



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC. APPLICATION NO. E004 OF 2020

ALICE WARUGURU GIKUNJU.....1ST APPLICANT

PAULINE WANJIKU GIKUNJU.....2ND APPLICANT

VERSUS

CHARLES KARANI GIKUNJU.....1ST RESPONDENT

EVAN MURIMI KARANI.....2ND RESPONDENT

KENNEDY MUNENE KARANI.....3RD RESPONDENT

JAMES WACHIRA KARANI.....4TH RESPONDENT

JOSPHAT KINYUA GIKUNJU.....5TH RESPONDENT

JOEL MURIMI GATHUNGU.....6TH RESPONDENT

RULING

Background

The Applicants vide a Notice of Motion dated 16th October 2020 brought under *Sections 152A, 152B, 152E, 152G and 152F of the Land Act No. 6 of 2012* sought the following orders:-

1. Spent.

2. That this Honourable Court be pleased and hereby issue a Temporary injunction against the respondents by themselves, their children, agents, employees or anyone at their behest stopping them from causing nuisance, trespassing in their house or their person, insulting them, tampering with their animals, crops, plants or taking any actions against the applicants interests pending full hearing and determining of this application.

3. That this Honourable Court be pleased and hereby issues an order of eviction against the 1st, 2nd, 3rd, 4th, 5th and 6th respondents herein for them to be evicted from the suit land known as MUTIRA/KAGUYU/6262.

4. That the officer commanding Kirinyaga Police Station (O.C.S.) do oversee the exercise of eviction and demolition of structures and provide security for law and order to be maintained.

5. That the cost of this application be borne by the respondents in any event.

Grounds upon which the application is premised:-

1. That the applicants are joint registered proprietors of the land parcel No. MUTIRA/KAGUYU/6262 (hereinafter “the suit land”).

2. That the suit land was initially number MUTIRA/KAGUYU/3602 which was sub-divided between the applicants and Edward Gikunju in order to excise MUTIRA/KAGUYU/3602 through succession in Kerugoya Chief Magistrate’s Succession Cause Number 434 of 2016.

3. That the applicant then proceeded to serve the respondents with an Eviction Notice wrongly dated 25/12/2020 (but correctly 25/02/2020) through her then Advocates Ngigi Gichoya & Co. Advocates and also served other relevant bodies being the Officer Commanding Police Division and the Deputy County Commissioner Kirinyaga Central.
4. That the eviction Notice was to take effect on 25th May 2020 after three (3) months provided under Section 152E (1) of the Land Act but the respondents did not move out nor did they file any pleadings to oppose eviction Notice.
5. That out of those issued with notice dated 25th February 2020, Joseph Gathungu Gikunju and Edward Muriithi Gikunju vacated and occupied their lawfully allocated parcels of land under succession process.
6. That the respondents herein however refused to vacate land in spite of having their parcels of land duly allocated through the succession process.
7. That on the 26th day of August 2020, the Applicants through the firm of Njoroge Kimani & Co. Advocates gave a reminder notice to the Respondents herein who have blatantly refused to vacate.
8. That the reminder notice was served upon the respondents through the Elder on the 26th August 2020 while the eviction notice of 25th February 2020 had been served through the Village Elder on 26th February 2020.
9. That the respondents continued to trespass, exploit and abuse the applicants land even when they are accruing benefit from their parcels of land.
10. That the respondents by themselves and/or their children have in numerous instances caused nuisance to the applicant who is a Senior member of the Society by insulting her, fighting within the compound, untying her livestock to the garden, selling her bananas, stealing coffee berries and chicken and specifically sarcastically asking the applicant why she has not evicted them using Court Order and not mere lawyer's letters.
11. That one of the family members (Edward Muriithi Gikunju) has been assaulted by Evan Murimi Karani and James Wachira Karani due to issues related to stealing the chicken by Kennedy Munene Karani and James Wachira Karani as per OB Number 04/11/10/2020.
12. That the 1st respondent has built a house in his land and even proceeded to divide the same among his children being the 2nd, 3rd and 4th respondents while the 5th respondent took possession of his land and leased it to third parties.
13. That the 6th respondent refused to vacate after his father one Joseph Gathungu Gikunju moved to his land.
14. That some if the respondents are the applicant's children and grandchildren and their trespass and nuisance have caused the emotional and psychological torture necessitating this application.
15. That it is in the interest of justice and fairness that the respondents be evicted from the applicant's suit land so that she can enjoy her property in peace.

