



**Wanyoike & 2 others v Wainaina & 5 others (Environment & Land Case
321 of 2017) [2023] KEELC 20719 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 321 OF 2017**

BM EBOSO, J

OCTOBER 3, 2023

BETWEEN

JACINTA NJERI WANYOIKE 1ST PLAINTIFF

DANIEL WANYOIKE NGUGI 2ND PLAINTIFF

TERESIAH WANJIKU WAINAINA 3RD PLAINTIFF

AND

TERESIAH WANJIKU WAINAINA 1ST DEFENDANT

JACINTA NJERI WANYOIKE 2ND DEFENDANT

DANIEL WANYOIKE NGUGI 3RD DEFENDANT

BUSHLINE PROPERTIES COMPANY LIMITED 4TH DEFENDANT

LAND REGISTRAR, RUIRU DISTRICT 5TH DEFENDANT

THE HON ATTORNEY GENERAL 6TH DEFENDANT

RULING

1. The dispute in this suit revolves around the question of ownership of what previously existed as land parcel number Ruiru/Ruiru East Block 2/5004. The 1st plaintiff in the primary claim contends that the land lawfully belonged to her and that she conveyed it to her husband (the 2nd plaintiff in the primary claim). The 2nd plaintiff in turn subdivided the land into 14 subdivisions, namely, Ruiru/Ruiru East Block 2/41456 to 41469.
2. The defendant in the primary claim brought a counterclaim and is waving a title relating to the original parcel. She contends that she is the lawful proprietor of the land. From the evidence tendered at this interlocutory stage, it does emerge that the Directorate of Criminal Investigations [the DCI] is seized of the issue of the parallel titles and has arraigned Teresia Wanjiku Wainaina [the defendant in the primary



claim] in court where she is facing various criminal charges relating to various titles she holds in relation to various parcels in the subdivision scheme.

3. The subdivision scheme was owned by Nyakinyua Investments Limited. A look at the witness statement attributed to the Chairlady of Nyakinyua Investments Limited reveals that the title which the land buying company recognizes as bonafide is the one issued to Jacinta Njeri Wanyoike (the 1st Plaintiff).
4. Through the plaintiffs' amended plaint dated 5/12/2022 and the defendant's amended defence and counter claim dated 7/11/2022, the two plaintiffs on one part and the defendant on the other part, claim ownership of the suit land and seek declaratory and injunctive orders relating to the land. The main suit is scheduled for hearing on 12/10/2023.
5. Through a notice of motion dated 20/7/2022, the defendant sought various interlocutory orders. The first and second prayers in the application are now spent. The third and fourth prayers were compromised on 31/10/2022. What remains to be determined in the application is the plea for a temporary injunction restraining the plaintiffs against dealing with the 14 subdivision titles and the land itself, pending the hearing and determination of this suit. That aspect of the application dated 20/7/2022 is the subject of this ruling.
6. The application is supported by the defendant's affidavit sworn on 20/7/2022. It was canvassed through written submissions dated 17/2/2023, filed by M/s Kipkenda & Company Advocates. The case of the defendant is that despite the pendency of this suit, the 1st plaintiff transferred the suit property to the 2nd plaintiff on 25/1/2022 and the 2nd plaintiff caused the land to be subdivided into 14 plots. She contends that the two plaintiffs are soliciting for purchasers and that unless the land is preserved, she will stand to lose it. She urges the court to grant the injunctive order.
7. The plaintiffs oppose the application through a replying affidavit sworn on 10/10/2022 by Jacinta Njeri Wanyoike. Their case is that Jacinta Njeri Wanyoike was the legitimate allottee and the first registered proprietor of the suit property prior to conveying the land to her husband [Daniel Wanyoike Ngugi]. They add that she acquired the land through shareholder-balloting in Nyakinyua Investments Limited and the said land buying company conveyed the land to her. It is the case of the plaintiffs that the title documents which the defendant is waving are fraudulent, adding that the said documents have been investigated by the DCI and the DCI has established that the documents are fraudulent and has arraigned the defendant in court to face criminal charges. They urge the court to decline the defendant's plea for interlocutory injunctive reliefs.
8. I have considered the application, the response to the application and the parties' rival submissions. As observed earlier in this ruling, the only outstanding aspect of the application dated 20/7/2022 is the plea for interlocutory injunctive relief. Consequently, the single question to be determined in this ruling is whether the applicant has satisfied the criteria for grant of the relief of interlocutory injunction.
9. The prevailing criteria was outlined by the Court of Appeal for East African in the case of *Giella v Cassman Brown Co. Ltd* [1973] E.A. 358. First an applicant is expected to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate that if the interlocutory injunctive relief is not granted, he would stand to suffer irreparable injury for which an award of damages may not be adequate. Thirdly, should the court have doubts on either or both of the above, the application is to be determined based on the balance of convenience. Lastly, at the stage of disposing the application for interlocutory injunctive relief, the court does not make definitive or conclusive findings or pronouncements on the key issues in the dispute.



10. In the application under consideration, the defendant is waving a title that she alleges was conveyed to her by Nyakinyua Investments Limited. In the witness statement which forms part of the plaintiffs' evidence on record, the said land buying company has disowned the applicant's title and contends that the legitimate title is the one issued to the 1st plaintiff. From the record, the said title was conveyed to the 2nd plaintiff by the 1st plaintiff.
11. There is also evidence indicating that the Directorate of Criminal Investigations has been seized of the parallel titles and has investigated the titles and has come to the conclusion that the title held by the applicant is fraudulent. On their part, the plaintiffs have exhibited land ownership documents which they attribute to the land buying company. The question as to who is the bonafide proprietor of the suit land will be answered conclusively after the rival title documents and evidence have been subjected to the rigours of trial. What I can say at this point, without being conclusive, is that given the evidence tendered at this interlocutory stage, the court has doubts as to whether the applicant can be said to have demonstrated a prima facie case with a probability of success.
12. There is, however, evidence that the original suit land was transferred to the 2nd plaintiff and has been subdivided into 14 plots. There is therefore a probability that the 14 plots may be disposed to third parties while the court is adjudicating the question of ownership.
13. The unique place that land occupies in the socio-economic lives of the people of Kenya cannot be gainsaid. Damages are hardly an adequate remedy in disputes relating to alleged parallel titles.
14. For the above reasons, the court takes the view that this application is one that should be disposed based on the balance of convenience. The balance of convenience, in the circumstances of this suit, favours the preservation of the land registers relating to the 14 subdivisions and the suit land itself. The balance of convenience does not, however, favour the restraining of the plaintiffs from occupying, accessing or having possession of the suit land as demanded in the application under consideration.
15. In reaching this view, the court has taken into account the fact that this suit is scheduled for substantive hearing on 12/10/2023 which is 8 days away.
16. In the end, the notice of motion dated 20/7/2022 is disposed in the following terms.
 - a. Pending the hearing and determination of this suit, the land register relating to land parcel number Ruiru/Ruiru East Block 2/5004 and the 14 subdivision registers resulting therefrom, namely, Ruiru/Ruiru East Block 2/41456 to 41469 are hereby preserved, in that, no entries other than this order, shall be registered in the said registers.
 - b. The actual land is similarly preserved, in that, no further construction shall take place on the land. The plaintiffs in the primary suit shall, however, continue to have possession of the land.
 - c. Unless extended by this court, the above preservatory orders shall lapse after six months.
 - d. Parties are directed to prepare and be ready for trial on 12/10/2023.
 - e. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 3RD DAY OF OCTOBER 2023

B M EBOSO

JUDGE

In the presence of: -



Mr Kinyanjui for the Plaintiffs in the primary suit

