



REPUBLIC OF KENYA



**Njogu v Muriithi & 2 others (Environment & Land Case E005 of 2023)
[2023] KEELC 21444 (KLR) (10 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E005 OF 2023**

**JO OLOLA, J
NOVEMBER 10, 2023**

BETWEEN

ANN MWIHAKI NJOGU APPLICANT

AND

MARY WANJIRU MURIITHI 1ST RESPONDENT

AGNES NJERI MURIITHI 2ND RESPONDENT

GEORGE NGARI KAMONDO 3RD RESPONDENT

RULING

1. By the Notice of Motion dated 6th February 2023, Ann Mwihaki Njogu (the Applicant) prays for a temporary order of injunction to issue restraining the three (3) Respondents from evicting her, entering, alienating, managing or otherwise interfering with her use and occupation of the parcel of land known as Konyu/Baricho/3989 pending the hearing and determination of this suit.
2. The application is supported by an Affidavit sworn by the Applicant and is premised on the grounds:-
 - (a) That at all material times, the Applicant has been in occupation of the suit property; and
 - (b) That the Respondents have on diverse dates threatened to evict the Applicant from the suit property thereby denying her full enjoyment thereof and thus causing her psychological torture.
3. Mary Wanjiru Muriithi, Agnes Njeri Muriithi and George Ngare Kamondo (the Respondents) are opposed to the application. In a Replying Affidavit sworn on their behalf by the 1st Respondent, she assets that she is the wife of the late George Muriithi Njogu and the administrator of his estate.
4. The 1st Respondent avers that the Applicant is a sister to her late husband who was the registered proprietor of the suit property having been issued with a title thereto on 29th November, 2012. The



- 1st Respondent avers further that before his demise, her husband had expressed a desire to sell the suit land but after he fell sick, he was unable to do so and he gave the 1st Respondent the go ahead to sell the land if she so wished.
5. The 1st Respondent further avers that after obtaining the letters of administration and the grant confirmed to her and the 2nd Defendant, she registered the suit property in her name and thereafter sold the land to the 3rd Respondent in line with the wishes of her late husband and the 3rd Respondent has since been issued with a title deed in his name.
 6. The 1st Respondent asserts that the Applicant has no claim on the suit land and denies that Parcel No. Konyu/Baricho/946 was registered in her husband's name in trust for the family. The 1st Respondent asserts that the Applicant has not been living on the suit land and accused her of only recently moving there into and illegally occupying the house standing thereon with her husband.
 7. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Parties herein.
 8. By her application before the Court, the Applicant prays for an order of temporary injunction to issue restraining the three (3) Respondents from evicting her or in any manner whatsoever interfering with her use and occupation of the parcel of land known as Konyu/Baricho/3989 pending the hearing and determination of this suit.
 9. As Spry V.P. Stated in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) EA 358:

“The conditions for the grant of an interlocutory injunctions 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 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. That being the case, the first inquiry that this Court must make is whether or not the Applicant herein has made out a prima facie case with a probability of success at the trial. As the Court of Appeal stated in *Mrao Limited v First American Bank of Kenya Limited & 2 others* (2003) eKLR:

“In civil cases, a prima facie case 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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”
 11. That position was once again re-emphasized by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR where the Court held that:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”



12. In the matter before me, the Applicant avers that the suit property is a sub-division of a parcel of land then known as Konyu/Baricho/946 that was registered in the name of her father one Njogu Murangura. The Applicant asserts that she has lived on the land ever since she was born and that upon sub-division of the land, her father caused the suit property to be registered in the name of her elder brother George Muriithi Njogu to hold in trust for their entire family.
13. The Applicant further avers that upon the demise of her parents, she was left occupying the land with other siblings as she is unmarried and that she had constructed a permanent house on which she resides thereon and was carrying out cattle grazing and other agricultural activities thereon.
14. It is the Applicant's case that following the death of her brother George Muriithi Njogu, the 1st Respondent herein who is the wife and the 2nd Respondent who is their daughter filed succession proceedings in Thika behind her back and upon obtaining a confirmed grant which included the suit property as part of the estate, the two proceeded to sell the same to the 3rd Respondent without considering the fact that the Applicant was residing thereon.
15. The Applicant asserts that she requires the protection of this Court as the Respondents have embarked on the process of violently evicting her from the suit land by injuring her livestock and cutting down her trees and fruits in an effort to force her out of the land.
16. On their part, the Respondents deny that the Applicant has been occupying the suit land and/or that the same was registered in the name of the 1st Respondent's husband in trust for their family. It is the Respondent's case that there is in existence property still registered in the name of the Applicant's mother Bella Wanjiru Njogu which the Applicant can use and that her claim that she has no other place to go is without any basis.
17. The Respondents assert that contrary to the Applicant's claims, she only recently occupied a house standing on the suit property as there was no one occupying the house at the time. It is further the Respondent's case that the Applicant occupies a bigger parcel of land known as Konyu/Baricho/947 where she does coffee farming.
18. As it were, the Respondents have not given the exact details of when the Applicant allegedly recently occupied the house on the suit property nor do they give an explanation as to who had constructed the house which the Applicant is said to have recently occupied. In her Affidavit in support of the application, the Applicant has exhibited photos of the house which she states she has constructed on the suit land together with those of livestock and food crops which she claims to be her own and it was apparent to me that she has been on the suit land for some time.
19. One of the issues for consideration before a Court can grant a temporary order of 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.
20. In the matter herein, it was evident that as at now the Applicant is in occupation of a portion of the suit property which she uses as her residence and for farming purposes. She accused the Respondents of embarking on a process to violently evict her therefrom. In her Replying Affidavit to the application, there is nowhere in which the 1st Respondent denies that they intend to evict the Applicant. Nor does the 3rd Respondent deny in the Further Affidavit sworn and filed in Court on 8th March, 2023 that he has been trying to evict the Applicant from the land.



21. In the circumstances herein, this Court is persuaded that the Applicant has demonstrated that she has a right which is directly threatened by the Respondents and that there is an urgent need to prevent a further invasion of her rights pending a full inquiry as to who between herself and the Respondents should occupy and use the suit property.
22. It follows that I am persuaded that there is merit in the Notice of Motion dated 6th February, 2023. I allow the same in terms of Prayer No. (b) thereof.
23. The costs shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 10TH DAY OF NOVEMBER, 2023.**

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J. O. OLOLA

JUDGE

In the presence of:

Ms Ann M. Njogu – Applicant in person

Mr. Kimunya for the Respondents

Court assistant - Kendi

