



Nampaso (Suing as the legal representative of the Estate of Charles Kapolonto Nampaso - Deceased) v Gilisho & 8 others (Environment and Land Appeal E007 of 2022) [2023] KEELC 21352 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21352 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL E007 OF 2022
CG MBOGO, J
NOVEMBER 9, 2023**

BETWEEN

ANTHONY OLE NAMPASO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHARLES KAPOLONTO NAMPASO, DECEASED) APPELLANT

AND

**PETER GILISHO 1ST RESPONDENT
WILSON KORIATA 2ND RESPONDENT
TITIMET OLE NAMPASO 3RD RESPONDENT
CHRISTINE CHEROP NGETICH 4TH RESPONDENT
ZABLON MWANGI 5TH RESPONDENT
DISTRICT LAND REGISTRAR NAROK NORTH/SOUTH DISTRICTS 6TH RESPONDENT
BOARD OF MANAGEMENT ILKIMITARE PRIMARY SCHOOL 7TH RESPONDENT
SANAYET OLE PARMUAT 8TH RESPONDENT
DANIEL NAINGEJ KIPEEN 9TH RESPONDENT**

RULING

1. The appellant herein being aggrieved by the ruling of the Hon. Samuel Mungai in Narok Chief Magistrates' Court ELC Case No. E072 of 2021 delivered on 9th June, 2022, appealed to this court



vide the memorandum of appeal dated 30th June, 2022 and filed in court on 5th July, 2022 against the whole ruling of learned trial magistrate on the following ground: -

1. That the honourable Samuel Mungai (CM) erred in law and fact by declining to grant the temporary injunction sought thus exposing the suit parcels to waste, damage and alienation and thereby rendering the suit otiose and bringing the rule of the law into opprobrium.
2. The appellant prays for the orders that: -
 - a. That the appeal be allowed and the ruling of the trial magistrate delivered on 09.06.2022 and the orders emanating therefrom be reversed and/or vacated and be replaced by an order allowing the prayers sought in the appellant's notice of motion dated 23.03.2022.
 - b. That the costs of this appeal and costs of the application in the subordinate court be awarded to the appellant.
 - c. Any other relief that this honourable court may deem fit and equitable to grant.
3. The memorandum of appeal was canvassed by way of written submissions. On 13th July, 2023, the appellant filed his written submissions dated 30th June, 2023. The appellant submitted that Order 40 Rule 1 (a) of the [Civil Procedure Rules](#) only required the appellant to prove that the properties in dispute were in danger of being wasted, damaged or alienated by any party to the suit and that in his supporting affidavit sworn on 1st March, 2022, the appellant brought to the attention of the court green cards of the suit properties that clearly indicate that the respondents were wasting, damaging and alienating the properties notwithstanding the pendency of the suit. Further, that the trial court went beyond its mandate by holding a mini trial and closely examining the merits of the main suit. Further, that the strange burden of disproving aside, all the enquiries in the application for injunction were misplaced. The appellant relied on the cases of [Lorna Catherine Philips v I&M Bank Limited & another](#) [2021] eKLR and [Hosea Kiplagat & 6 Others v National Environment Management Authority & 2 Others](#) [2015] eKLR.
4. The appellant went ahead to give the facts of the appeal as was contained in the application and the plaint before the trial court and submitted that there was sufficient evidence of damage, waste and alienation of the suit properties. The appellant further submitted that by his 4th prayer, he seeks that an order of inhibition do issue on the suit properties pending the hearing and determination of the suit before the trial court.
5. On 4th September, 2023, the 1st, 2nd, 3rd and 5th respondents filed their written submissions dated 31st August, 2023. The 1st, 2nd, 3rd and 5th respondents submitted that in their replying affidavit, they deposed that they do not lay any claim to the estate of the deceased but that they are registering documents of conveyance to members of EnkejuEmutukaa community which documents were already signed by the deceased before he passed away on 31st December, 2019. They submitted that it is the duty of the appellant to demonstrate that he has *prima facie* claim/right to the parcel of land in question and that the respondents have trespassed on the said land. Further, that the whole suit by the appellant has been a grudge of settling scores for reasons that he wanted to be appointed as the Chairman of the Plot Allocation Committee. Further, that the appellant has no *prima facie* right over the estate of Charles Kapolonto Nampaso and there cannot be a question of irreparable loss or inadequacy of damages.



6. I have considered the grounds of appeal and the written submissions filed by the appellant and the 1st, 2nd, 3rd and 5th respondents and the issue for determination is whether the memorandum of appeal merits grant of the orders of injunction.
7. This being a first appeal the law is that this court is entitled to revisit the evidence on record, evaluate it and arrive at its own conclusion. Often times, an appellate court will not interfere with the findings of fact by the trial court unless they were based on no evidence at all or were arrived at on a misapprehension of it or the trial court is shown to have acted on wrong principles in arriving at those findings as it was held in *Mwanasokoni v Kenya Bus Service Ltd* (1982 – 88) I KAR 278.
8. The application, the subject of this appeal is a notice of motion dated 1st March, 2022 filed by the appellant seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That until the disposal of this suit or until further orders, the defendants by themselves, their servants, agents or otherwise whomsoever be restrained, stayed or prevented from wasting, damaging, alienating, selling, subdividing or in any manner disposing of any of the parcels of land comprised in Titles No. Cis Mara/Lemek/4260,4261,4262,6933 to 6936 and 7079 to 7222.
 4. That until the disposal of this suit or generally until a further order, an inhibition do issue inhibiting the registration of any dealings with any of the parcels of land comprised in titles No. Cis Mara/Lemek/4260,4261,4262,6933 to 6936 and 7079 to 7222.
9. The application was supported by the affidavit of the appellant sworn on even date and was accompanied by documents in support of the application.
10. The application was opposed by the replying affidavit of the 5th respondent sworn on 7th March, 2022 and filed in court on 9th March, 2022.
11. Kanyinke Edward Nampaso, Alex Kilusu Nampaso, Antony Ole Nampaso filed a supplementary affidavit in response thereto which was sworn on 22nd March, 2022 and filed in court on the same day.
12. The appellant filed his written submissions dated 22nd March, 2022 whereas the 1st, 2nd, 3rd and 5th respondents filed their written submissions dated 5th April, 2022. The trial court considered the application which culminated into the ruling delivered on 31st May, 2022.
13. I have perused the lower court record and the record of appeal and I see no ruling that was delivered on 9th June, 2022. Unfortunately, this error either intentional or otherwise runs through the entire form of the Memorandum of Appeal and the written submissions. In view of that, this court is unable to determine the instant appeal for the reason that there was no ruling delivered on 9th June, 2022 to be considered. And even if I were to consider the appeal concerning the ruling delivered by the learned trial magistrate on 31st May, 2022, in my view, there would have been nothing to determine since the memorandum of appeal was filed on 5th of July, 2023 which is outside the 30 days provided for one to appeal. Secondly, there is nothing to show that there was an application filed for leave to appeal out of time.



14. Arising from the above, the memorandum of appeal dated 30th June, 2022 and filed on 5th July, 2022 is hereby dismissed. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 9TH DAY OF NOVEMBER, 2023.

HON. MBOGO C.G.

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JUDGE

9/11/2023.

In the presence of:

CA:Meyoki

