



**Kibiba v Nguwa (Environment & Land Case 137 of 2018)
[2023] KEELC 17840 (KLR) (7 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17840 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 137 OF 2018**

EK MAKORI, J

JUNE 7, 2023

BETWEEN

JUMWA KARISA KIBIBA PLAINTIFF

AND

JEFWA NGUWA DEFENDANT

RULING

1. By an application dated 28th of June 2018 the Applicant seeks injunctive orders seeking to restrain the Respondent from further trespass on suit property Kilifi/Kibarani/Block 9 measuring six acres or thereabouts. The application was filed sometimes on June 28, 2018. I cannot comprehend what has been up for an interlocutory application to pend for so long in our courts.
2. The contention by the Applicant is that she is the registered owner of the suit property. Title document Kilifi/Kibarani/Block 9 - Annexure JKK-2 is exhibited to evidence ownership.
3. That the estate of the Respondents trespassed into the land and built houses without colour of right or at all and that the Respondent intends to sell the land.
4. Respondent contended that he together with his brother Nzaro Nguwa (now deceased), purchased the suit land from the Plaintiff via a sale agreement dated September 30, 1995 and took possession of the same. The consideration was Kshs 33,000/-.
5. That he has resided in the suit property since 1995 and that his brother, wife, and mother died and were buried on the land in question.
6. It is in the year 2018 that the Plaintiff/Applicant started to raise issues and interfere with the peaceful occupation of the land in question alleging that she sold one acre of the land and not the whole parcel.
7. The issue for determination is whether this court should issue injunctive relief(s) at this stage.



8. The test as to whether to issue an interlocutory injunction is as laid in the leading case of *Giella v Cassman Brown* [1973] EA 358. That the Applicant has to establish a prima facie case with a probability of success. That the Applicant will suffer, irreparable damage if no injunction is granted, and if in doubt the court to decide on a balance of convenience.
9. The parties are squabbling over land Title No Kilifi/Kibarani/Block 9. The Applicant is the registered owner. The Respondent claims ownership by purchase and sale and that the Respondent and family have been in occupation as bona fide purchasers for value by dint of sale agreement on record.
10. That at this stage, and with the material placed before me it will not be germane to issue injunctive relief(s) but rather to issue status quo orders under the Environment and Land Court Practice Directions 2014 because the facts before me point to that. This court has been doing so to preserve the substratum of the suit and protect what obtains on the ground and give both parties equal measures or equality of arms during the hearing process - see for example the works of Onguto J. in *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR:

“In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugah v Kunga* [1988] KLR 748, in land matters *status quo* orders should always be issued for purposes of preserving the subject matter. This court’s practice directions vide Gazette Notice No 5178/2014 have followed suit. Practice Direction No 28(k) is relatively clear. It gives the court the leeway and discretion to make an order for the *status quo* to be maintained until the determination of the case. I however take note that the Gazette Notice was issued before this court’s July, 16th 2014 decision.

The end result is that status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders: see *Texaco Ltd v Mulbery Ltd* [1972] 1 WLR 814, but also when the court is of the view that as a case management strategy, it would be more proportionate and appropriate without prejudicing one party but both, to issue a “status quo” order.”

11. I am persuaded that the orders which commend for issuance at this stage are as follows:
 - a. That the *status quo* obtaining on land parcel Kilifi/Kibarani/Block 9 persists. Each party is to remain in their respective portions till this matter is heard and determined.
 - b. The costs in the course.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 7TH DAY OF JUNE 2023

EK. MAKORI

JUDGE

In the presence of:

Ms. Mbae holding brief for Mr. Kinaro for Defendant

Court Clerk: Happy

In the absence of:

M/s. Katsoleh & Company Advocates for the Respondent.

