



**Ndegwa v Mwangi (Environment & Land Case E15 of 2023)  
[2023] KEELC 17246 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17246 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E15 OF 2023  
FM NJOROGE, J  
MAY 8, 2023**

**BETWEEN**

**JENNIFER WANJIKU NDEGWA ..... PLAINTIFF**

**AND**

**PETER MUCHIRI MWANGI ..... DEFENDANT**

**RULING**

1. The plaintiff filed her suit *vide* a plaint dated 16/2/2023. She sought orders of declaration that that she owns the suit property, known as Land Reference 519/361 Grant IR NO as 54340/1 and an injunction against the defendant. The grounds relied on in the suit are that the defendant had sold the suit land to a third party, who sold the same to another third party who in turn sold the suit land to the plaintiff. It is alleged that at one time the defendant even executed a transfer in favour of the plaintiff and that the plaintiff has been in possession of the land since 2006. She lays out a claim of ownership by way of purchase and in the alternative by way of adverse possession. She prayed that the defendant be compelled to transfer the land to her.
2. The notice of motion dated 16/2/2023 sought an injunction to restrain the plaintiff from trespassing on the suit land pending the hearing and determination of the present suit, and it is the subject of the present ruling, and so is defendant's application dated 24/3/2023 seeking that the interim orders issued on the plaintiff's application dated 16/2/2023 be stayed or vacated.
3. In the replying affidavit dated 24/3/2023 and filed on even date the respondent opposed the application by stating as follows: that he is the proprietor of the suit land; that he was registered as such in 1991 and the land office records reflect as much; that he has erected a fence around the land and a store; that he has never sold land to the applicant; that the advocates currently representing the applicant have been his advocates for a lengthy period of time and had access to his documents and specimen signatures; that he never executed the agreement alleged to have been made between him and Samuel Kingori and John Muniu Ngahu; that he also never executed the transfer exhibited by the



- plaintiff; that his title got misplaced and he applied for a replacement; that the plaintiff's suit is time barred and that the plaintiff has never been in occupation of the suit land. He exhibited among others Gazette Notice No 1562 advertising the loss of his title on 22/2/2019 and a provisional certificate of title issued on 24/4/2019. He also attached some plans.
4. The defendant also filed his own application dated 24/3/2023 seeking that the interim orders issued on the plaintiff's application dated 16/2/2023 be stayed or vacated. The grounds he relied on are partially similar to those in his replying affidavit analysed herein before but he also adds that he has been in occupation of the suit land since 1991; that the effect of the orders is to evict him without a hearing and that the plaintiff had misled the court that she was in occupation.
  5. In addition to his application the defendant filed the notice of preliminary objection dated March 24, 2023 which has been subsumed into the two applications for the purpose of the present ruling. The ground in the objection is that the plaintiff's suit is statute barred.
  6. The plaintiff responded to the defendant's filings by lodging her supplementary affidavit on 4/4/2023 in which she stated as follows: that the firm of Lawrence Mwangi & Co no longer exists; that she had not been granted any ex parte orders by this court and therefore the defendant's application dated 24/3/2023 serves no purpose and should be dismissed with costs; that she has made 3 statements to the Criminal Investigation Department office at Njoro; that the defendant delivered all his original ownership documents to the plaintiff and the land was given to her in vacant possession and the defendant cannot backtrack from the sale; that the orders of injunction sought are not to evict the defendant but to prevent him from entry; that the land is developed with a fence and a half complete toilet put up by the plaintiff; that the suit is not time barred ; that investigations are underway against the defendant at Njoro for giving false information; that the plaintiff's advocate has never handled any documents of the defendant regarding the suit land; that the photograph of the suit land she exhibits demonstrates that the claim by the defendant that he has put up a store on the land is false; that the defendant has come to court with dirty hands and simply wants to defraud the plaintiff.
  7. In addition to the supplementary affidavit the plaintiff also filed grounds of opposition which have been already covered by the supplementary affidavit analysed herein before. The supporting affidavit to the defendant's motion is faulted by the plaintiff for its alleged defect in form.
  8. The defendant came out with all barrels blazing and filed his submissions in three phases, with the first set filed on 24/4/2023 targeting the plaintiff's motion and the second filed on the same date, addressing his own application herein above mentioned. He also filed submissions on the preliminary objection he had filed. The plaintiff on her part filed a single set of submissions on the two applications and the preliminary objection on 3/5/2023. I have considered all the submissions of the parties.
  9. The defendant's application as so closely related with the orders that the plaintiff seeks in that the dismissal of the plaintiff's application would automatically benefit the defendant by granting him the orders his application seeks and therefore the sole issue for determination at the present stage of proceedings is simply whether an injunctive order ought to issue as against the defendant.
  10. I have considered the material before me, and especially the claim by the plaintiff, which includes exhibits, that the original title documents for the suit land were passed on to her and that she has partially developed the land by fencing; that is in total contradistinction to the complete absence of any evidence by the defendant to show that the store that he claims to have erected on the premises exists. I am persuaded that the plaintiff has adduced sufficient evidence to enable conclusion by this court that she has some element of possession while the defendant has not placed any material to demonstrate the same.



11. The plaintiff has also exhibited a set of documents that prima facie show that there could have been a transaction or a series of transactions over the suit property. I therefore find that she has established a *prima facie*. A part of her claim being in adverse possession at the moment I am of the view that any interruption of that possession may be detrimental to her claim. On these two grounds I find that the plaintiff may suffer irreparable loss if the orders sought in her application dated 16/2/2023 are not granted.
12. Consequently, I allow the plaintiff's application dated 16/2/2023 in terms of prayer no (b) thereof. The defendant's application dated 24/3/2023 therefore lacks merit and is therefore dismissed with costs to the plaintiff while the plaintiff's application dated 16/2/2023 is allowed with costs being hereby ordered to be in the cause.
13. The preliminary objection raised by the plaintiff is misplaced and lacks merit and indeed should not be raised by him in this matter especially while the plaintiff's claim is as pleaded to involve a cause of action that is predicated on the lapse of time against the defendant. To determine that objection would be to pre-empt her substantive claim while the defendant is the paper title holder against whom time should run for the purposes of her claim. I hereby strike out the preliminary objection for those reasons.
14. Parties shall comply with the rules and this matter shall be mentioned on 25/5/2023 for the fixing of a hearing date.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 8<sup>TH</sup> DAY OF MAY 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

