



Charles Nyomoo Ituaruchiu v Robert Muthuku Thabari (sued as the legal representative and administrator of the estate of Chabari Karigicha (Environmental and Land Originating Summons 47 of 2019) [2021] KEELC 4783 (KLR) (19 May 2021) (Ruling)

Charles Nyomoo Ituaruchiu v Robert Muthuku Thabari (sued as the legal representative and administrator of the estate of Chabari Karigicha [2021] eKLR

Neutral citation: [2021] KEELC 4783 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 47 OF 2019
LN MBUGUA, J
MAY 19, 2021

BETWEEN

CHARLES NYOMOO ITUARUCHIU PLAINTIFF

AND

ROBERT MUTHUKU THABARI RESPONDENT

(SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF CHABARI KARIGICHA)

RULING

1. Before me is a notice of motion dated 3.12.2019 brought pursuant to Section 1A, 1B, 3, 3A, 100 and 63(c) and (e) of the Civil Procedure Act and Order 8 rule3, Order 40 Rules 1, 2, 3 and 4 and Order 51 Rule 1 of the Civil Procedure Rules as well as Section 68, 69 and 70 of the Land Registration Act. The applicant/plaintiff seeks the following orders;
 - 1) Spent
 - 2) Spent
 - 3) Spent
 - 4) That this Honorable court be pleased to issue temporary orders of inhibition and the same be registered against the parcel of land No. L.R No. Abothuguchi/L-KIJA/11 to prevent any dealings or transfer of the same pending hearing and determination of this suit.
 - 5) That this Honorable court be pleased to issue orders of temporary Injunction to restrain the defendant by himself his agents, servants or anybody else legally acting under his name,



directive and instruction from selling or evicting the plaintiff from 2 acres on L.R No. Abothuguchi/L-KIIJA/11 pending hearing and determination of this suit.

- 6) That the cost of this application be paid by the defendant.
2. The application is based on the grounds on the face of it and on the supporting affidavit of Charles Nyomoo Ituaruchiu, the plaintiff/applicant. He avers that he has been in occupation of 2 acres of the suit land since 2003, that the said suit land measures 4.8 Ha which is occupied by himself, the defendant and his family to which he has no interest in the defendant's occupied portion. He has been utilizing and cultivating his portion. The defendant has started sub-dividing the suit land and has secured consent for sub-division from Kiagu Land Control Board and has also threatened to evict him, to which he is now apprehensive that the defendant may transfer the suit land to 3rd parties causing his loss and damage. That no prejudice, damage or hardship will be suffered by the respondent if the status quo is maintained pending the hearing and determination of this suit.
3. The respondent has opposed the application vide a replying affidavit dated 30/06/2020. He contends that he is not the registered owner of the suit land and the plaintiff is not a creditor of the estate of the deceased in whose name the suit land is registered. That the suit land is not sub divided into any identifiable shares and his family and himself are in use and occupation of the suit land. The allegation by the plaintiff that he has been utilizing and cultivating the suit land for a long time and has planted food is far-fetched and untrue and the same has not been supported or proved.
4. The respondent contends that the plaintiff began to forcibly invade/trespass on the suit land sometime in 2019 and upon being repulsed he filed this suit. He had also filed an objection in Meru HC Succession Cause No. 300 of 2003 but he abandoned his claim before confirmation of the grant. He avers that the application does not meet the threshold for grant of the injunctive orders sought and he stands to suffer great prejudice, irreparable loss and damage as he will be denied an opportunity to use and develop the remainder of the land if the orders are granted.
5. On 9.3.2021, the advocates for both parties agreed by consent that a ruling be delivered based on the affidavits filed. I have carefully considered the arguments advanced by each party. The issues arising for consideration are; whether the orders of injunction and inhibition should be confirmed and who should meet the costs of the application.
6. The law governing the grant of interlocutory injunction orders is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides that:-

“Where in any suit it is proved by affidavit or otherwise—

- (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”



7. In the Court of Appeal case of National Bank of Kenya Limited v Juja Coffee Exporters Limited [2021] eKLR, the court had this to say on applications for injunctions;

“In keeping with the long-standing principles in *Giella vs. Cassman Brown Co Ltd* [1973] E.A. 358, the grant or refusal of an interlocutory injunction is a matter of exercise of judicial discretion and an applicant is required to show a prima facie case with a probability of success; secondly, that it would suffer irreparable harm which would not be adequately compensated by an award of damage; and lastly if the court was in doubt, to determine the application on a balance of convenience”.

8. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others*[2003] eKLR, the court stated thus in respect of what amounts to a prima facie case;

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

9. The applicant has stated that he has been using 2 acres out of the suit land which in total measures 4.8 Ha. He has been cultivating crops and he has water supply. The respondent does not dispute this averment but asserts that applicant entered the land through invasion in year 2019. That when the applicant was repulsed is when he filed this suit. The respondent has stated that the applicant had filed an objection in the succession case though he abandoned the same. This is a pointer that the applicant has been agitating to assert his interests in the suit land.

10. In dealing with an application for interlocutory injunction, the court is not required to decide the issues of fact but rather to weigh up the relevant strength of each sides proportions- See *Mbuthia vs Jimba Credit Corporation Ltd* (1988) KLRI. To this end, I need not reinvent the wheel in considering the interlocutory application. Thus the court will not go into details as to when and how the applicant entered the suit land or who is the registered owner of that land. All in all, I do find that the injunctive orders are merited.

11. From the averments put forth by the respondent, there has been a succession cause of which a confirmed grant has already been issued. The end result in such a case is the distribution of the estate. It follows that the applicant’s fears are not far-fetched as the alienation of the suit land is a real possibility. To this end, I find that the orders of inhibition are also merited.

12. It is noted that this court granted the initial prayers of injunction and inhibition way back on 4.12.2019 and there is nothing to indicate that the parties have had any problems with the said orders. In the circumstances, the orders of injunction and inhibition granted on 4.12.2019 are hereby confirmed but the same shall remain in force for a period of ONE YEAR. The costs of this application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF MAY, 2021 IN PRESENCE OF:

C/A: Kananu

Muthomi for defendant/respondent

HON. LUCY. N. MBUGUA

ELC JUDGE

