



Macharia v Watiri (Environmental and Land Originating Summons E005 of 2024) [2025] KEELC 3770 (KLR) (14 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3770 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E005 OF 2024**

LN MBUGUA, J

MAY 14, 2025

BETWEEN

PETER MURIUKI MACHARIA PLAINTIFF

AND

MARY PHILOMENA WATIRI DEFENDANT

RULING

1. Before me is a notice of motion application dated 23.12.2024 filed contemporaneously with the Originating summons in which the plaintiffs are claiming entitlement to parcel Nanyuki Marura Block8/929 (suit land) through adverse possession.
2. In the application, the plaintiff is seeking the following orders;
 1. Spent
 2. That the Hon. Judge be satisfied that this matter is of urgent need for such hearing during the vacation and order for the same to be heard and determined giving relief as sought and or fix a date for such hearing under the said urgency.
 3. That the Hon. Judge to admit the affidavit giving grounds herein and to deal with the application being satisfied that the matter is of urgent need.
 4. That a temporary injunction to restrain the defendant herself/her agents/representatives from interfering/preventing the plaintiff/applicant the use and occupation of parcel No. Nanyuki Marura Block 8/929 (Nturukuma) the suit property pending hearing and determination of this application.
 5. That a temporary injunction to restrain the defendant herself/her agents/representatives from interfering/preventing the plaintiff the use and occupation of parcel No. Nanyuki Marura



Block 8/929 (Nturukuma) the suit property pending hearing and determination of the Originating Summons (OS)

6. That importantly to order return of the plaintiff himself, family, agents, representatives into the parcel No. Nanyuki Marura Block 8/929 (Nturukuma) the suit property pending the hearing and determination of the Originating Summons (OS) herein. (The plaintiff was evicted unlawfully and illegally).
 7. That the Hon. Judge to stay the orders of eviction in Chief Magistrates Court at Nanyuki CMCC ELC No. 18/2018 Mary Philomena Watiri Wambugu v Michael Karani M'Rimberia and if the same have been overtaken by events to order return or reinstating the plaintiff/family to their previous status awaiting the outcome of the application herein.
 8. That the Auctioneers/OCS Nanyuki to be served with the orders thereafter to provide security and smooth return to the suit property.
3. The application is premised on grounds on the face of the application and on the supporting affidavit of the applicant. He avers that his mother, now deceased had purchased the suit land from Michael Karani M'Rimbera in 1994, but the transfer was not effected as the vendor disappeared. Nevertheless, the family of the plaintiff took over the suit land and have been living thereon since year 1994.
 4. That the defendant is the current registered owner of the suit land vide a court order of 24.9.2019 issued in a suit where he was not a party. He learnt of the existence of defendant's title when an order of eviction was issued against one Michael Karani M'Rimbera.
 5. In a supplementary affidavit dated 17.3.2025, the applicant avers that their eviction was wrongful as they were not served, the person who was served was Michael Karani.
 6. No response was filed in respect of the application, hence the said application is unopposed. Nevertheless, the court has a duty to deal with the merits of the application going by the Supreme Court of Kenya holding in the case of *Gideon Sitelu Konchellab v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR.
 7. I find that as per prayer no.6 in the application as well as in the entire supplementary affidavit, it is clear that the plaintiff and his family are not in occupation of the suit land. They were evicted. The applicant has not indicated as to when the eviction occurred. In such circumstances, the court cannot grant a temporary injunction to restrain that which has already taken place. After all, the eviction of the applicants was a court sanctioned process through proceedings in the magistrates court. As to whether those proceedings were valid or not, this court cannot purport to deal with such an issue at this stage of the trial as the court is not sitting on appeal in respect of the proceedings conducted before the trial court.
 8. In the end, I find that the application dated 23.12.2024 is not merited, the same is hereby dismissed, with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 14TH DAY OF MAY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Kiget for Plaintiff



Wandaka for Defendant

Yaru: Court Assistant

