



M'Murithi v M'Mutunga & 2 others (Environment & Land Case E017 of 2024) [2025] KEELC 3837 (KLR) (12 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3837 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E017 OF 2024**

BM EBOSO, J

MAY 12, 2025

BETWEEN

SAMUEL MUTUMA M'MURITHI PLAINTIFF

AND

EDWARD MARETE M'MUTUNGA 1ST DEFENDANT

HELLEN KANANU MBOROKI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MUTUNGA MAARA) 2ND DEFENDANT

NEWTON KINYUA MARETE 3RD DEFENDANT

RULING

1. The plaintiff, Samuel Mutuma M'Murithi, initiated this suit through a plaint dated 26/7/2024. He sought: (i) a declaration that he is the bona fide owner of land parcel numbers Nyaki/Nkabune/1081 and 1082 [hereinafter referred to as "the suit properties"]; (ii) a permanent injunction restraining the defendants and their agents/servants against evicting him from, selling, leasing or charging the suit properties or interfering with his possession of the suit properties. As an alternative relief, the plaintiff sought an order decreeing the defendants to compensate him for the two parcels of land and for the costs of the developments made by him on the suit properties. He also prayed for costs of the suit and interest.
2. Together with the plaint, the plaintiff brought a notice of motion dated 26/7/2024, seeking the following interlocutory reliefs: (i) an interlocutory injunctive order restraining the defendants and their servants/agents against evicting him from, selling, leasing or charging the suit properties or interfering with his [the plaintiff's] possession of the suit properties; and (ii) an interlocutory status quo order preserving the land registers relating to the suit properties. The said application is the subject of this ruling.



3. The plaintiff's case is that the two suit properties [land parcel number Nyaki/Nkabune/1081 and 1082] are subdivisions surveyed out of land parcel number Nyaki/Nkabune/872 which previously belonged to the late Mutunga Maara alias M'Mutunga M'Mara [hereinafter referred to as "the deceased"] who died on 25/11/2003. He [the plaintiff] purchased the two suit properties on 27/4/2016 and 7/6/2016, respectively, from Eric Muriira Mutai and Teresia Wangari Njunge & Erick Muriira Mutai, at Kshs 1,750,00 and Kshs 800,000 respectively. At the time of purchasing the suit properties, he carried out due diligence at the Land Registry and at the Survey Office and established that the suit properties were registered in the names of the respective vendors.
4. He states that the two parcels were duly transferred to him and registered in his name, adding that he was financed by Co-operative Bank of Kenya Limited who registered a charge against parcel number Nyaki/Nkabune/1081. He subsequently developed the two parcels and established a home on them, where he resides with his wife and children.
5. It is the plaintiff's case that the 1st defendant is a son to the deceased and a husband to Hellen Kananu Mboroki [the 2nd defendant]. He adds that the 1st defendant is a father to the 3rd defendant. He contends that, at all material times, the 1st defendant was the administrator of the estate of the deceased and sold and transferred the two parcels of land to third parties who in turn sold the parcels to him [the plaintiff]. He adds that the three defendants subsequently colluded and procured cancellation of the grant; cancellation of the certificate of confirmation of grant; cancellation of his (the plaintiff's) titles; issuance of a new grant in the name of the 2nd defendant; and issuance of an amended certificate of grant divesting the suit land from him [the plaintiff] and vesting the original title in the names of the 2nd and 3rd defendants. The plaintiff states that when he learnt about the cancellations by the Succession Court, he made an application in the Succession Court seeking a review of the order that annulled his titles but the Succession Court dismissed his application
6. The plaintiff contends that the defendants have moved swiftly to implement the orders obtained from the Succession Court. He further contends that if that is allowed to proceed, he will be thrown out of the suit properties which he has occupied since 2016 and has immensely developed. The plaintiff adds that the defendants have started bringing strangers on the suit properties and he is apprehensive that the defendants intend to secretly sell the suit land to a third party unless the court intervenes urgently.
7. The defendants opposed the application through an affidavit sworn on 18/9/2024 by Hellen Kananu Mboroki and written submissions dated 2/12/2024, filed by L.Kimathi Kiara & Company Advocates. She deposes that she is the bona fide owner of land parcel numbers Nyaki/Nkabune/1081 and 1082, having obtained the same vide succession orders issued in Meru High Court Succession Cause No. 200 of 2012. She further deposes that the applicant fraudulently obtained titles to the suit land and the said titles were subsequently revoked by the Succession Court vide a ruling dated 20/3/2018. She adds that after the Grant was revoked, she applied for the titles to be cancelled and to revert to the name of the deceased and her plea was granted by the Succession Court.
8. It is the case of the defendants that in a move to defeat the ruling and the orders of the Succession Court, the plaintiff applied to set aside the ruling but the High Court dismissed his application. They contend that the issues raised in the instant suit are res judicata and an abuse of the court process. The defendants add that the applicant is in contempt of the High Court orders because he obtained a loan and charged one of the impugned titles as a collateral, contending that they intend to file contempt proceedings against him.
9. The court has considered the application, the response to the application, and the parties' respective submissions. The key question to be determined in this ruling is whether the application dated 26/7/2024 satisfies the criteria for grant of an ordinary interlocutory injunctive relief.



