



**Mwangi v Kamira & 2 others (Environment & Land Case
8 of 2017) [2021] KEELC 4746 (KLR) (27 May 2021) (Ruling)**

Neutral citation: [2021] KEELC 4746 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 8 OF 2017**

YM ANGIMA, J

MAY 27, 2021

BETWEEN

MARY WAIRIMU MWANGI PLAINTIFF

AND

MARY WANJA KAMIRA 1ST DEFENDANT

MICHAEL MACHARIA WACHIRA 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. By a notice of motion dated November 15, 2019 expressed to be based upon order 42 rule 6 and order 51 rule 1 of the *Civil Procedure Rules*, section 68 & 69 of the *Land Registration Act* No 3 of 2012 and section 13 (7) (a) of the *Environment and Land Court Act* No 19 of 2011 and all other enabling provisions of law, the plaintiff sought the following orders:
 - (a) ...spent
 - (b) ...spent
 - (c) ...spent
 - (d) ...spent
 - (e) That pending the hearing and determination of the appeal, an order of inhibition be made and issued to inhibit any and all dealings with and involving title No Nyandarua/Ndaragwa/Uruku block 2 (Uruku)/865.
 - (f) That pending the hearing and determination of the appeal, an order of an injunction do issue to restrain the 1st defendant by herself, agents, relatives, servants employees and/or any other individual, individuals or persons claiming authority through or by her from evicting,



ejecting, hindering, denying access to, desecrating the tombs or burial grounds or in any other manner whatsoever or howsoever interfering with the plaintiff's peaceful, quiet use, enjoyment, occupation and possession of a portion of title No Nyandarua/Ndaragwa/Uruku block 2 (Uruku)/865 and/or leasing or disposing of or parting with possession or selling either the whole or a part of the said parcel of land

- (g) That the costs of this application be provided for.
2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on November 15, 2019 and the annexure thereto. The plaintiff contended that he had already filed a notice appeal indicating her intention to challenge the judgment and decree of this court dated November 5, 2019 before the Court of Appeal. It was contended that it was necessary to maintain the existing status quo and to preserve the suit property pending the filing, hearing and determination of the intended appeal.
 3. The plaintiff was apprehensive that in the absence of some conservatory orders, she might be evicted from the suit property and the same alienated or otherwise dealt with to her detriment before the hearing and determination of her intended appeal thereby rendering the same nugatory should it be successful.
 4. There is no indication on record of any of the defendants having filed a substantive response to the said application. The only challenge on record to the application is the 1st defendant's notice of preliminary objection dated December 16, 2020 which was considered and overruled on February 4, 2021.
 5. The material on record indicates that when the ruling on the preliminary objection was delivered on February 4, 2021 it was directed that the said application shall be canvassed through written submissions. The Plaintiff was granted 21 days to file her submissions whereas the defendants were granted 21 days upon the lapse of the plaintiff's period to file theirs. The record shows that the plaintiff's submissions were filed on February 17, 2021 whereas the defendants' submissions were not on record by the time of preparation of the ruling.
 6. The court has considered the plaintiff's application dated November 15, 2019, the plaintiff's written submissions as well as the material on record. The court is of the opinion that the sole issue for determination is whether the plaintiff is entitled to any preservative orders in view of the dismissal of her suit against the defendants. The court has noted that there is no opposition to the application by any of the defendants. However, that is not sufficient by itself, to warrant the granting of the orders sought. The court has to consider whether on the basis of the material on record the plaintiff has made out a case for the orders sought.
 7. In the case of *Butt v Rent Restriction Tribunal* [1979] eKLR it was held, *inter alia*, that the court should exercise its judicial discretion under order 42 of the *Civil Procedure Rules* in such manner as to prevent a successful appeal being rendered nugatory. It was further held that whether or not a stay order ought to be granted depends on the special circumstances of each case. The court should thus strive to preserve the substratum of the appeal.
 8. There is no doubt from the material on record that the plaintiff is in possession of the suit property. The 1st and 2nd defendants appear to be registered proprietors whose registration the plaintiff shall be challenging in the intended appeal. The court is thus of the opinion that in the circumstances of this case, it is in the interest of justice to preserve the suit property which is the subject of the intended appeal. Should the plaintiff ultimately succeed on appeal the suit property should be available to her. On the other hand, should the 1st and 2nd defendants be the successful parties, the suit property would still be available to them.



9. The court is further of the opinion that the plaintiff should not be evicted from the suit property pending the filing, hearing and determination of the intended appeal. However, in order to avoid a situation where the plaintiff goes to sleep after obtaining interim orders, the court limit the period the orders shall subsist.
10. The upshot of the foregoing is that the court finds merit in the plaintiff's application for interim orders. The court shall therefore allow the application in the following terms only:
 - (a) An order of inhibition be and is hereby granted under section 68 of the *Land Registration Act* 2012 to prevent any dealings with title No Nyandarua/Ndaragwa Uruku Block 2 (Uruku)/865 for a period of two (2) years from the date hereof or until conclusion of the intended appeal, whichever comes first.
 - (b) The plaintiff shall not be evicted from the suit property for a period of two (2) years or until conclusion of the intended appeal, whichever comes first.
 - (c) Costs of the application shall abide the outcome of the intended appeal.

It is so ordered.

RULING DATED AND SIGNED IN CHAMBERS AT NYAHURURU THIS 27TH DAY OF MAY 2021 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr Sigilai for the plaintiff.

Ms Muigai holding brief for Ms Ndegwa for the 1st defendant.

No appearance for the 2nd and 3rd defendants.

C/A- Carol

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YM ANGIMA

JUDGE

