



**Munywoki v Mwangi & 3 others (Environment & Land Case  
E021 of 2023) [2023] KEELC 20446 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20446 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E021 OF 2023  
CA OCHIENG, J  
OCTOBER 5, 2023**

**BETWEEN**

**DANIEL MUOKI MUNYWOKI ..... PLAINTIFF**

**AND**

**PETER MUHIU MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**LUCY WANGARE MUHIU ..... 2<sup>ND</sup> DEFENDANT**

**SYOKIMAU FARM LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before court for determination are the plaintiff's notice of motion applications dated the March 12, 2023 and March 22, 2023 respectively as well as the 1<sup>st</sup> and 2<sup>nd</sup> defendant's notice of motion application dated the March 17, 2023.
2. In the plaintiff's two notice of motion applications which were supported by the affidavit of Daniel Muoki Munywoki, he has sought for orders of interlocutory injunction restraining the defendants or their agents from interfering with LR No 12715/146 IR No 44487 survey plan number 121315 hereinafter referred to as the 'suit land', pending the outcome of this suit. The plaintiff claimed to be the registered proprietor of the suit land and produced a certificate of search to that effect. The 1<sup>st</sup> and 2<sup>nd</sup> defendants opposed the two applications by filing several affidavits and annexing various documents. They produced a certificate of title and aver that they are on the suit land. The 3<sup>rd</sup> defendant through an affidavit sworn by Paul Masila Kimeu claims the suit land which initially belonged to the 3<sup>rd</sup> defendant was transferred to the late Kithuku Mwala who thereafter transferred it to the plaintiff. He only produced minutes and a register of members. I note Kithuku Mwala's son in an affidavit in support of the 1<sup>st</sup> and 2<sup>nd</sup> defendant's notice of motion application denied knowledge of the plaintiff and confirmed having transferred the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Further, the law firm of



messrs Hayanga & Company that did the transfer of suit land confirmed that the said transfer was done to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. They denied undertaking any transfer to the plaintiff.

3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their notice of motion application dated the March 17, 2023 supported by the affidavit sworn by Peter Muhiu Mwangi have also sought for orders of temporary injunction restraining the plaintiff or his agents from interfering with land reference No 12715/146 (IR No 44487) pending the determination of this suit. The plaintiff filed a replying affidavit insisting that he is the registered proprietor of the suit land since April 24, 1990. Further, that he has been paying land rates to Mavoko Municipality and denied that his business partner has been charged at Mavoko Law Courts.
4. The plaintiff together with the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their respective submissions to canvass the three applications.

### **Analysis and Determination**

5. Upon consideration of the plaintiff's notice of motion applications dated the March 12, 2023 and March 22, 2023 as well as the 1<sup>st</sup> and 2<sup>nd</sup> defendant's notice of motion application dated the March 17, 2023, the respective affidavits, annexures including rivalling submissions, the following are the issues for determination: Whether the plaintiff is entitled to orders of interlocutory injunction restraining the defendants from interfering with the suit land pending the outcome of the suit. Whether the 1<sup>st</sup> and 2<sup>nd</sup> defendants are entitled to orders of interlocutory injunction restraining the plaintiff from interfering with the suit land pending the outcome of the suit.

I will deal with both issues jointly.

