



**Sayed & another v Kimani & 2 others (Environment & Land Case E008 of 2022 & E136 of 2021 (Consolidated)) [2022] KEELC 13438 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13438 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT & LAND CASE E008 OF 2022 & E136 OF 2021 (CONSOLIDATED)**

**BM EBOSO, J**

**OCTOBER 5, 2022**

**BETWEEN**

**INDERJEET KAUR KARIM SAYED (SUING ON HER OWN BEHALF AND AS ADMINISTRATOR OF THE ESTATE OF THE LATE SAYED ABDULLA KASSIMALI) ..... PLAINTIFF**

**AND**

**DANIEL MBUGUA KIMANI ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KIAMBU ..... 2<sup>ND</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE E136 OF 2021**

**BETWEEN**

**DANIEL MBUGUA KIMANI ..... PLAINTIFF**

**AND**

**MUMWE INVESTMENTS LIMIT ..... DEFENDANT**

**RULING**

1. Thika ELC No E008 of 2022 and Thika ELC No E136 of 2021 were consolidated on 3/2/2022. Thika ELC No E008 of 2022 was designated as the lead file. The dispute in the two consolidated causes relates to land parcel number Kiambu/Municipality Block 111/220 [the suit property]. The late Karim Sayed Abdulla Kassimali [the deceased] purchased the suit property from Kunverji Arjan Kerai in 2007 and was registered as proprietor on October 15, 2007. Daniel Mbugua Kimani is waving a certificate of lease dated 10/3/2011 and contends that the deceased sold to him the suit property on 10/3/2011. He



is also waving a land register showing that an entry relating to his registration as proprietor of the suit property was made in the land register on 10/3/2011. The estate of the deceased, through Inderjeet Kaur Karim Sayed [widow of the deceased and administrator of the deceased's estate], contends that the certificate of lease which Mr Kimani is waving is a fraudulent document and entry numbers 9 and 10 relating to registration of the suit property in the name of Mr Kimani and issuance of a certificate of lease to him are, similarly, fraudulent entries. It is the case of the estate of the deceased that the deceased never sold the suit property to Mr Kimani; he never received any purchase price from Mr Kimani; he never executed any instrument disposing the suit property to Mr Kimani and; he never processed any other necessary conveyance document in favour of Mr Kimani.

2. Thika ELC No E136 of 2021 was the first suit to be instituted. Through it, Mr Daniel Mbugua Kimani sued M/s Mumwe Investments Limited, seeking among other reliefs, permanent injunctive orders against them. He contended that he was the registered proprietor of the suit property. He contended that M/s Mumwe Investment Limited who were the managers of the estate where the suit property is located were interfering with his quiet possession of the suit property.
3. Soon after that, the estate of the deceased, through Inderjeet Kaur Karim Sayed, instituted Thika ELC E008 of 2022, contending that the title held by Mr Kimani and the two impugned entries in the land register were fraudulent. The estate itemized various particulars of fraud. The estate sought, among other reliefs, a declaration that the suit property belongs to the deceased and forms part of his estate. They also sought an order annulling the title held by Mr Kimani together with the impugned entries.
4. Alongside the respective complaints initiating the two causes, the respective plaintiffs brought interlocutory applications in the two causes, seeking interlocutory injunctive orders against the defendants named in the two causes. The application filed in ELC 136 of 2021 is dated November 19, 2021 while the application filed in E008 of 2022 is dated 21/1/2022. The two applications are the subjects of this ruling.
5. Mr Anthony Gichira Wandu was named as an interested party in ELC No E008 of 2022 on account of the averments made in ELC 136 of 2021 to the effect that he was in the process of purchasing the suit property from Mr Kimani.
6. The two applications were canvassed and objected to through written submissions which I have read. I now proceed to dispose the two applications.
7. The principles upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs are well-settled. [See *Giella v Cassman Brown and Company Limited* (1973) E.A. 358]. First, the applicant is required to demonstrate a *prima facie* case with a probability of success. Second, the applicant is required to demonstrate that unless an interlocutory injunction is granted, he will stand to suffer irreparable damage that may not be indemnifiable by an award of damages. Third, should the court have doubts on both or either of the above, the application should be determined on the basis of the balance of convenience. Lastly, it is now an accepted principle in Kenya's jurisprudence that at the stage of disposing an application for interlocutory injunctive relief, the court does not make definitive or conclusive pronouncements on contested issues in the dispute.
8. It does emerge that Mumwe Investments Limited is the company that manages the estate where the suit property is located. At this interlocutory stage, nothing has been placed before the court to demonstrate that they are infringing on Mr Kimani's rights to property. What has emerged is that there is a dispute relating to the title which Mr Kimani is waving. It is alleged that the said title is a fraudulent document. In the above circumstances, I cannot say that Mr. Kimani has established a *prima facie* case against M/s Mumwe Investments Ltd to warrant grant of interlocutory injunctive order against them.



9. On the application by the estate of Karim Sayed Abdulla Kassimali [the deceased] dated 21/1/2022, the estate of the deceased contends that the deceased is the lawful owner of the suit property and that the certificate of lease held by Mr Kimani is a fraudulent document. The estate further contends that the entries made in the land register are fraudulent. Their case is that the deceased neither sold nor conveyed the suit property to Mr Kimani. On his part, Mr Kimani contends that he is the lawful registered proprietor of the suit property. It is his case that he purchased the suit property from the deceased on 10/3/2011. He has, however, not exhibited the sale agreement. He has not exhibited the sale agreement. He has not disclosed the purchase price and how he paid the purchase price.
10. Given the above circumstances, the court takes the view that the application dated 21/1/2022 is one to be determined on the balance of convenience. In the view of the court, the balance of convenience calls for preservation of the suit property and fast-tracking of the disposal of this dispute.
11. In the end, the application by Mr Daniel Mbugua Kimani dated November 19, 2021 and the application by the estate of the late Karim Sayed Abdulla Kassimali dated 21/1/2022 are dismissed through the following orders:
  - a. The application by Mr Daniel Mbugua Kimani dated November 19, 2021 is rejected for lack of merit.
  - b. Pursuant to the application dated 21/1/2022 by the estate of the late Karim Sayed Abdulla Kasamalli, an order is hereby issued preserving land parcel number Kiambu Municipality Block III/220 in the sense that no dealings shall be registered against the parcel register and no developments shall be undertaken on the land pending the hearing and determination of Thika ELC No E008 of 2022.
  - c. Owing to the above preservative order, hearing of this suit shall be fast-tracked.
  - d. Costs of the two applications shall be in the cause.
  - e. Hearing of the main suit shall be on 17/11/2022.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5TH DAY OF OCTOBER 2022**

**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr Biwott for the Plaintiff in E008 of 2022 for the Plaintiff

Mr Ruiru for the Defendant in E008 of 2022 and for the plaintiff in E136/2021

Court Assistant: Sydney

