



**Muriuki v Njoroge & 3 others (Environment & Land Case
E354 of 2022) [2023] KEELC 18719 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E354 OF 2022**

J OMANGE, J

JULY 6, 2023

BETWEEN

CHARLES MUCHIRI MURIUKI PLAINTIFF

AND

PURITY WAMBUI NJOROGE 1ST DEFENDANT

FELICITY NJERI NJOGU 2ND DEFENDANT

GRACE GERTRUD MILLER 3RD DEFENDANT

REGINA GERTRUD NJOGU 4TH DEFENDANT

RULING

1. The application dated November 14, 2022 is in respect of the properties Dagoretti/kangemis/S149 And Dagoretti/kangemi/S151 hereinafter referred to as the suit property.
2. The application seeks the following orders;
 1. The application be certified urgent and service hereof dispensed with and it be heard in the first instance.
 2. A temporary injunction to issue restraining the defendants whether by themselves, servants, agents and or otherwise from disposing off in or any way interfering with the plaintiff's quiet possession and rights to Dagoretti/Kangemi/S149 and Dagoretti/Kangemi/S.151 pending the hearing and determination of this application.
 3. A temporary injunction to issue restraining the defendants whether by themselves, servants, agents and or otherwise from disposing off in or any way interfering with the plaintiff's quiet possession and rights to Dagoretti/



Kangemi/S149 and Dagoretti/Kangemi/S.151 pending the hearing and determination of this suit.

4. A temporary injunction to issue restraining the defendants whether by themselves, servants, agents and or otherwise from collecting rental income from the plaintiff's 11 rental houses on Dagoretti/Kangemi/S149 and Dagoretti/Kangemi/S/151 pending the hearing and determination of this Application.
 5. A temporary injunction to issue restraining the defendants whether by themselves, servants, agents and or otherwise from collecting rental income from the plaintiff's 11 rental houses on Dagoretti/Kangemi/S149 and Dagoretti/Kangemi/S/151 pending the hearing and determination of this suit.
 6. An order that the plaintiff continues collecting rent from the 11 rental houses on Dagoretti/Kangemi/S149 and Dagoretti/Kangemi/S.151 that he owns and has previously been collecting rent from pending the hearing and determination of this application.
 7. An order that the plaintiff continues collecting rent from the 11 rental houses on Dagoretti/Kangemi/S149 and Dagoretti/Kangemi/S.151 that he owns and has previously been collecting rent from pending the hearing and determination of this suit.
 8. An order be issued that the OCS, Kangemi police station do enforce the order.
 9. Any other relief that this honourable court may deem fit and just to grant.
 10. Costs of the application be provided for.
3. The applicant avers that the 1st, 2nd, and 3rd Defendant/ Respondents are the registered proprietors of the suit properties having inherited them from the late James Evans Njogu who was his brother. He depones that the properties were purchased by his parents who registered the properties in the names of his elder brother father to the first three Defendants. He depones that he has lived on the suit property since 1965 when his parents bought the land. He said that after the demise of his parents he has been collecting rent from the 11 houses on the suit property until the 1st Defendant informed him that he should not collect the rent and sent security guards to harass him. He produced a letter dated June 13, 2022 in which the tenants were informed not to pay rent to him. He contends that the defendants obtained title after filing a succession case in respect of their fathers estate without notifying him.
4. The 1st Defendant Purity Njogu filed a Replying Affidavit in which she deponed that the suit properties belong to the 1st, 2nd and 3rd Defendant who inherited the property from their father Dr. James Njogu. She traced the history of the properties which she said her late father acquired after exchanging his properties Kangemi s145 and S146 with Peter Samuel Muiro Kibinge. She stated that after her father constructed a house on the property he invited his parents together with his brother, the plaintiff herein to reside on the property. She said that her father gave his siblings and parents use of the land to empower them but did not intend to give it to them. Her averments were corroborated by the 4th Defendant who referred the court to an affidavit her late husband had sworn that explained how he came into possession of the properties. She stated that she had been wrongly sued.



5. In a further affidavit the plaintiff stressed again that the property was developed by his parents. He annexed mpesa messages showing that he was being paid rent from the property. He also alleged that the Defendants had tried to change the meter which was in the name of one of the brothers.
6. Both counsels have filed submissions which I have duly considered. The two issues that emerge for the courts determination are; whether a temporary injunction should issue restraining the Defendants from collecting rental income from the suit property pending the hearing and determination of the suit and whether the Plaintiff should continue collecting rent from the suit property.
7. The law on interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the Civil Procedure Rules as follows:

“Where in any suit it is proved by affidavit or otherwise –

- a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

8. The principles for grant of injunction were well settled by the locus classicus of *Giella Vs Cassman Brown & Company Limited* [1973] EA 358, wherein the court stated thus:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

9. In this case, it is common ground that the suit property is registered in the names of the 1st, 2nd and 3rd Defendant. It is equally not in dispute that before the suit property was registered in the names of the three Defendants, it was previously registered in the name of Dr James Njogu, the Defendants father and husband who is also the brother to the plaintiff. The only bone of contention appears to be how the property came to be registered in his name. The plaintiff alleges that the property belonged to his parents who registered it in the name of the late Dr Njogu to enable him borrow loans. On the other hand, the Defendants contend that the property belongs to their father. After his death the property was registered in their name. in a case where a party is challenging a title more so against a registered owner they must meet the test set out in Munyu Maina Versus Hiram Gathiba Maina 2013(EKLR)

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and



free from any encumbrances including any and all interests which need not be noted on the register”.

10. I am cautious not to preempt the evidence that will be given during the full trial. However even at this interlocutory stage it is evident that the 1st, 2nd and 3rd Defendant have gone to great lengths to explain how their father the late Dr James Njogu acquired the suit properties after exchanging his own property. On the other hand, is the plaintiff who states that his mother bought the land and developed it from money she would obtain from women groups. Even at this preliminary stage it is clear to me that the plaintiff has to do more to prove his version of the events. As such I find that he has not established that he has a prima facie case.
11. On the question of damages, a reading of the affidavit of the plaintiff and the defendants point to a convergence on one issue, which is that the plaintiff has been collecting rent from the properties. The plaintiff insists that this is because the land belongs to his father. On the other hand, the Defendants state that their late father in the interest of providing for his parents and siblings did invite them to stay on the property and allowed them to support themselves from the income. They argue that any rent the plaintiff has been collecting has been without consent. It is clear from the pleadings that the issue of the rents has caused acrimony which has been extended to the tenants.
12. The court will only get to the extent to which the plaintiff is entitled to the income if at all once the matter is heard substantively. It is not a clear case in which the court can issue orders that the Plaintiff collect the rent. Given the competing interests with both seeming to have a stake I find that the rents in question should be secured until the case is heard substantively. However, I note that both parties concur that an offer was made by the Defendants to pay the fees for the plaintiff's daughter. I find that this is an offer which this court should readily buttress.
13. I also note that this is a matter that involves a family. The court should as much as possible encourage an amicable settlement. Consequently, the court makes the following orders;
 - a. The rental income from the suit property be deposited in a joint interest earning account pending the hearing and determination of the suit within 30 days from today.
 - b. The fees for the plaintiff's daughter be paid directly from the said account.
 - c. The matter to be mentioned before the Deputy Registrar for appointment of a mediator

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF JULY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

Ms Njuguna for Plaintiff

Mr. Ndolo for Mr. Mwangi for the Defendants

Steve - Court Assistant

