



**Marete v Kimathi (Sued as the Legal Representative of the Estate of Edward Kimathi – Deceased)  
(Environment & Land Case E31 of 2021) [2022] KEELC 2340 (KLR) (13 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2340 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E31 OF 2021**

**CK NZILI, J  
JULY 13, 2022**

**BETWEEN**

**NAOMI KAWIRA MARETE ..... PLAINTIFF**

**AND**

**ROSE HELLEN K. KIMATHI ..... DEFENDANT**

**SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF EDWARD  
KIMATHI – DECEASED**

**RULING**

1. By an application dated December 15, 2021 the applicant seeks inhibition and temporary orders of injunction barring and restraining the defendant from dealing with trespassing into, evicting, selling, leasing or in any way whatsoever interfering with the plaintiff's quiet, peaceful and actual possession and enjoyment of L.R No. Nyaki/Mulathankari/451 pending hearing and determination of this suit. The application is supported by an affidavit sworn by Naomi Kawira Marete on December 15, 2021. The grounds are that the applicant has a homestead on the suit land. She is disabled; that following chief magistrates court Succession Case No. 115 of 2018 there is imminent eviction and disposal of the suit land; If the status quo is not maintained, the applicant is likely to suffer irreparable loss and damage. In support of the application the applicant has attached a copy of the record showing the land is registered under the name of the deceased Edward Kimathi represented by the defendant, photos showing her developments therein since 1967, where she has lived openly, continuously and in exclusive occupation. Further the applicant avers the respondent sought for letters of administration wherein she protested but the same was dismissed as per the annexed judgment marked NKM "3" subsequent to which her injunction was discharged.
2. The application is opposed through a replying affidavit sworn by Rose Hellen Kimathi on 10.1.2022 on the basis that the issue being raised was heard and determined in the succession cause and the applicant was found illegally on the land hence lacks any enforceable claim against the estate. The



respondent states the applicant was only occupying less than ¼ on an acre and not ½ acre as alleged and that the interment of the remains of her late husband on the land was out of benevolence and good heartedness of her late husband. Additionally, the respondent states the fact that the applicant is disabled and a widow should not be used as an excuse to gain an extra mileage.

3. The basis of the plaintiff's claim is the originating summons dated December 15, 2021 in which she seeks declaratory orders is that she acquired one half of an acre of the defendant's land measuring 3 acres by virtue of adverse possession with effect from 1967 and setting up a matrimonial home in 1980.
4. In order to be entitled to an injunction a party has to establish a prima facie case with a probability of success, that he stands to suffer irreparable loss and damage which may not be compensated by way of damages and lastly that the balance of convenience tilts in favour of granting the orders sought.
5. In *Mrao Ltd vs First American Bank of Kenya Ltd & 3 others* (2003) KLR 125, the court held a prima facie case is established where based on the material placed before the court a right has been infringed to call for a rebuttal from the other party.
6. In *Nguruman Ltd vs Jan Bonde Neilsen & 2 others* (2014) eKLR the court held the *Giella vs Cassman Brown & Co. Ltd* (1933) E.A 358 principles are separate distinct and must be proved sequentially.
7. In this matter there is no dispute that the suit land is registered in the name of a deceased who died in 2015 and that during the succession cause an inhibition order was registered on August 23, 2018 until the disposal of the succession cause. As at the date the copy of record and was extracted on December 10, 2021, the inhibition order was still subsisting on the register. Be that as it may the applicant herein has not demonstrated before this court anything to show that the respondent has moved ahead to vacate the said orders and or effect the decree of the succession cause. Further to this, the applicant has not shared with this court a copy of the confirmed grant to know to whom the subject has been distributed to.
8. In the circumstances and in absence of those details this court is unable to find the applicant justified to be granted the orders of inhibition.
9. As concerns the orders of injunction, the applicant is yet to be declared entitled to the orders of adverse possession. That notwithstanding the respondent has admitted the applicant has been in occupation of approximately ¼ of an acre of the deceased parcel of land since she got married and has remained therein to date, though in her view is wrongly in occupation.
10. Further, it is also admitted by the defendant that the applicant lives in the old parent's house and has a small permanent structure put up albeit with a lot of resistance.
11. The defendant has not counterclaimed and or sought for any eviction orders yet she states the applicant is a trespasser.
12. In my view and given the suit is yet to be determined on merits it is only fair that the status quo subsisting on the ground be maintained to the extent of the ¼ an acre being occupied and or covering the permanent house of the applicant, for a period of one year only.
13. Costs shall be in the course. Meantime, parties to comply with orders II and set the suit for hearing within three months.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 13<sup>TH</sup> DAY OF JULY, 2022**

**In presence of:**



Riungu for plaintiff

Nelima for Mokuu for defendant

**HON. C.K. NZILI**

**ELC JUDGE**

