



**Oseko (Suing as a Personal Representative of Joseph Oseko Momanyi or Momanyi Oseko) v Momanyi & 3 others; Momanyi (Interested Party) (Environment & Land Case E004 of 2023) [2023] KEELC 20629 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20629 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E004 OF 2023  
JM KAMAU, J  
OCTOBER 12, 2023**

**BETWEEN**

**ROBERT KEBASO OSEKO (SUING AS A PERSONAL REPRESENTATIVE OF JOSEPH OSEKO MOMANYI OR MOMANYI OSEKO) ..... PLAINTIFF**

**AND**

**THE ESTATE OF BENSON NYASIMI MOMANYI ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, NYAMIRA COUNTY LAND  
REGISTRY ..... 2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**KINENI FARMERS CO-OPERATIVE SOCIETY ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**ERICK AGWATA MOMANYI ..... INTERESTED PARTY**

**RULING**

1. In this Petition dated 27/10/2020, the Petitioner moved the court for:-
  - i Abstract of entries made in the proprietary entries for Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County.
  - ii Two (2) certified copies of Green Card for Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County.



- iii. Copies of any certificates of the Land Control Board tendered in support of any transfer/encumbrance/transaction thereto for Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County.
  - iv. Any other document and/or information pertaining Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County noted in the register.
2. The Petition was made under Articles 10,12,21,22,23,35 &47 of *the Constitution* of Kenya, 2010 on the ground that the Respondents and particularly the 1<sup>st</sup> Respondent is the custodian of and in possession of Title documents in respect of parcel No. 67 Kineni-isoge Settlement Scheme within Nyamira County which is registered in the name of Momanyi Oseko and which the Petitioner requires in order to protect, enforce and/or pursue the beneficiaries' hereditary rights over the Estate. The Petitioner is one of the beneficiaries of the Estate of the said Momanyi Oseko. Once the information was provided, the Petitioner filed Civil Suit No. E004 of 2023 for orders that: -
- a. A holding and finding that Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County was fraudulently registered in the name of Benson Nyasimi Momanyi by the Defendants.
  - b. An order does not issue cancelling the purported registration of Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County registered in the name of late Benson Nyasimi Momanyi.
  - c. An order does issue directing the 2<sup>nd</sup> Defendant to register Parcel Title No. 67 in Kineni-isoge Settlement Scheme approximately 40 hectares located in Nyamira County in the name of the Plaintiff herein to hold it in trust for the estate of Momanyi Oseko or Josephat Oseko Momanyi.
  - d. An order does issue that the Director of Criminal Investigation directing him to carry out investigation and the land fraud herein and take the appropriate actions thereafter.
  - e. An Eviction Order does issue to remove of intruders scouting on the suit property.
  - f. Cost of suit and interest.
  - g. Any other order that the Honourable Court may deem fit and just to grant.
3. Claiming that Parcel No. 67 Kineni-isoge Settlement Scheme was bought by the late Momanyi Oseko or Josephat Oseko Momanyi in 1967, while he was working as a teacher, which was then registered in the name of Benson Nyasimi Momanyi, also deceased, and who had no relationship with the late Oseko Momanyi and the Plaintiff believes that the same was fraudulently transferred in the name of the said Benson Nyasimi. Contemporaneously with the Plaintiff, a Notice of Motion dated 30/03/2023 was filed seeking that this court orders that: -
- i. That the instant Application and Plaintiff be certified urgent and heard inter-partes on a priority basis.
  - ii. That pending hearing and determination of this Application/suit, this Honourable Court be pleased to grant a Conservatory Orders maintaining the status quo of the parcel Title No. 67 Kineni-isoge Settlement Scheme within Nyamira County currently registered in the names of Momanyi Oseko or Josephat Oseko Momanyi.



- iii. That in the interim and pending hearing and determination of this Application/suit the Honourable Court be pleased to issue an Interim Injunction restraining the Defendants/ Respondents, their agents, employees, representatives or people working under instructions from selling, leasing, charging, transferring, alienating or in any manner transacting with Parcel Title No. 67 Kineni-isoge Settlement Scheme within Nyamira County.
  - iv. That cost of this Application and interest be provided for.
  - v. Any other order that this court may deem fit for the disposition of this suit.
4. The same was grounded on the Supporting Affidavit sworn on 30/03/2023 by the Plaintiff herein deponing the same averments as are in the Plaint above.
  5. The said Application was opposed by the 1<sup>st</sup> to 4<sup>th</sup> Defendants (inclusive) on the ground that the Plaintiff is not the Administrator of the Estate of Momanyi Oseko and that the Plaintiff had filed the following suits in various courts: -
    - a. Succession Cause No. E900 of 2020 in Nairobi High Court
    - b. ELC PET. NO. E004 of 2022 in Nyamira ELC Court
    - c. CMCC NO. E5211 of 2020 in Nairobi
    - d. HCC Appeal NO. E176 of 2021 in Nairobi
  6. Erick Agwata Momanyi, the interested party whose relationship to the parties herein has not been given by either party, swore an Affidavit on 31/05/2023 claiming that the Applicant is a vexatious litigant, and that the late Josephat Oseko was son to the late Momanyi Oseko and that the Plaintiff is not a beneficiary of either of them and that he was born in 1987 long after 1967 when the land was acquired.
  7. I invited the parties to put in written Submissions before retiring to write this Ruling.
  8. After considering the Application and submissions of counsel, I wish to warn myself that we are at an interlocutory stage in this matter, and that any observations made at this stage ought to be made with an eye on that background. Further, this matter cannot possibly be tried by affidavit evidence. The matter should therefore go for full trial. But before it is tried, one question that must be answered is whether the Plaintiff/Applicant is entitled to the interlocutory injunctive orders sought, pending the Hearing and final determination of the suit.
  9. The principles governing the granting of temporary injunctions are well summarized then well elaborated in *Giella v Cassman Brown & Co. Ltd.* [1973] EA 358, where Spry, V.P. of the then Court of Appeal for East Africa said –

“The conditions for the grant of an interlocutory injunction are now well settled in East Africa. 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.”



10. In *Mobile Kitale Service Station v Mobil Oil Kenya Limited & Another* (2004) eKLR the Hon. Justice Warsame held: -

“An interlocutory injunction is given on the court’s understanding that the defendant is trampling on the rights of the plaintiff.

11. It is clear that the 4<sup>th</sup> Respondent is a society that inter alia has land and which land was purchased through monies contributed by her members. This must have been hard earned monies by ordinary peasant farmers who denied themselves a lot so that one day they would secure a piece of land they would call a home. The Estate of the Plaintiff is one such member. If it is found that he was a member of the aforesaid society and that he was entitled to the suit land, his spirit would only be appeased if his Dependants would get what he had worked for and what he made painful sacrifices to bequeath them. Any refund of money or monetary compensation would not appease his spirit, so to speak. In any case today land is scarce as compared to the time the Deceased joined the society and even if the Estate were to be adequately compensated the availability of such land would not be so obvious. Not even in any other locality.

12. Therefore, I find that the 2<sup>nd</sup> principle is more crucial here. That the Applicant might suffer irreparable injury, which would not be adequately compensated in monetary terms.

13. I therefore order that pending the Hearing and final disposal of this suit, an injunction be and is hereby issued restraining the Defendants and/or anybody deriving Title from the Defendants from selling, leasing, transferring, alienating, disposing of or in any other manner transacting with the land parcel number 67 Keneni Isoge Settlement Scheme or any part thereof.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 12TH DAY OF OCTOBER 2023.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Sibota

Plaintiff: N/A

Defendants: Mr. Nderitu for 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

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