



REPUBLIC OF KENYA



**Gatawa & 14 others v Kariuki & 5 others (Environment & Land Case
E023 of 2021) [2022] KEELC 14494 (KLR) (1 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14494 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E023 OF 2021
MN GICHERU, J
NOVEMBER 1, 2022**

BETWEEN

DAVID NYORORO GATAWA 1ST PLAINTIFF
JACKSON MUGWE 2ND PLAINTIFF
STEPHEN ASIATI 3RD PLAINTIFF
WILLIAM RUO 4TH PLAINTIFF
STEPHEN MURIITHI MBOGO 5TH PLAINTIFF
JAMES GITAU 6TH PLAINTIFF
PHILIP K. KISYOKA 7TH PLAINTIFF
LUCY KURIA 8TH PLAINTIFF
RUTH W.K. WARUTERE 9TH PLAINTIFF
MARGARET NJOROGE 10TH PLAINTIFF
SHANGWE INVESTMENT T/A 11TH PLAINTIFF
JOHN KANYI KIHORO 12TH PLAINTIFF
ZACHARY MAINA WATHUU 13TH PLAINTIFF
HARRISON NGATIA NDIRANGU 14TH PLAINTIFF
MARY WANJIKU CHEGE 15TH PLAINTIFF

AND

HEZEKIAH KARIUKI 1ST DEFENDANT
ALFERIOUS DAUDI KIPROP 2ND DEFENDANT
GIDEON LENANA NAKUO 3RD DEFENDANT



JOEL PARMERES 4TH DEFENDANT
CHIEF LAND REGISTRAR, KAJIADO 5TH DEFENDANT
CHIEF LAND REGISTRAR, MACHAKOS 6TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 15/4/2021. It is brought under order 40, rules 1, 2 and 4 of the Civil Procedure Rules, section 3A of the Civil Procedure Act and all other enabling provisions of the law.
2. The main prayers seeks to restrain the defendants either by themselves, their agents, servants, employees and or proxies by way of injunction from trespassing, excising, entering, fencing, constructing, building, dumping of any building or other materials, erecting any permanent or temporary structures, alienating, selling, leasing, encroaching, encumbering, and/or interfering in whatsoever manner with the plaintiffs' quiet possession of LR Numbers Kajiado/Kaputiei –North/1477-82, 14786, 14788, 14789-91, 14793-4, 14796, 83685 – 87, 83689 – 95 and 83697 – 99 (suit parcels) pending the hearing and determination of this suit.
3. The motion is supported by nine grounds, two supporting affidavits sworn by the first and ninth plaintiffs and a supplementary affidavit by the first plaintiff.

The gist of the above material is that the plaintiffs are the registered owners of the above parcels which they acquired at different times between the years 2011 and 2019 and they have been in possession thereof.

The defendants have without any justification or authority of the plaintiff trespassed onto the suit parcels, dug trenches on some of them, removed and interfered with the existing beacons, put up temporary structures and fences, sold or are in process of selling some of the parcels and severally interfered with the suit property, in one way or another.

The defendants should therefore let the plaintiffs enjoy quiet possession until the dispute is resolved.
4. Annexed to the first plaintiffs supporting affidavit are the following documents.
 - i. Copy of title deed number Kajiado/Kaputiei – North/12907 and sale agreement for the same.
 - ii. Copy of certificate of official search for the same land dated October 27, 2011.
 - iii. Copy of mutation form for the same land duly approved by the Land Registrar on 22/6/2015.
 - iv. Copies of title deeds for the individual suit parcels.
 - v. Copy of OB report made to the police at Kitengela on 23/1/2021 and five photographs showing the suit land.
 - vi. Copy of lease for LR IR 205578 in the names of the second, third and fourth defendants and copy of certificate of clearance of rates dated 2/11/2020, issued by the County Government of Machakos.
5. The application is opposed by the respondents and the second defendant has sworn a replying affidavit dated May 5, 2021 in which he says that the plaintiffs were conned into buying nonexistent land.



He says that the genesis of the fraud was the subdivision of LR Kajiado/ Kaputitei –North/81 measuring 3.7.73 hectares into five parcels numbers 6087 – 91 measuring 58.439 hectares.

According to the second defendant LR 12907 originated from 7158 and problem lies in the resultant parcels purportedly being bigger than the mother titles.

6. In addition to the above, the second defendant says that the suit parcels are not in Kajiado county but in Machakos county and the Land Registrar Kajiado was wrong to issue title deeds for land situated in Machakos county.
7. Annexed to the second defendant’s affidavit are several annexures which include mutation forms for LR 6088 and 81, copy of title LR 205578 dated 14/5/2018, copy of sale agreement for the first and second defendants and copy of memorandum of understanding between the first defendant on one hand and the second, third and fourth defendants on the other dated 8/2/2019.
8. Counsel for the parties filed written submissions.
9. I have carefully considered the application dated 15/4/2021 in its entirety including the affidavits, grounds, annexures as well as other pleadings.

I have borne in mind the three prerequisites to be proved by an applicant before an order of injunction can issue. They are;

- i. A *prima facie* case with a probability of success.
- ii. Substantial loss that cannot be adequately compensated by an award of damages and
- iii. Where the court is not sure of the above two, it should look at the balance of convenience. See the famous case of *Giella vs Cassman Brown* (1973) EA 358.

I find that the plaintiffs are, *prima facie*, in occupation. In making this finding, I have relied on the four pictures filed on 15/4/2021 which show several structures including what looks like a permanent house with a reddish roof behind a stone or brick wall. This is the third picture.

Secondly, I find that this may be a boundary dispute between the counties of Kajiado and Machakos. Even if it were not a boundary dispute between the two counties, it is a boundary dispute between the plaintiffs and the defendants.

This means that the authority with jurisdiction to resolve the dispute would be the two Land Registrars or at least one of them.

Under section 18 (2) of the [Land Registration Act](#), I refer the dispute to the two Land Registrars to resolve.

I all the circumstances of this case, I find that it is fair and just to allow prayers 2 of the notice dated 15/4/2021 to preserve the *status quo* pending the determination of the dispute.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