Applicants' summary of Facts

The Applicant in their supporting affidavit sworn by the 1st applicant deposed as follows:

1. That I am the registered proprietor of the land parcel Number MUTIRA/KAGUYU/6262 jointly with Pauline Wanjiku Gikunju.
2. That the suit land was initially number MUTIRA/KAGUYU/3602 which was subdivided between applicant Edward Muriithi Gikunju in order to excise MUTIRA/KAGUYU/3602 through succession in Kerugoya Chief Magistrate Succession Cause No. 434 of 2016.
3. That the respondents were occupying MUTIRA/KAGUYU/3602 prior to succession proceedings but, every beneficiary of the Estate of Joel Gikunju Gathungu (deceased) the subject of Succession 434 of 2016 moved to their new locations save for the respondents.
4. That the respondents were served with an eviction Notice wrongly dated 25/12/2020 (but correctly 25/02/2020) through by then advocate Ngigi Gichoya & Co. Advocates and also served other relevant bodies being the Officer Commanding Police Division and Deputy County Commissioner Kirinyaga Central.
5. That the eviction Notice was to take effect on 25th May 2020 after three (3) months as provided under Section 152E (1) of the Land Act but the respondents did not move out nor did they file any pleadings to oppose the eviction notice.
6. That out of those issued with vacation notice dated 25th February 2020, Joseph Gathungu and Edward Muriithi Gikunju vacated and occupied their lawfully allocated parcels of lands under succession process.

7. That the respondents herein however refused to vacate land in spite of having their parcels of land duly allocated through the succession process.
8. That some of the respondents are sufficiently mischievous such that after they have wronged me, they disappear to their houses in their allocated lands for a few days only to return to my land later boasting they have two homes.
9. That on the 20th day of August 2020, I instructed the firm of Njoroge O. Kimani & Co Advocates to give reminder notice to the respondents herein who have blatantly refused to vacate.
10. That the reminder notice was served upon the respondents through the area Village Elder on the 26th August 2020 while the eviction notice of 25th February 2020 had been served through the Village Elder on 26th February 2020.
11. That the respondents continue to trespass, exploit and abuse my land even when they are accruing benefit from their parcels of land.
12. That the respondents by themselves and/or their children have in numerous instances caused nuisance by insulting me, untying my livestock to the garden, selling my bananas and sarcastically asking me why I have not evicted them using Court order and not mere lawyer's letters.
13. That one of the family members (Edward Muriithi Gikunju) has been assaulted by Evan Murimi Karani and James Wachira Karani due to issues related to vacation as per OB Number 07/17/03/2020 and breaking the chicken structure and stealing the chicken by Kennedy Munene Karani and James Wachira Karani as per OB Number 04/11/10/2020.
14. That the 1st respondent has built a house in his land and even proceeded to divide the same among his children being the 2nd, 3rd and 4th respondents while the 5th respondent took possession of his land and leased it to third parties.
15. That the 6th respondent refused to vacate after his father one Joseph Gathungu Gikunju moved to his land.
16. That some of the respondents are my children and grandchildren and their trespass and nuisance have caused me emotional and psychological torture necessitating this application.
17. That it is in the interest of justice and fairness that the respondents be evicted from our land so that we can enjoy our property in peace.

1st Respondent's summary of Facts

The 1st respondent filed a replying affidavit in which he deponed as follows:-

1. That the application dated 16th October 2020 has been read out to me by my Advocate on record and I have understood the contents therein.
2. That I am advised by my advocate on record, which information I believe is true that the current application is an abuse of the court process and a nonstarter as the orders sought ought to be sought in a substantive case.
3. That I am advised by my advocate on record which information I believe is true that the applicant ought to file a fresh suit seeking for the orders herein which cannot be granted through a Miscellaneous Application as it involves production of evidence.
4. That the application as filed is frivolous, vexatious and an abuse of the court and therefore ought to be dismissed.

The 2nd, 3rd, 4th, 5th and 6th respondents did not file any response but made brief remarks orally on oath opposing the application.

Legal Analysis and Decision

I have considered the Notice of Motion and the supporting affidavit sworn by the applicant on 16th October 2020. I have also considered the replying affidavit sworn by the 1st respondent on 22nd December 2020 and the oral response given on oath by the 2nd, 3rd, 4th, 5th and 6th respondents.

