evict the applicant from the land. The applicant avers that he had filed MRU ELC No 12 of 2020 (OS) against the respondents, but which case he subsequently withdrew and filed this case.



4. The applicant avers that unless the orders sought are granted, he stands to suffer irreparable loss, adding that the respondents will not be prejudiced since the applicant is in occupation, possession and use of the suit land.
5. In the affidavit in support of the application, the applicant has annexed copies of the sale agreement, letter of offer, acknowledgment receipt, photographs, letters and the pleadings, documents and order in Meru ELC No 12 of 2020 (OS) and copies of title deeds.
6. In opposing the application, the 2<sup>nd</sup> respondent filed a replying affidavit sworn on October 3, 2022 wherein he avers that he is the *bonafide* purchaser for value without notice of the suit land. That he bought the land on May 18, 2018 from the 1<sup>st</sup> respondent upon satisfying himself that she was the owner at a consideration of Kshs 1,000,000/= which he said he paid in full. The 2<sup>nd</sup> respondent avers that he knew that the applicant was tilling the land occasionally having been informed by the 1<sup>st</sup> respondent and knew that at one time, the applicant would surrender possession to him. The 2<sup>nd</sup> respondent has annexed copies of the agreement, receipts, title deed and argued that he was not aware and or notified of the applicant's purchaser's interest on the land till this suit was filed. That the applicant does not stay and or live on the suit land but cultivating seasonal crops.
7. The 2<sup>nd</sup> respondent states that the applicant has been indolent in fighting for his rights and he is now time barred, and can only seek refund of the purchase price.
8. The 1<sup>st</sup> respondent did not file any response to the application. The application was canvassed by way of written submissions which were duly filed and which I have read and considered in this ruling. The issues that the court finds for determination are whether the applicant has met the threshold for an order of temporary injunction and whether the orders sought should be granted or not.
9. The conditions for the grant of temporary injunctions were laid in the celebrated case of *Giella Vs Casman Brown & Company Ltd* ( 1973)EA 358 where it was stated that-;
 

“ First an 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. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
10. The question that arises is whether the applicant herein has made out a prima facie case with a probability of success. In the case of *Mrao Ltd Vs First American Bank of Kenya Limited & 2 others* ( 2003) KLR 125, a prima facie case was described as follows-;
 

“ a prima facie case in a civil application includes but is not confined to a “genuine and arguable case”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
11. In this case, there is no dispute that both the applicant and the 2<sup>nd</sup> respondent claim to have purchased the suit property from the 1<sup>st</sup> respondent. The applicant has explained how he entered into an agreement for sale with the 1<sup>st</sup> respondent and was granted possession. There is also no dispute that the applicant is still in occupation and use of the suit property. Indeed, the 2<sup>nd</sup> respondent has filed a counter claim seeking eviction of the applicant from the suit land. The 1<sup>st</sup> respondent who sold the



property to both the applicant and 2<sup>nd</sup> respondent has not filed any response to the application herein. The issue of who is the rightful owner of the suit property can only be dealt with at the trial.

12. From the evidence on record, I find that the applicant has established a prima facie case with a probability of success. As both the applicant and the 2<sup>nd</sup> respondent are claiming ownership of the suit property, it is my view that the property should be preserved pending the hearing and determination of the suit.
13. No doubt, if the respondents went ahead to evict the applicant and sell or alienate the property, the applicant stands to suffer irreparable harm not compensable in damages. Further, and if I had doubt, the balance of convenience tilts in favour of the applicant who was given possession and is still in occupation and use of the property. It is therefore appropriate that status quo prevailing be maintained pending the hearing and determination of the suit. Otherwise the suit may be rendered nugatory should the applicant be evicted and the property sold and/or alienated.
14. The applicant is also seeking orders of inhibition against the suit property. An order of inhibition is provided under Section 68 (1) of the *Land Registration Act, 2012*. This section gives the court discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event. As such, an inhibition order is an order which is in the nature of a prohibitory injunction restraining dealings on land pending further orders by the court. The purpose of the said order, just as in a temporary injunction, is to preserve the property from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter.
15. The conditions for grant of an order of inhibition are now settled. The applicant has to satisfy the following conditions. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservatory orders of inhibition are issued, that the refusal to grant orders of inhibition would render the applicant's suit nugatory, and that the applicant has an arguable case ( see *Japhet Kaimenyi M'Ndatbo Vs M'Ndatbo M'Mbwiria* [2012] eKLR and *in re Estate of Paul Kimeu (deceased)* [2020]eKLR).
16. As already stated, both the applicant and the 2<sup>nd</sup> respondent claim ownership of the suit property. They both allege that they purchased the property from the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has not filed any response to controvert the averments made by the applicant, and also by the 2<sup>nd</sup> respondent. It is also not disputed that the applicant is the one who is in possession, occupation and use of the suit land. This is admitted by the 2<sup>nd</sup> respondent who has infact filed for a counterclaim seeking eviction of the applicant from the suit land. Therefore, the refusal to grant orders of inhibition would certainly render the applicant's suit nugatory as he may be evicted and the property alienated. There is indeed a need to protect the suit parcel of land from further dealings pending the hearing and determination of the suit.
17. The upshot is that the notice of motion dated June 10, 2022 is merited and the same is allowed with costs to the applicant.
18. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 15<sup>TH</sup> DAY OF MARCH 2023**

In the presence of

Court Assistant- Kibagendi

Mageria holding brief for Nyamu Nyaga for plaintiff

M/s Kiema holding brief for Ondari for 2<sup>nd</sup> defendant



No appearance for 1<sup>st</sup> defendant

**C.K YANO**

**JUDGE**

