



**Njuguna v Kamoni (Environment and Land Miscellaneous Application  
E076 of 2023) [2023] KEELC 17885 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17885 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E076 OF 2023  
EK WABWOTO, J  
JUNE 8, 2023**

**BETWEEN**

**JACKSON MBURU NJUGUNA ..... PLAINTIFF**

**AND**

**WILSON KAMUNYA KAMONI ..... DEFENDANT**

**RULING**

1. The Applicant filed a Notice of Motion Application dated March 10, 2023 which was accompanied by a Supporting Affidavit sworn by Jackson Mburu Njuguna. The Applicant sought the following orders:
  - i. Spent.
  - ii. That mandatory injunction be directed to defendant compelling him to forthwith pull down, remove and/or demolish the constructed temporary structure within Title No Nairobi/Block 105/151 situate at Ruai and restore the property to its original state.
  - iii. That an eviction order be directed at the defendant to forthwith vacate the property being within Title No Nairobi/Block 105/151 in Ruai.
  - iv. That a permanent injunction be issued restraining the defendant by himself, his servants, agents and/or whomsoever in any means howsoever from further encroaching, invading, constructing, developing, alienating and/or disposing off, charging, leasing, letting out and/or in any other way interfering with the property being within Title No Nairobi/Block 105/151 in Ruai.
  - v. That the OCS Ruai Police Station do oversee the enforcement of the orders issued.
  - vi. That the costs of this Application be provided for
2. The Application was made on the grounds that:



- i. The Plaintiff is registered as proprietor of the suit property measuring 0.12Ha.
  - ii. The Plaintiff has been in possession of the property and has since fenced it off. However, it came to his attention that the defendant had invaded the premise and constructed a galvanized iron sheet 'mabati temporary structure' of a church known as Compassionate Pentecostal Gospel Church, Ruai.
  - iii. At no time whatsoever has there been any conflict concerning ownership of the suit property.
  - iv. The defendant is a trespasser with no rights to remain and/or develop the suit property.
  - v. The construction of the galvanized iron sheet mabati remains an eye sore to the plaintiff with the premise being greatly misused, damaged, wasted and degraded.
  - vi. The defendant has threatened to continue trespassing and has refused to yield to demands to pull down the structures in the suit property and vacate therefrom
  - vii. Pursuant to Section 24(b), 25(1) and 26 of *Land Registration Act*, the plaintiff as registered owner has absolute rights of ownership and holds indefeasible title to the suit property.
  - viii. Section 152A of the *Land Act* N 6 of 2012 prohibits unlawful occupation of private land with Section 152B allowing eviction of an unlawful occupant.
3. On April 25, 2023, the matter came up for hearing of application where Applicant's counsel confirmed service upon the respondent and reiterated that since the application was unopposed, the orders should be allowed as prayed. An affidavit of service sworn by Edward Gacau Kariuki dated April 19, 2023 stated that service to the Respondent was effected via Whatsapp to his registered phone number.
  4. I have considered the application and supporting documents. In my view, the main issue for determination are whether the Applicant has met the threshold to be granted the mandatory injunction order and an eviction order.
  5. On the issue of granting a mandatory injunction, the Court must be cognizant of its stark difference as compared to a temporary injunction. Whereas a temporary injunction the applicant must establish the existence of a prima facie case with high chances of success, and that he will suffer irreparable loss/ damage which cannot be adequately compensated by an award of damages if the injunction is not granted, and further that the balance of convenience tilts in his favour (See *Giella vs Cassman Brown & Co Ltd (1973) EA 358*), an applicant in a mandatory injunction must, establish the existence of special circumstances. Furthermore, an applicant for mandatory injunction must prove his case on a standard higher than the standard in temporary injunctions.
  6. In the case of *Kenya Breweries Ltd & Another vs Washington O Okeya [2002] eKLR*, the Court of Appeal stated as follows on mandatory injunctions.

' A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.'



7. In the case of *Nation Media Group & 2 Others vs John Harun Mwau [2014] eKLR*, the Court of appeal said:

' It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances. A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted'

8. With regard to the prayers for an eviction order, this Court is guided by the pre-requisite procedures outlined in Section 152(E) of the *Land Act* which provides:-

'If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.'

2) The Notice under subsection (1) shall:-

- a) Be in writing and in a national and official language.
- b) In the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land.
- c. Specify any terms and conditions as to the removal of buildings, the mandatory procedures during eviction, reaping of growing crops and any other matters as the case may require and
- d. Be served on the Deputy County Commissioner in charge of the area as well as the Officer Commanding the police division of the area.'

10. In this instance, the Applicant submitted that he was the proprietor of the suit property and no conflict on ownership had arisen. Be that as it may, I am of the opinion that the Applicant has not demonstrated any special circumstances to build a strong case for the granting of a mandatory injunction. Moreover, the Applicant only averred to the refusal of the Defendant to vacate the premise but did not provide evidence to substantiate that the obligatory procedures in compliance to the provisions of Section 152A, 152B, 152E & 152G of the Land Laws (Amendment) Act No 28 of 2016 in so far as it relates to the procedure for moving the court while seeking eviction orders against a party had been adhered to.

11. In view of the foregoing, I find that the Notion of Motion Application dated March 10, 2023 is unmerited and hereby dismissed in its entirety.

12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF JUNE 2023.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

Mr. Kariuki for the Plaintiff/Applicant

N/A for the Defendant/Respondent



