



**Mwega v Kailutha & 4 others (Environment & Land Case E015 of 2021)  
[2022] KEELC 14517 (KLR) (2 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E015 OF 2021**

**CK NZILI, J**

**NOVEMBER 2, 2022**

**BETWEEN**

**CORNELIUS MUTHURI MWEGA ..... PLAINTIFF**

**AND**

**STANLEY KAILUTHA ..... 1<sup>ST</sup> DEFENDANT**

**KANYILI FRANCIS ..... 2<sup>ND</sup> DEFENDANT**

**BERNARD KIMATHI ..... 3<sup>RD</sup> DEFENDANT**

**GEOFFREY ABURUKI ..... 4<sup>TH</sup> DEFENDANT**

**JOSEPH MUGAMBI ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated 21.4.2021 the plaintiff, the owner of LR No. Ruiru/Rwarera/2447, (hereinafter the suit land), sued the defendant for trespass, commission of acts of destruction, erection of illegal structures. He averred that due to the above actions, his peaceful and quiet enjoyment of his property had been interfered with, the defendants had resorted to intimidation, violence and were threatening to deny him entry into and development of his land. The plaintiff sought for declaratory order that the suit land belongs to him; removal of all illegal structures erected therein, in default eviction orders and permanent injunction. The plaint was supported by the plaintiffs witness statement and list of documents dated 21.4.2021.
2. The defendants were duly served with the summons to enter appearance and an affidavit of service filed to that effect on 13.7.2021. Further, despite service of hearing notice the defendants did not attend court hence the matter proceeded exparte.
3. The plaintiff adopted his witness statement dated 21.4.2021 as his evidence in chief. He told the court that he purchased the suit land on 8.10.2013 from the executors and beneficiaries of the estate of



the late Justus Mbaabu M'Mwithimbu for Kshs.13 million, took vacant possession and built up a permanent house. He produced the sale agreement, certificate of title, police order for the arrest of the defendants after they started causing chaos on the land, bank transfer of monies from Barclays Bank to the vendor, letter from District Land Adjudication and Settlement officer dated 26.8.2019 and photographs showing development as P. Exhs 1-6 respectively.

4. The plaintiff submitted that based on the documentary evidence produced he was entitled to protection of his property under Sections 24 & 25 of the Land Registration Act since his title to the land had not been challenged at all. The plaintiff relied on Propwa Company Ltd vs Justus Nyamo Gatondo & another (2020) eKLR on the proposition that as a title holder his rights and privileges over the suit property were protectable in law.
5. Further, the plaintiff submitted that based on the evidence tabled before court he had demonstrated that the defendants were trespassers who had resorted to force and violence hence making it difficult for him to develop his land. Relying on Karuru Munyorori vs Joseph Ndumia Murage & another, Nyeri HCCC No. 95 of 1988, the plaintiff urged the court to find his evidence uncontroverted and proceed to grant the reliefs sought.
6. The plaintiff has sought for declaratory orders that he is the owner of LR No. Ruiiri/Rwarera/2447. He has produced a sale agreement dated 8.10.2013 and proof of payment of the consideration by way of a bank slip. Further he produced a title deed issued on 9.1.2019 which under Sections 24, 25 & 26 of Land Registration Act is prima facie evidence of ownership of the suit land. This has been confirmed by the letter dated 26.8.2019 from the District Land Adjudication Officer.
7. In terms of developments the plaintiff produced photographic evidence. He submitted that his ownership, use and occupation is under attack and threats from the defendants as evidenced by P. exhibit 3, a police order to arrest, a P3 form and photographs showing some illegal structures belonging to the defendants.
8. All the above documentary evidence has not been challenged by the defendants despite adequate notice given to enter appearance or attend the hearing. Therefore, given this credible evidence there is no doubt that the plaintiff deserves orders to guarantee him quiet and peaceful enjoyment of his property.
9. A permanent injunction is normally granted upon the hearing of the suit since it determines the rights of the parties before the court. It perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.
10. In Nguruman Ltd vs Jan Bonde Nielsen & 2 others (2014) eKLR, the court said the foundation of any order of injunction temporary or permanent, must be met by surmounting sequentially the three pillars namely a prima facie case, demonstration of irreparable injury or damage and any doubts as to (a) & (b) by showing the balance of convenience tilts in favour of granting the injunction.
11. In this matter, the plaintiff has demonstrated that he has valid proprietary rights which have been threatened by the defendants with no justification. He has said the defendants have gone to an extent of erecting illegal structures on his land and efforts to remove them have borne no fruits since the defendants are violent, chaotic and armed with crude weapons as well as guns.
12. The plaintiff has produced evidence of the actual bodily harm. Despite service of summons and hearing notices the defendants have failed to oppose the suit.
13. The upshot is that the plaintiff has proved his case on a balance of probabilities. The court hereby declares that he is the sole proprietor of L.R No. Ruiiri/Rwarera/2447 to the exclusion of the defendants; that the defendants jointly and severally are ordered to remove all illegal structures and



buildings on the suit land within 3 months from the date hereof in default which they shall be forcefully be evicted at their cost in line with the law on eviction under the supervision of the area Sub County Police Commander. A permanent injunction be and is hereby issued barring and restraining the defendants jointly and severally from entering, remaining, occupying, erecting and in any way whatsoever interfering with the plaintiff's quiet enjoyment and occupation of the suitland. Costs to the plaintiff.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 2ND DAY OF NOVEMBER, 2022**

**In presence of:**

C/A: Kananu

Ashaba for plaintiff

**HON. C.K. NZILI**

**ELC JUDGE**