10. The relevant criteria was spelt out in *Giella v Cassman Brown & Co Ltd* (EA) 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate that if the interlocutory injunctive relief is declined, he will stand to suffer damage that may not be adequately indemnifiable through an award of damages. Lastly, should the court have doubts on either or both of the above, the application is to be determined on the basis of the balance of convenience. A fourth principle which has emerged over the years is that, at the stage of disposing the plea for an interlocutory injunctive relief, the court should not make conclusive or definitive pronouncements or findings on the key issues in the dispute. Conclusive or definitive pronouncements are to await trial.
11. Does the application meet the above criteria? First, the plaintiff is waving titles that he alleges were conveyed to him by third parties. None of the third parties has been joined as a party to this suit. Secondly, the plaintiff is alleging that parcel number 1081 is charged to Co-operative Bank. The said Bank has not been joined as a party to this case. Thirdly, the plaintiff has come to this court waving two titles that are alleged to be products of succession orders issued by the High Court while exercising jurisdiction under the *Law of Succession Act*. The plaintiff is before this court because he is aggrieved by the decision of the High Court which annulled his titles in exercise of its jurisdiction as a Succession Court. This Court and the High Court are courts of equal status exercising distinct jurisdiction spelt by *the Constitution*. Neither of the two courts of equal status has review/supervisory/appellate jurisdiction over the other. If the plaintiff is aggrieved by the decision of the High Court, the court with direct supervisory/review/appellate jurisdiction over the High Court is the Court of Appeal.
12. It does also emerge from the interlocutory evidence presented to this court that the plaintiff sought an order staying the order which annulled his titles. The High Court considered the application and dismissed it for lack of merit. It does therefore appear that the plaintiff wants an interlocutory relief from this court to indirectly review/overturn/stay the two decisions that were made by the High Court. Regrettably, the titles which he is waving, as evidence of ownership and the basis upon which he should be granted an interlocutory injunction, were annulled by the High Court - a court of equal status with the Environment and Land Court. The two titles are no longer valid ownership documents. For the above reasons, I do not think the applicant has demonstrated a prima facie case before this Court. Secondly, I do not think it would be in the interest of justice for two courts of equal status to issue conflicting orders.
13. Whereas the second element in the principle in *Giella v Cassman Brown* exists, the fact that the titles which the plaintiff is waving were a product of succession orders and were annulled by a competent Succession Court of equal status with the Environment and Land Court is, at this interlocutory stage, proper reason for this court to defer to the appeal redress mechanism under the *Law of Succession Act*.
14. The balance of convenience, similarly, favours deferring to the appeal redress mechanism under the *Law of Succession Act* as opposed to issuing conflicting orders that would expose the justice system to disrepute.
15. For the above reasons, the application dated 26/7/2024 is rejected and dismissed.

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF MAY 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Court Assistant – Mr. Tupet

