



**Mputhia (Suing as The Legal Representative of The Estate of Zachariah M'ithirai (Deceased))
v Kimwere (Sued as The Legal Representative of The Estate of Kimwere (Deceased))
(Environment & Land Case E21 of 2021) [2022] KEELC 2668 (KLR) (6 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E21 OF 2021**

**CK NZILI, J
JULY 6, 2022**

BETWEEN

**LAWRENCE NKONGE MPUTHIA APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ZACHARIAH
M'THIRAI (DECEASED)**

AND

**LEONARD MBAABU KIMWERE RESPONDENT
SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIMWERE
(DECEASED)**

RULING

1. Before the court is the notice of motion dated November 30, 2021 and supported by a sworn affidavit of Lawrence Nkonge Mputhia seeking temporary orders of injunction restraining the defendant and his family members, agents or employees from entering, interfering or in any way whatsoever dealing with L.R No. Igoji/Mweru/934 until the suit is determined.
2. The grounds upon which the application is based are that the applicant has been in occupation of the premises since 1969 with extensive developments therein; the land is registered under the name of the deceased parent; there was some forceful entry and purported erection of beacons using the police and the area chief with a view of disinheriting the applicant and unless the court intervenes more harm was likely to occur.
3. The respondent has opposed the application through a replying affidavit sworn by Leonard Mbaabu Kimwere on December 7, 2021 on the basis that the suit is res judicata on account of Meru JR No. 37 of 2010 and LDT No. 4 of 2010 which have never been appealed against; that the district surveyor had given a notice on the visit of November 22, 2021; there was no appeal against the said notice with



- an intention of implementing the lower court order and that the alleged crops belong to the estate of the deceased.
4. By written submissions dated January 31, 2022 the applicant submits he disclosed the previous suits in the main suit though the issues raised and the orders in this matter are totally different.
 5. The applicant relies on *Giella vs Cassman Brown Co. Ltd* (1973) E.A 358, *Mrao Ltd vs First American Bank of Kenya and 2 others* (2003) eKLR, *Paul Gitonga Wanjau vs Gathuthi Tea Factory Co. Ltd and 2 others* (2016) eKLR on the principles of granting temporary injunction.
 6. The respondent submits the application is defective, an afterthought, is an attempted forum shopping endeavor given his entry to the land was out of the order made in LDT No. 4 of 2010, which orders have not been appealed against. Further it is submitted the scene visit by the land surveyor on November 22, 2021 was known and whose mission resulted in to a sharing of the land with the aggrieved parties and the applicant was at liberty to appeal hence the suit is *res-judicata*.
 7. The basis of the plaintiff's claim is the plaint dated June 17, 2021 in which he seeks a declaration that the committee case no. 26/1969 was implemented before the award in Meru LDT case No.4 of 2010 was made and an order declaring Meru CMCC LDT case No. 4 of 2010 null and void. Further the plaintiff is seeking for a permanent injunction restraining the defendant, his family, employees, agents or servants from entering into, remaining, occupying or trespassing into or interfering with his peaceful use and enjoyment of L.R Igoji/Mweru/11/1994.
 8. The defendant filed a defence dated August 16, 2021 stating the suit is *res judicata* due to LDT No. 4 of 2010 and J.R 37 of 2020 and secondly that the suit land falls under the pecuniary jurisdiction of the Nkubu Law Courts.
 9. For a party to be entitled to a temporary injunction he must establish a *prima facie* case with a probability of success, demonstrate irreparable loss and damage and lastly that the balance of convenience tilts in favor of granting the order sought.
 10. In *Mrao Ltd vs First American Bank* (2003) eKLR, the court held a *prima facie* case is established where based on the material before the court, a right has been established calling for the other party to rebut it.
 11. In this matter the applicant has sued as a legal representative of the deceased Zacharia Mputhia M'Thiria. Looking at the entire plaint the suit revolves around the committee case No. 26/1969 which issues were determined both in the Meru Judicial Review case No. 37 of 2010 and which also formed the basis in Meru LDT No. 4 of 2016.
 12. Therefore, I do not see any right belonging to the applicant which has been infringed particularly where a regular order of the court is being executed by a district surveyor following a ruling delivered by the lower court on May 5, 2021 and which the applicant has not appealed against.
 13. Further this court in Meru JR NO. 37 of 2010 declined to quash LDT award made on December 29, 2009 regarding the suit land.
 14. Instead of appealing against the said decision the plaintiff herein has filed similar suit this time round by way of a plaint over the same parcel of land and seeking almost similar prayers as in the JR albeit in a different language.
 15. It is a cardinal rule or principle of law that litigation must come to an end and where a court of competent jurisdiction has pronounced a final decision on a matter to bring fresh proceedings whether civil suit or otherwise would amount to an abuse of the court process. See *Maina Kiai vs IEBC* (2017) eKLR.



16. In *Karuri & others vs Dawa Pharmaceuticals Co. Ltd and others* (2007) 2 E.A 325 the court held it had inherent powers to prevent the abuse of its process by striking out a frivolous and vexatious application.
17. In this matter the applicant lost in the JR matter but has now come to the same court submitting the issues and prayers sought are different from the previous matters and the pending case at Meru Chief Magistrate's Court.
18. This court should not be used as a forum to reopen matters which it has previously determined albeit in a different style and format by the same parties.
19. To do so would not only be an abuse of the court process but also amount to undermining the integrity of the court.
20. In the premises I find the application lacking merits. Likewise, the entire suit is an abuse of the court process. The same is hereby struck out with costs to the defendant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 6TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

No appearance

HON. C.K. NZILI

ELC JUDGE