6. The plaintiff in his submissions reiterated the averments as per the two notice of motion applications including affidavits and contended that he has established a prima facie case to warrant the orders sought as he is the registered proprietor of the suit land which the 1<sup>st</sup> and 2<sup>nd</sup> defendants are interfering with. To support his arguments, he has relied on the following decisions: *Giella v Cassman Brown & Company* (1973) EA 358; *Mrao Ltd v First American Bank of Kenya & 2 others* (2003) KLR 125; *Kenleb Cons Ltd v New Gatitu Service Station Ltd & another* (1990) eKLR and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR.
7. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their submissions also reiterated their averments as per the instant notice of motion application including the respective affidavits and insisted that as registered proprietors of the suit land, they had established a prima facie case to warrant the orders of injunction as sought. They contended that the plaintiffs documents are fake. To support their averments, they relied on the following decisions: *Giella v Cassman Brown & Company* (1973) EA 358; *Mrao Ltd vs First American Bank of Kenya & 2 others* (2003) KLR 125 and *Moses C. Mubia Njoroge & 2 others v Jane W Lesaloi & 5 others* (2014) eKLR.
8. In line with the principles established in the case of *Giella v Cassman Brown & Company* (1973) EA 358 as well as the definition of a *prima facie* case as highlighted in the case of *Mrao Ltd v First American Bank of Kenya & 2 others* (2003) KLR 125, I will proceed to determine whether the plaintiff or 1<sup>st</sup> and 2<sup>nd</sup> defendants have established a *prima facie* case to warrant the orders of interlocutory injunction as sought in the respective applications.
9. The plaintiff claims he is the registered proprietor of the suit land and annexed a certificate of title and copy of search to that effect. He states that he is in possession of the suit land and had been paying rates to the Mavoko Municipal Council. Further, that it is the 1<sup>st</sup> and 2<sup>nd</sup> defendants interfering with his occupation of the suit land. The 1<sup>st</sup> and 2<sup>nd</sup> defendants also claim ownership of the suit land and



contend that the plaintiff including his agents trespassed thereon and commenced putting a wall. They insist they are in occupation thereon. The 1<sup>st</sup> and 2<sup>nd</sup> defendants annexed various documents including a certificate of title; transfer dated April 26, 1999 between Rael Munyiva Kithuku; Boniface Musyoki Kithuku and Peter Muhu Mwangi and Lucy Wangare Muhiu; payment receipt for transfer; certificate of confirmation of grant dated the March 5, 1999 in the estate of Nathan Kithuku Mbithi issued to Rael Munyiva Kithuku and Boniface Musyoki Kithuku wherein the suit land has been distributed to his beneficiaries; and transfer dated the April 23, 1990 between Syokimau Farm Limited and Nathan Kithuku Mbithi I have had a chance to peruse the various annexures herein, noting that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have provided various correspondence challenging the plaintiff's title, I opine that the pertinent issues raised can only be properly dealt with in a substantive hearing where *viva voce* is presented. Justice Tuiyott (as he then was) in the case, In the matter of an application by Saifudeen Abdullabhai & 4 others for leave to apply for judicial review and for orders of *certiorari* and prohibition (2013) eKLR, stated that:

“...then turn to the nature of orders made by the tribunal. I accept that the Court of Appeal has repeatedly stated that the tribunal has no jurisdiction to issue an injunction. This court is, however, of the view that the tribunal has jurisdiction to make an order to preserve the status quo of a matter before it pending the hearing and determination of a reference or complaint made to it. I fully endorse the exposition of Murithi J in *Baobab Beach Resort (Mombasa) Ltd* (supra) when he said,

“In my view, an order to status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is an substantive equitable remedy granted upon establishment of right, or at interlocutory stage, a *prima facie* case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or *prima facie* case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo. I find that the Tribunal has among the orders that it may make on a complaint under section 12(4) of the Landlord and Tenant Act an order for status quo to hold the situation in the controlled tenancy until the determination of the proceedings filed thereon.”

10. Based on the facts before me while associating myself with the aforementioned decisions, it is my considered view that since the plaintiff including the 1<sup>st</sup> and 2<sup>nd</sup> defendants claim ownership of the suit land, it would suffice if the suit land was preserved pending the outcome of this suit. At this juncture, I opine that orders of status quo would be the best remedy.
11. In the circumstances, I find the plaintiff's notice of motion applications dated the March 12, 2023 and March 22, 2023 as well as the 1<sup>st</sup> and 2<sup>nd</sup> defendant's notice of motion application dated the March 17, 2023 compromised. I will proceed to make the following final orders:
  - a. The obtaining status quo be maintained where no one should interfere with the suit land nor develop it, pending the determination of this suit.



b. Costs of the three (3) applications be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 5<sup>TH</sup> DAY OF  
OCTOBER, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

