



Katsoleh t/a Katsoleh & Company Advocates v Ombati & another (Environment and Land Miscellaneous Application E006 of 2022) [2023] KEELC 18017 (KLR) (5 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18017 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2022**

JM KAMAU, J

JUNE 5, 2023

BETWEEN

**GEOFFREY KATSOLEH T/A KATSOLEH & COMPANY
ADVOCATES APPLICANT**

AND

JIM AGWENYI OMBATI 1ST RESPONDENT

DAMARIS JACKLINE NYAMOITA KENYURI 2ND RESPONDENT

RULING

1. The Plaintiff through her Complaint dated January 24, 2022 filed in Keroka Principal Magistrate's Court, Civil suit No PMCC Land No E003 of 2022 prays for:-
 - a. A declaration that she is the lawful beneficiary of her matrimonial house situated on parcel known as LR Manga Scheme/23, registered in the name of Nehemiah Ombati Nyakundi (deceased).
 - b. An order of vacant possession of the Plaintiff's matrimonial house situated on the parcel known as LR MANGA SETTLEMENT SCHEME/23 against the Defendant, her agents, servants, employees or any person acting through her.
 - c. A permanent injunction restraining the Defendant by either herself, her agents, servants, employees or anyone claiming under the Defendant from in any way whatsoever, trespassing, occupying, using and/or dealing in any way with the Plaintiff's matrimonial house situated on parcel known as LR NO Manga Settlement Scheme/23 registered in the name of Nehemiah Ombati Nyakundi (deceased).
 - d. General damages for trespass and/or conversion.
 - e. Interest on (d) above at court rates.



- f. Costs of this suit be borne by the Defendant.
 - g. Such further and/or other relief as the Honourable Court may deem fit and expedient so as grant.
2. In the Plaint she claims to be the daughter in law of Nehemiah Ombati Nyakundi (now deceased). The latter is the registered owner of parcel of land known as LR NO Manga Settlement Scheme/23. She also avers that she got married to Jim Angwenyi Ombati, who was son to Nehemia Ombati Nyakundi in the year 1992 with whom they constructed their matrimonial house on a portion of the father in law's land, the suit land which she has since occupied quietly but that the Defendant has since trespassed onto the suit land and locked up her house when she had travelled to Nairobi. Contemporaneously with the Plaint, the Plaintiff filed a Motion seeking: -
1. The instant Application be certified urgent and same be heard on priority basis.
 2. Pending the hearing and determination of this Application, The Honourable Court be pleased to issue an order compelling the Defendant/Respondent to open up and/or grant vacant possession of the locked up matrimonial house of the Plaintiff/Applicant situated on parcel known as LR No Manga Settlement Scheme/23, registered in the name of Nehemiah Ombati Nyakundi (deceased) to the Plaintiff/Applicant.
 3. Pending the hearing and determination of this Application, there be an interim order of injunction restraining the Defendant/Respondent either by herself, her agents, servants, employees or any person acting through her from in any way whatsoever, trespassing, occupying, using and/or dealing in any way with the Plaintiff/Applicant's matrimonial house situated on parcel known as LR NO Manga Settlement Scheme/23, registered in the name of Nehemiah Ombati Nyakundi (deceased).
 4. Pending the hearing and determination of the main suit, there be an interim order of injunction restraining the Defendant/Respondent either by herself, her agents, servants, employees or any person acting through her from in any way whatsoever, trespassing, occupying, using and/or dealing in any way with the Plaintiff/Applicant's matrimonial house situated on parcel known as LR No Manga Settlement Scheme/23, registered in the name of Nehemiah Ombati Nyakundi (deceased).
 5. The Officer Commanding Station (OCS) Manga Police Station be ordered and/or directed to ensure compliance.
 6. Costs of this Application be borne by the Defendant/Respondent.
 7. Such further and/or other orders be made as the court may deem fit and expedient.
3. She supported her Notice of Motion Application with a supporting Affidavit sworn on even date with the same facts as are contained in the Plaint. She further depones that the Respondent is not a member of their family and that she has not shown how she has acquired interest on the suit land.
4. On July 19, 2022, the Respondent filed a Replying Affidavit in which she described herself as the wife of Jim Angwenyi Ombati, that the suit premises was developed after the divorce between Jim Angwenyi Ombati and the Plaintiff herein. There is indeed attached to the Replying Affidavit a certificate of Decree Nisi absolute dated October 29, 2020 from the Chief Magistrate's Court at Milimani in Divorce Cause No E354 of 2021 to that effect. On July 19, 2022, the Defendant raised a Preliminary Objection to the effect that: -



- a. The Hon. Court has no jurisdiction to hear and determine the suit herein as the open market value of the suit premises is above Kshs 150,000,000/=.
 - b. That the suit premises doesn't belong to the Respondent/Defendant but the late Nehemiah Ombati Nyakundi, whose estate is yet to be administered.
 - c. The subject building developed on Plot No 23/Manga Settlement Scheme belongs to Jim Angwenyi Ombati and not the Defendant. The Respondent/Defendant cannot therefore give what she doesn't have.
 - d. Both parties have no capacity over parcel No 23/Manga Settlement Scheme as the same is part of the multimillion estate of the late Nehemiah Ombati Nyakundi and the house standing thereon belongs to Jim Angwenyi Ombati (the deceased's son).
5. Before then the matter had been referred to arbitration and some recommendations made.
6. A Bill of Costs was then filed in the High Court of Kenya at Nyamira in Misc. Application No E006 of 2022 resulting from services rendered in the lower court i.e. suit No PMCC Land No. E003 of 2022 at Keroka Magistrate's Court as Advocate's clients Bill of costs by the firm of Katsoleh & Co Advocates against the Defendant Damaris Jackline Nyamoita Kenyuri. After the same was served on January 19, 2023, Mososmi & Co Advocates came on record for the client and issued an objection to the Taxation on the grounds that: -
- a. This court lacks jurisdiction for lack of retainer.
 - b. This Bill is premature since the Advocate has not ceased to act for the Respondent. Mr Mogaka maintains that he is still on record.
7. On February 22, 2023, I directed that the Preliminary Objection be served and that the Applicant do file a response to the same detailing his retainership and for all the issues raised in the Preliminary Objection, a response to the same by the client's Advocates within 7 Days of service.
8. I will not address the issue of retainership since the Applicant is still on record and can therefore not tax his Bill of costs. He must first cease acting for the Respondent or wait until the matter is finalized to enable him tax his Bill of Costs. Otherwise if the Bill of costs is taxed while the Advocate is still on record and the matter is still ongoing, what happens when he ceases acting or the matter is concluded? Will he have to file another Bill? The Bill of costs is therefore premature and I order that the same be withdrawn forthwith to await the appropriate time.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 5TH DAY OF JUNE 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Applicant: N/A

Respondents: N/A

