



**Githinji v Gitahi (Environment & Land Case 6 of 2022)  
[2023] KEELC 21206 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21206 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 6 OF 2022**

**JO OLOLA, J**

**NOVEMBER 2, 2023**

**BETWEEN**

**PETER MURIITHI GITHINJI ..... PLAINTIFF**

**AND**

**LIVINGSTONE GITUKU GITAHI ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 26<sup>th</sup> April 2022, Peter Muriithi Githinji (the Plaintiff) prays for a temporary order of injunction to issue restraining the Defendant from alienating, transferring, selling, leasing, charging, developing, constructing on, trespassing on, entering upon or in any manner whatsoever dealing and/or interfering with the Plaintiff's possession of the parcel of land known as Gakawa/Githima Block 1/Burguret/103 pending the hearing and determination of this suit.
2. The application is supported by an Affidavit sworn by the Plaintiff and is premised on the grounds that:
  - (a) The Plaintiff is the owner of the suit property having been in occupation thereof since the year 1990;
  - (b) The Defendant has without any colour of right demanded that the Plaintiff and other persons who have been allowed to cultivate the suit premises measuring approximately 5 acres or thereabouts to vacate the same on the basis that he is the registered owner thereof since the year 1988;
  - (c) The Defendant's right over the suit property (if any) has since been extinguished by the Plaintiff's right of adverse possession, the Plaintiff having been in occupation for over 32 years;
  - (d) The Defendant having obtained title to the suit property is likely to alienate the same to unsuspecting third Parties and thereby subject the plaintiff to loss and damage; and



- (e) It is thus in the interest of justice that the suit property be preserved by the grant of the interim injunctive reliefs sought so that the same is preserved pending the determination of the suit.
3. Livingstone Gituku Gitahi (the Defendant) is opposed to the application. In his Replying Affidavit sworn on 31<sup>st</sup> May 2022, the Defendant asserts that the orders sought for are incapable of being issued against himself as being the registered proprietor of the suit land he cannot be barred from entering and utilizing the same.
  4. The Defendant avers that the orders sought in the application are merely meant to legalize the illegal acts of the Plaintiff and his agents of entering into the suit land without permission on 9<sup>th</sup> December, 2021. The Defendant avers that his rights over the land have not been extinguished as stated as the Plaintiff only entered the land on 9<sup>th</sup> December, 2021. He asserts that he acquired his title on 24<sup>th</sup> November, 1988 and that if he had intended to sell the land he would have done so by now.
  5. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the Defendant. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the Parties herein.
  6. By this application, the Plaintiff prays for an order of temporary injunction to issue restraining the Defendant from selling, alienating, transferring or dealing in any manner whatsoever with the parcel of land known as Gakawa/Githima/Block 1/Burguret/103 (the suit property) pending the hearing and determination of this suit.
  7. As to the circumstances warranting a grant of an order of injunction, order 40 rule 1 of the Civil Procedure Rules, 2010, provides as follows:

- “ 1. Where in any suit it is proved by affidavit or otherwise –
- (a) That any property in dispute 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 the 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. As was stated in the celebrated case of *Giella -vs- Cassman Brown & Company Limited* (1973) EA 358:

“ The conditions for the grant of an interlocutory injunction are now, I think, 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 be normally 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. That being the case, the first issue for consideration by the Court is whether or not the Plaintiff has made out a prima facie case with a probability of success. As the Court of Appeal observed in *Mrao Limited -vs- First American Bank of Kenya Limited & 2 others* (2003) KLR 125:

“... a prima facie case in a civil application includes but is not confined to a “genuine and arguable case”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
10. In the matter before the Court, the Plaintiff asserts that he has been in occupation of the suit property since the year 1990 when the same, was bequeathed to him by his mother the late Teresa Wambui Githinji. It is the Plaintiff's case that his said mother had purchased the suit land from a land buying company known as Burguret Arimi Limited and that she was thereafter issued with a clearance certificate dated 18<sup>th</sup> June, 1988. It is further the Plaintiff's case that the original area list prepared by the company had indicated that his mother was the original owner of Plot No. 103 – Gakawa/Githima.
11. According to the Plaintiff, he had enjoyed quiet possession and occupation of the land until sometime in the year 2021 when the Defendant appeared and started giving ultimatums to various people he had allowed to cultivate the land to harvest their crops as the Defendant claimed he was intent on taking over this land on the basis that it is registered in his name.
12. On his part, the Defendant asserts that he is the registered proprietor of the suit property having been issued with a title therefore on 24<sup>th</sup> November, 1988. Just like the Plaintiff, the Defendant asserts that he purchased the suit property from the same Burguret Arimi Limited.
13. According to the Defendant, the Plaintiff did not stay on the land as claimed. It is his case that the Plaintiff invaded the land with several agents and built a temporary iron sheet structure thereon on 9<sup>th</sup> December, 2021. He accused the Plaintiff of dubiously obtaining a clearance certificate in the name of his mother from the company after the company had transferred the land to himself.
14. I have looked at the averments by the Parties as well as the material placed before the Court. It was interesting to note that in laying claim to the property, the Defendant relies on documents which are in the name of the Plaintiff's mother the said Teresa Wambui Githinji. In particular, the Defendant relies on a letter dated 17<sup>th</sup> September, 1987 authored by an entity known as Burguret Arimi Probe Committee giving the members of the company notice to pay survey fees for the land. The said letter is addressed not to the Defendant but to Teresa Wambui Githinji.
15. Similarly, the Defendant relies on an original list of members of what is referred to as Gakawa/Gathima Block 1 (Burguret) Nyeri. The typed document indicates that it was Teresa Wambui Githinji aforesaid who was ear marked for Plot No. 103 (the suit property). There is however a cancellation made by pen and the name of the Defendant inserted thereon with an accompanying “tick” sign. That appears to corroborate the Plaintiff's claim that his mother had cleared her payments and was in the original list of the landowners.
16. At Paragraph 17 of the replying affidavit, the defendant avers that he did explain to the Githima Area Chief as well as the Plaintiff the process through which the land was transferred to himself by the company and that the Chief and the Plaintiff ignored him. He has not given that explanation in his pleadings herein and this Court is left in doubt as to the process through which he acquired the titles that is being challenged by the Plaintiff the same having been apparently registered in the name of the Plaintiff's mother at some point in time.



17. Arising from the foregoing and given the Defendant's concession that the Plaintiff has been on the land at least since the year 2021, I am persuaded that the balance of convenience tilts in favour of the Plaintiff who stands to be evicted from the land if the orders sought herein are not granted.
18. In the premises, I find merit in the Plaintiff's Motion dated 26<sup>th</sup> April 2022 and I allow the same in terms of Prayer No. 3 thereof.
19. The costs of the application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI  
THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2023.**

In the presence of:

Ms Kinia holding brief for Njenga for the Plaintiff

Mr. Muchiri wa Gathoni for the Defendant

Court assistant - Kendi

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**J. O. Olola**

**JUDGE**

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