



**Nyaramba & another (Suing as Personal Representatives of the Estate of Japheth Mbeche Nyaramba - Deceased) v Mogusu & another (Environment & Land Case E006 of 2023) [2023] KEELC 21311 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21311 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E006 OF 2023**

**M SILA, J**

**NOVEMBER 7, 2023**

**BETWEEN**

**PATRICK LUMUMBA NYARAMBA ..... 1<sup>ST</sup> PLAINTIFF**

**SOPHIA MORAA BIRONGA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF JAPHETH  
MBECHÉ NYARAMBA - DECEASED**

**AND**

**CHARLES MOGUSU ..... 1<sup>ST</sup> DEFENDANT**

**MORGAN NYAMACHE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(Application for injunction; principles to be applied; plaintiffs claiming that they share a boundary with the defendants and that the defendants have trespassed into their land; allegations of the plaintiffs categorically denied by the defendants; no evidence of such trespass demonstrated by the plaintiffs; no *prima facie* case established; application dismissed with costs)

1. This suit was commenced through a plaint filed on 22 May 2023. The plaintiffs have sued as administrators of the Estate of Japhet Mbeche Nyaramba (deceased). They plead that the deceased was the registered proprietor of the land parcel Kisii/Wanjare/Bogiakumu/665 which borders the land parcel Kisii/Wanjare/Bogiakumu/2297. They plead that there has been a boundary dispute which was decided on 13 April 2018 by the Land Registrar, Kisii. It is pleaded that notwithstanding the decision of the Land Registrar, on 8 May 2023, the defendants trespassed into the land parcel No. 665, carved out a portion measuring 50 X 100 feet and deposited building materials in readiness for construction. It is averred that it took the intervention of the Chief to



stop the illegal acts of trespass. In the suit, the plaintiffs seek orders inter alia to have the defendants permanently restrained from the land parcel No. 665.

2. Together with the plaint, the plaintiffs filed an application seeking interlocutory orders of injunction to restrain the defendants from the disputed land pending hearing and determination of the suit. It is that application which is the subject of this ruling. The supporting affidavit is sworn by the 1<sup>st</sup> plaintiff who has more or less repeated what is in the plaint, which I have already outlined above. He has annexed copies of the decision of the Land Registrar of 13 April 2018 and summons by the Chief issued on 11 May 2023. He has averred that unless restrained, the defendants will proceed to encroach into the disputed land and evict the family of the deceased.
3. The defendants appointed counsel and opposed the motion through a replying affidavit sworn by Charles Mogusu, the 1<sup>st</sup> defendant. He has denied the allegations of trespass into the land parcel No. 665. He has deposed that he and the 2<sup>nd</sup> defendant have never stepped into the land parcel No. 665. He has asserted that he and the 2<sup>nd</sup> defendant stay in the land parcel Wanjare/Bogiakumu/6043. He contends that this application has been filed just for the sake of satisfying the plaintiffs that something legal can come out of this motion, when in real sense, there is no substance in the motion.
4. I invited counsel to file submissions towards the application and I have seen the submissions of Mr. Mageto, learned counsel for the plaintiffs/applicants, and of Mr. Ochwangi, learned counsel for the defendants/respondents. I have taken these into account before arriving at my decision.
5. In a nutshell, the complaint of the applicants is that the defendants have encroached into their land parcel No. 665, and through this application, they seek to have them restrained from the said land pending hearing and determination of the suit. Before a court issues an order of injunction, the court needs to be satisfied that the applicant has demonstrated a *prima facie* case with a probability of success, demonstrate that he/she stands to suffer irreparable loss if the order of injunction is not given, and where the court is in doubt, it will decide the application on a balance of convenience. These principles were laid down in the case of *Giella v Cassman Broan* [1973] EA 358, and I need not re-invent the wheel.
6. So have the plaintiffs demonstrated a *prima facie* case with a probability of success? I am not persuaded. I have carefully gone through the material presented by the plaintiffs and there is nothing before me to suggest that the defendants have encroached into the land parcel No. 665 as they allege. The plaintiffs do claim that they had a boundary dispute between themselves, as owners of the parcel No. 665, and the defendants as owners of the parcel No. 2297, and that a decision was made by the Land Registrar on 13 April 2008. I have seen the annexed decision of the Land Registrar which more or less adjudicates that the boundary of the two parcels of land is an existing river channel. There is absolutely no evidence before me that the defendants have breached this boundary and proceeded to conduct activities on the land parcel No. 665. Probably a report of a surveyor or other land expert would have assisted the plaintiffs but they have annexed none. In light of the denial by the defendants, I am afraid that a mere statement that the defendants have trespassed into the neighbouring land is not good enough. That is why I am not persuaded that the plaintiffs have demonstrated a *prima facie* case with a probability of success.



7. With that finding, it is not necessary to determine the other two limbs of the principles in *Giella vs Cassman Brown*, and the only fate that the application of the plaintiffs deserves is a dismissal with costs. The said application is hereby dismissed with costs to the defendants.

8. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 7 DAY OF NOVEMBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

**In the presence of: -**

**Mr. Mageto for the plaintiffs/applicants**

**Mr. Ochwangi for the defendants/respondents**

**Court Assistant – Mr. Lawrence Chomba**

