



**Mburugu alias Daniel M'Mburugu M'Mugwiria v Buuri Investment Limited & another (Environment & Land Case E002 of 2023) [2023] KEELC 21188 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21188 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE E002 OF 2023  
JO OLOLA, J  
NOVEMBER 2, 2023**

**BETWEEN**

**DANIEL MBURUGU ALIAS DANIEL M'MBURUGU  
M'MUGWIRIA ..... PLAINTIFF**

**AND**

**BUURI INVESTMENT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL MACHARIA NJARARA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion herein dated 21<sup>st</sup> January 2023, Daniel Mburugu alias Daniel M'Mburugu M'Mugwiria (the Plaintiff) prays for orders:
  1. ...
  2. ...
  3. That this Honourable Court be pleased to grant an order of temporary injunction restraining the Defendants/ Respondents by themselves, their agents, employees, assigns and/or servants and/or any person acting on their behalf from evicting or interfering with the Applicant's quiet user and occupation of 42 acres being part of parcel Land Reference No. 9831/14 Certificate of Title No. I.R 67392 pending the hearing and determination of this suit;
  4. ...
  5. That this Honourable Court be pleased to grant an order of inhibition against the registration of any dealings with the proprietorship interest in parcel Land



Reference No. 9831/14 Certificate of Title No. I.R 67392 pending the hearing and determination of this suit; and

6. That the costs of this application be borne by the Defendant/Respondent.
2. The application which is supported by an Affidavit sworn by the Plaintiff is premised on the grounds inter-alia:
  - (a) That the Plaintiff is about to be evicted from the 42 acres by the Defendants effectively rendering the suit nugatory;
  - (b) That the Plaintiff has been in exclusive, open and uninterrupted occupation of 42 acres of the suit property since the year 1995 and hence developed a beneficial interest thereto under the doctrine of adverse possession;
  - (c) That any interference with his possession shall occasion him irreparable loss and damage as this has been his home with his family for over 27 years;
  - (d) That the Plaintiff has made developments on the suit land; and
  - (e) That it is only fair, just and equitable to preserve the suit land to enable the Plaintiff to ventilate his cause.
3. The application is opposed. By a Replying Affidavit sworn by Michael Macharia Njarara (the 2<sup>nd</sup> Defendant) on his own behalf and as a director of Buuri Investment Limited (the 1<sup>st</sup> Defendant) filed on 7<sup>th</sup> February 2023, the Defendants aver that the 2<sup>nd</sup> Defendant is non-suited as he is not the registered owner of the land indicated as L.R No. 9831/14.
4. The Defendants aver that the suit herein has been filed for the sole purpose of circumventing a valid judgment of the Court vide Nanyuki Criminal Case No. 1929 of 2017 while the Plaintiff herein is an adjudged forcible detainer of the portion now claimed. The 2<sup>nd</sup> Defendant states that the plaintiff herein in collusion with one Jeremiah Muthomi who is his co-director at the 1<sup>st</sup> Defendant had attempted to cheat the 1<sup>st</sup> Defendant of land in the year 2012.
5. The 2<sup>nd</sup> Defendant avers that he did discover that the Plaintiff and his co-director had in fact signed sub-division schemes where the Plaintiff had purported to be a director of the 1<sup>st</sup> Defendant and had been earmarked for 42 acres of land. The 2<sup>nd</sup> Defendant filed ELC Case No. 686 of 2014 wherein he sought the sub-division of the company property on a prorata basis.
6. The 2<sup>nd</sup> Defendant asserts that this suit is meant to propagate an illegal and unlawful occupation and annexation of land after the Plaintiff was found guilty of the offence of forcible detainer.
7. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the 2<sup>nd</sup> Defendant. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the Parties.
8. By the application before the Court, the Plaintiff prays for an order of injunctions restraining the two Defendants from evicting him and/or interfering with his quiet user and occupation of some 42 acres of land being part of the parcel of land known as L.R No. 9831/14 pending the hearing and determination of this suit. In addition, the Plaintiff craves an order of inhibition barring the registration of any dealings as regards his proprietorship interest in the suit property.
9. It is the Plaintiff's case that he has been in exclusive, open and uninterrupted occupation of the said 42 acres since the year 1995 and that he has since extensively developed the same and acquired beneficial



interest thereto under the doctrine of adverse possession. He accuses the Defendants of being intent on evicting him from the said portion of land and asserts that such an act would occasion him irreparable loss and damage and that it is hence only fair and just that the suit land be preserved pending the determination of his case.

10. As the Court of Appeal stated in *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* CA No. 77 of 2012 (2014) eKLR:

“... in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to: (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted and (c) allay any doubts as to b, by showing that the balance of convenience is in his favour.”

11. In the matter herein, the Plaintiff asserts that he has been on the suit property since the year 1995 and that he has carried out extensive developments including the building of his home which he states he has lived on with his family ever since. He has annexed photographs of the permanent home built on the land together with those of other structures.
12. It is notable that while he denies that the Plaintiff has been on the land since 1995, the 2<sup>nd</sup> Defendant himself acknowledges at Paragraph 18 of his Replying Affidavit that the Plaintiff has been in occupation of that portion of the land since the year 2012. I did not hear the 2<sup>nd</sup> Defendant deny that the Plaintiff has built a home on the disputed portion of the land.
13. As it were, the circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the *Civil Procedure Rules* is the existence of proof that a property in dispute is in danger of being wasted, damaged or alienated by any Party to the suit or that the Defendant threatens or intends to remove or dispose the property before a determination is made by the Court on the issues in dispute.
14. In the circumstances herein I am persuaded that unless temporary orders of injunction are issued herein, there is every possibility that the Plaintiff may be evicted from, and, the suit property wasted before a determination is made as to the rightful ownership of the 42 acres portion of land in dispute herein.
15. Accordingly I hereby allow the plaintiff's application in terms of prayers nos. 3 and 5 of the motion dated 21<sup>st</sup> January, 2023.
16. 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:**

Mr. Muia Mwanzia for the Applicants

Ms. Miriti for the Respondents

Court assistant - Kendi

**J. O. OLOLA**

**JUDGE**

