



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rayit & 2 others v Rayit (Environment & Land Case E159 of 2023)  
[2023] KEELC 20517 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E159 OF 2023  
EK WABWOTO, J  
OCTOBER 5, 2023**

**BETWEEN**

**AVTAR SINGH RAYIT ..... 1<sup>ST</sup> PLAINTIFF**

**KAMALJIT SINGH RAYIT ..... 2<sup>ND</sup> PLAINTIFF**

**KULWANT SINGH RAYIT ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**RAJINDER SINGH RAYIT ..... DEFENDANT**

**RULING**

1. This ruling is in respect to the plaintiffs' application dated May 9, 2023. The plaintiffs' application was accompanied by a supporting affidavit sworn by Avtar Singh Rayit on the even date. The plaintiffs sought the following orders:
  - i. ...spent.
  - ii. That this honourable court be pleased to issue a temporary injunctive order restraining the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this application.
  - iii. That this honourable court be pleased to issue a temporary injunctive order restraining the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this suit.



- iv. That this honourable court be pleased to issue an eviction order against the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him for plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this application.
  - v. That this honourable court be pleased to issue an eviction order against the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him for plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this suit.
  - vi. That the honourable court do order the respondent to forthwith deliver up the title of the property known as plot number LR 1870/IX/59 Muthithi Road to the 3<sup>rd</sup> applicant.
  - vii. That this honourable court be pleased to issue a permanent injunctive order restraining the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this application.
  - viii. That this honourable court be pleased to issue a permanent injunctive order restraining the respondent his servants, agents, employees, heirs and dependants or any other person claiming through him from entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this suit.
  - ix. That the OCS Parklands Police Station be ordered to provide security and assistance during the enforcement of the orders above.
  - x. Any other orders that this honourable court may deem fit to grant.
2. The application was made on the grounds that:
- i. The respondent who is one of the administrator of the estate of the late Tarsem Singh Rayit is illegally trespassing on plot number LR 1870/IX/59 Muthithi Road which rightfully belongs to his mother, the 3<sup>rd</sup> applicant.
  - ii. The 3<sup>rd</sup> applicant who is quite elderly is the absolute beneficiary of the property.
  - iii. The respondent is infringing on the 3<sup>rd</sup> applicant's right to property as he is illegally residing, has authorized various entities to run their businesses in the property and is causing damage and disturbances in the property.
  - iv. The 3<sup>rd</sup> applicant efforts to evict the respondent from the property have been futile hence this instant application.
  - v. The 3<sup>rd</sup> applicant wishes to exercise her authority as per the mediated agreement dated July 17, 2017 in seeking that the respondent or his servants, agents, employees, heirs and dependants or any other person claiming through him vacate the property.
3. The application was opposed by the respondent who filed a replying affidavit dated May 23, 2023 and written submissions dated June 19, 2023, in which it was submitted that the suit property was registered in joint names of Pritam Singh and the late Tarsem Singh, the respondent's grandfather and father. It was also submitted that since 1984 the respondent was residing on the premise and was the only family member who remained in the country residing on the premise with his family while other



family members had relocated. It was also submitted that there was an ongoing suit succession cause No 204 of 2007 and as such the 3<sup>rd</sup> applicant, as a beneficiary of the estate should hold on realizing any proprietary interest.

4. The applicants filed written submissions dated July 17, 2023 in which it was submitted that the 1<sup>st</sup>, 2<sup>nd</sup> applicant and the respondent herein are co-administrators in the estate of the late Tarsem Singh and also biological sons to the 3<sup>rd</sup> applicant. It was also submitted that pursuant to the mediation agreement, the 3<sup>rd</sup> applicant issued an authorization to the 1<sup>st</sup> and 2<sup>nd</sup> applicants to evict the respondent from her property which resulted in a physical fight that was reported at Parklands Police Station and an OB was issued. It was argued that the respondent has been running businesses on the premise thus subjecting it to noise pollution and damage to the property. These actions amount to irreparable injury and harm to the 3<sup>rd</sup> applicant. relying on article 40 of the [Constitution](#) and section 152A and 152E of [Land Act](#) it was argued that the 3<sup>rd</sup> applicant's right to ownership should be protected by the court.
5. I have considered the application, the rival affidavits and written submissions filed. In my view, the main issue for determination is whether the applicants/plaintiffs have met the threshold to be granted the orders sought as prayed.
6. The applicants at this stage have sought inter alia an order for mandatory injunction. On the issue of granting a mandatory injunction during interlocutory proceedings, the court must reiterate the high bar that has been set when considering an application for mandatory injunction. An applicant seeking a mandatory injunction must establish the existence of special circumstances. The case of [Locabail International Finance Limited v Agro-Export](#) (1988) 1 All ER 901, outlines general principles which the court applies when determining applications for interlocutory mandatory injunction as follows:

“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 thinks 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 has attempted to steal a march on the plaintiffs. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.”[emphasis mine]
7. This position was echoed by the Court of Appeal in the case of [Nation Media Group & 2 others v John Harun Mwau](#) [2014] eKLR,:

“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.”[emphasis mine]
8. In this instance, the applicants avers that the special circumstances are that the case of how the estate was to be handled was very clear and ought to be handled at once. It is the applicants' position that the respondent as an administrator was obligated to transfer properties to the 3<sup>rd</sup> applicant as the sole beneficiary of the deceased's estate. First, I have considered that neither the will, mediation agreement and consent order of the court granted on February 22, 2022 are contested. In essence, the dispute stems from the current possession of the premise and consequent distribution of the late Tarsem Singh's estate. The granting of mandatory injunction orders at this stage would essentially determine



the issue in finality. It is this court's core mandate to ensure parties fairly ventilate their claims and as such refrain from granting any of the mandatory orders sought at the interlocutory proceedings.

9. With regards to the *mandamus* orders sought, it is my opinion that the issue of possession of the title should be dealt with exhaustively at trial and this court will also refrain from granting such orders.
10. With respect to the issue of granting of temporary injunctive orders, I have primarily considered the balance of convenience and consequent competing rights of the parties. On one hand, the respondent claims to be currently residing with his family on the suit property. On the other hand, the applicants have claimed the 3<sup>rd</sup> applicant's interests in the premise and their attempts to follow through with the eviction processes as stipulated in law. At this interlocutory stage, it would be most prudent to see that the premise is preserved in its current state and protected from further degradation or change in its nature. In the specific context of such applications before this court, one should also bear in mind paragraph 32 of Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to The Environment and The Use and Occupation of, and Title to Land and Proceedings in other courts (gazette notice No 5178 of 2014) which provides:

During the *inter-partes* hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.

11. In view of the foregoing, the court makes the following orders:
  - i. An order of status quo is hereby issued restraining all parties from further interfering in any manner with respect to all that parcel of land known as plot number LR 1870/IX/59 Muthithi Road pending the hearing and determination of this suit.
  - ii. Costs to abide the outcome of the main suit.
12. It is so ordered.

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

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Muriuki for the Applicants.

Mr. Koech for the Respondent.

