



**Mukindia v Mutwiri (Sued as the Legal Representative of the Estate of  
Febian Rugiri – Deceased) (Environmental and Land Originating Summons  
E007 of 2023) [2023] KEELC 18648 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18648 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

**CK NZILI, J**

**JULY 12, 2023**

**BETWEEN**

**LAWRENCE MURORI MUKINDIA ..... PLAINTIFF**

**AND**

**LAWRENCE MWORIA MUTWIRI (SUED AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF FEBIAN RUGIRI – DECEASED) ..... DEFENDANT**

**RULING**

1. By an application dated 3.4.2023 the court is asked to issue a temporary injunction barring and restraining the defendant, his servants, employees or agents from entering, interfering, damaging or in any way whatsoever interfering with LR No Abothuguchi/Igane/783 pending hearing and determination of this suit.
2. The application is supported by the grounds on its face, the supporting and supplementary affidavits sworn by Lawrence Murori Mukindia on April 3, 2023 and April 26, 2023, respectively. The applicant deposes that he risks being evicted from the suit land, which he has occupied since 2000 and has extensively developed through farming activities. He states that he bought the land from the deceased through a sale agreement dated July 3, 2000, took vacant possession and paid for the same as per the acknowledgement receipts in his list of documents dated April 3, 2023. He denied the alleged fraud.
3. The application is opposed through Mworira Lawrence Mutwiri sworn on April 25, 2023. He deposes that the suit land is family land occupied by his siblings with permanent residences.
4. The defendant admits that the plaintiff was sold one acre of the land by his late father for Kshs 90,000/=, took vacant possession in March 2001 but defaulted in clearing the balance of Kshs 22,000/=. He denied the alleged acknowledgement receipts which he termed as forgeries. The defendant avers that in 2011, his late father bequeathed all his land to his children and confirmed that his relationship



with the plaintiff had deteriorated for non-payment, took back the land and eventually after his death subdivided the entire land as per the confirmed grant is in the process of obtaining title deed for all the beneficiaries.

5. The defendant avers that there have been several dispute altercations and tilts with the plaintiff hence the alleged occupation was never peaceful to the extent that he resolved to use the police.
6. Therefore, the defendant avers that since the plaintiff hails from the same village, he should have protested in the succession cause. He attached copies of the sale agreement, acknowledgement receipts, gazette notice, confirmed grant, and police summons as annexures marked ML 1-4, respectively.
7. With leave of court, parties were ordered to file written submissions. The plaintiff submits that he has established the ingredients of granting an injunction as in *Giella vs Cassman Brown Co. Ltd* (1973) E. A 1933, since he bought the land, the defendant has acknowledged that land has sentimental value and, if subdivided out of the confirmed grant, the balance of convenience tilts in favour of granting the injunction. Reliance was placed on *Joel Kipkurui Arap Koeb vs Alice Wambui Magandu & 3 others* (2018) eKLR.
8. As to inhibition, the applicant submits that the defendant was in the process of disposing of the land to third parties and, therefore, to avoid the risk, the court should grant an inhibition order guided by *Dorcas Muthoni & others vs Michael Ireri Ngari* (2016) eKLR and *Elly Jepkoech Limo vs Susan Wangoi Kibe & another* (2020) eKLR.
9. For a party to be entitled to a temporary injunction, he has to establish a prima facie case with a probability of success and show that the balance of convenience tilts in favour of granting the orders sought. Further, an inhibition has been termed as similar to a prohibitory injunction under Section 68 of the *Land Registration Act* is given to stop any transaction over a title to land until an occurrence of a certain event.
10. In *M'Mwongera Miruri vs Nancy Kanugu Mbaya* (2011) eKLR, the applicant had alleged to have been occupying the land for a long time. The orders sought were to preserve the land until the intended appeal's hearing. The alleged occupation was based on a sale agreement. The court said that the mere fact of that possession was prima facie evidence of some understanding between the deceased and the applicant; the truth as to how and on what basis the applicant took possession could only be established at the hearing.
11. In *Nguruman Ltd vs Jan Bonde Nielsen & others* (2014) eKLR, the court held that the three conditions in *Giella supra* were distinct and logical hurdles which the applicant was expected to surmount sequentially, and if the prima facie case was not established, then irreparable injury and balance of convenience would not be considered.
12. In the case of *Luka Ruteere & others vs Marcella Kinaitore Mwimbi* (2022) eKLR, the court observed that an inhibition order issues for some time or until an occurrence of a particular event and to stop any registration of an instrument inconsistent with the inhibition. An inhibition also preserves the property in dispute pending trial as held in *David Gitau Kuria vs Michael Mbugua Ndumo & others* (2021) eKLR. A prima case is ordinarily established on the material before the court that a right belonging to the applicant has been infringed to call the opposite party to rebut it.
13. Applying the preceding case law to the instant case, has the plaintiff established entitlement to the reliefs sought? I think so. In the first instance, a sale agreement was exhibited, defining the parties' rights as to the suit land, which they contracted under the law and vacant possession handed over. In trite law, parties are free to contract and reduce their terms and conditions in writing. In this instance, the



parties herein agree that certain entitlements accrued from the sale agreement. What is in dispute is whether the sale agreement was breached.

14. On the 2<sup>nd</sup> hurdle, the plaintiff avers that there was imminent danger of the property changing hands since there is inexistence of a confirmed grant which, if acted upon, the property might change ownership. In *Nguruman* (supra), the court said that a party alleging irreparable loss must demonstrate something beyond an alleged fear or apprehension or danger to the property through tangible evidence. The irreparable loss must be substantial and incapable of adequately being remedied by way of damages.
15. In *Said Almed vs Manasseh Benya & another* (2019) eKLR, the court observed that where what is complained of may be unlawful, the issue of whether or not damages can be an adequate remedy does not fall for consideration since a party should not be allowed to maintain an advantageous position he has gained simply because he was capable of paying the damages. In *Joseph Siro Mosoima vs HFCK* (2008) eKLR, the court observed that damages were not and could not be substituted for the loss, which was occasioned by a clear breach of the law.
16. In this suit, the plaintiff has produced evidence of clearance of the consideration to the sale agreement. The defendant, on the other hand, has termed the said documents forgeries. I think there would be irreparable damage if the plaintiff was disadvantaged by the property changing hands, yet he paid for valuable consideration and took vacant possession.
17. The balance of convenience also tilts in favour of issuing temporary injunctions and inhibitive orders to last for one year. Parties are directed to comply with Order 11 of the *Civil Procedure Rules* and list the matter for hearing on a priority basis.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 12<sup>TH</sup> DAY OF JULY 2023**

**In presence of:**

C.A John Paul

Mwirigi B for Defendant

Miss Soy

**HON. CK NZILI**

**ELC JUDGE**