At paragraph 3 and 4 of his replying affidavit, the 1st respondent deposed as follows:-

3. *“That I am advised by my Advocate on record, which information I believe is true that the current application is an abuse the Court process and a non-starter as the orders sought ought to be sought in a substantive suit/case.*
4. *That I am advised by my advocate on record which information I believe is true that the applicant ought to file a fresh suit seeking for the orders herein which cannot be granted through a Miscellaneous Application as it involves production of evidence”.*

The applicant in the supporting affidavit has deposed that the suit properly land parcel No. MUTIRA/KAGUYU/ 6262 was initially registered as land parcel No. MUTIRA/KAGUYU/3602 in the names of Joel Gikunju Gathungu (deceased) before they undertook succession proceedings in Succession Cause No. 434 of 2016 (Chief Magistrate, Kerugoya). After the succession proceedings were completed, the Estate was distributed amongst the beneficiaries including the 1st respondent who did not file any affidavit of protest and the Court confirmed the grant and the 1st respondent got shares in the following properties:-

1. MUTIRA/KAGUYU/3602 (5 acres)

- i. Alice Waruguru Gikunju
- ii. Julia Waruguru Gikunju
- iii. Josphat Kinyua Gikunju
- iv. Pauline Wanjiku Gikunju To share remainder
- v. Joseph Wachira Gikunju Equally
- vi. Charles Karani Gikunju
- vii. Edward Muriithi Gikunju

2. MUTIRA/KIRIMUNGE/35 (3 acres)

- i. Joseph Gathungu Gikunju
- ii. Josphat Kinyua Gikunju
- iii. Pauline Wanjiku Gikunju
- iv. Joseph Wachira Gikunju To share Equally
- v. Charles Karani Gikunju
- vi. Edward Muriithi Gikunju

3. MUTIRA/KIRUNDA/459 (4 acres)

- i. Joseph Gathungu Gikunju
- ii. Josphat Kinyua Gikunju
- iii. Pauline Wanjiku Gikunju To share Equally
- iv. Joseph Wachira Gikunju
- v. Charles Karani Gikunju
- vi. Edward Muriithi Gikunju

4. MUTIRA/KAGUYU/1019

- i. Joseph Gathungu Gikunju
- ii. Josphat Kinyua Gikunju
- iii. Pauline Wanjiku Gikunju To share Equally
- iv. Joseph Wachira Gikunju
- v. Charles Karani Gikunju
- vi. Edward Muriithi Gikunju

5. Money in the Family Bank Kerugoya Branch A/c No. [particulars withheld

- i. Alice Waruguru Gikunju
- ii. Julia Waruguru Gikunju
- iii. Joseph Gathungu Gikunju
- iv. Josphat Kinyua Gikunju To share Equally
- v. Pauline Wanjiku Gikunju
- vi. Joseph Wachira Gikunju
- vii. Charles Karani Gikunju
- viii. Edward Muriithi Gikunju

The applicant has further deposed that every beneficiary to the Estate of Joel Gikunju Gathungu were given their shares and the issue relating to the Succession Cause No. 434 of 2016 in connection to the Estate of Joel Gikunju Gathungu (deceased) was closed.

I agree with the applicant and her counsel that the issue relating to the ownership of land parcel No. MUTIRA/KAGUYU/6262 was determined in the Succession Proceedings No. 434/2016 (C.M. Kerugoya) and no substantive suit is required to enforce the decision of a Court of competent jurisdiction. The applicant stated in paragraph 15 of the supporting affidavit that the 1st respondent has built a house in his land and even proceeded to divide the same among his children who are the 2nd, 3rd and 4th respondents. Those averments given on oath have not been controverted. The deposition by the applicant that the 5th respondent took possession of his land and leased it to third parties has not also been controverted.

I find the application dated 16th October 2020 merited and the same is hereby allowed as prayed. Each party shall bear her own costs. It is so ordered.

RULING READ, DELIVERED PHYSICALLY AND SIGNED IN OPEN COURT AT KERUGOYA THIS 11TH DAY OF JUNE, 2021.

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E.C CHERONO

ELC JUDGE

In the presence of:-

1. Mr. Wanyinge for Applicant
2. Ms Ndorongo holding brief for Nyangati for 1st Respondent
3. 2nd Respondent – present
4. Kabuta – Court clerk.