



**Matu & 4 others v Guchu & 4 others (Environment and Land Appeal
20 of 2015) [2023] KEELC 17352 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17352 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL 20 OF 2015**

EK MAKORI, J

MAY 4, 2023

BETWEEN

GRACE GA MATU & 4 OTHERS APPELLANT

AND

EPHUNTUS KIHARA GUCHU & 4 OTHERS RESPONDENT

(Environment and Land Court, before a judge other than Olola J)

RULING

1. The Applicant filed an application dated October 19, 2022 seeking the following orders:
 - a) Spent.
 - b) Pending the hearing and determination of this application, a temporary injunction do issue restraining the Appellants/Respondents authority from trespassing, encroaching upon, provoking or dealing with the suit property in any manner whatsoever and the Land Registrar at Lamu County be ordered to place restriction against the suit property being a land registered under Title Reference No. Lamu/Mpeketoni Township/291 pending hearing and determination of this application.
 - c) Pending the hearing and determination of this application, a temporary injunction do issue restraining the appellants/respondents authority from trespassing, encroaching upon, provoking or dealing with the suit property in any manner whatsoever and the Land Registrar at Lamu County be ordered to place restriction against the suit property being a land registered under Title Reference No. Lamu/Mpeketoni Township/291 pending hearing and determination of this suit.
 - d) The costs of this application be in the cause.



2. The application is supported by the grounds on the face of the application and the supporting affidavit of the applicant sworn on the October 19, 2022.
3. The application is opposed there is a replying affidavit deposited on November 16, 2022.
4. The court directed parties to file written submissions on the pending application.
5. Applicant filed a suit CMCC Land Case No. 110 of 2011 at Subordinate Court against the appellants/ respondents which matter was determined in favour of the applicant. Appellant was aggrieved by the Subordinate Court's decision and appealed to the High Court which matter was determined in their favour. That the applicant made a move and appealed against the decision of the High Court at the Court of Appeal which matter was determined in his favour by a judgement delivered on 3rd April 2020. The Court of Appeal ordered the matter to be remitted back to the Environment and Land Court, before a judge other than Olola J, for rehearing and determination on merits of the Appellant's appeal and the Court of Appeal set aside the Judgement and the orders of the High Court.
6. The parties are now wrangling as to whether the court at this stage can issue injunctive reliefs or not. Looking at the submissions by the parties, each is trying to interpret the meaning of retrial before this court, whether we revert to the position before appeal to this court or the situation that obtained before the appeal to the Court of Appeal.
7. A similar application for injunction had been made to this court - Angote J. The decision is reported as *Grace Gathoni Matu & 4 others v Ephantus Kihara Guchu* [2016] eKLR. The judge aptly stated as follows:

“The Application before me is praying for injunctive orders pursuant to the provisions of order 40 of the Civil Procedure Rules and not for a stay of execution of the orders of the Magistrate.

 9. The Application is badly drafted because it does not describe the land in respect of which the Respondent should be restrained from interfering with.
 10. If the injunction that the Appellants are seeking is in respect of the suit property, then the appropriate Application should have been for stay of execution of the Judgment of the learned Magistrate.
 11. An injunction pursuant to the provisions of order 40 of the Civil Procedure Rules presupposes that there is a pending suit.
 12. However, there is no pending suit before this court. The suit which was before the learned Magistrate was heard and determined. The Appellants can only apply for a stay of the learned Magistrate's Judgment pending the hearing of the Appeal and not for an injunction.
 13. Considering that the jurisdiction of this court has been wrongly invoked by the Appellant, I find and hold that the Application dated August 18, 2015 is unmeritorious and I dismiss it with costs.”
8. When the Court of Appeal remitted this matter back for retrial, the parties' rights were folded back to the time when the appeal had been filed. The only orders as clearly stated by this court on the same subject matter - Angote J. is for stay pending appeal and not injunction as there is no suit pending before this court but an appeal.



9. The upshot is that application dated October 19, 2022 is hereby dismissed with costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS
4TH DAY OF MAY 2023.**

E. K. MAKORI

Judge

In the Presence of: -

M/s Marubu for the Applicant

In the absence of:

Ms Katsoleh & Company Advocates for the Respondent

