



**Musau v Shire (Environment & Land Case E17 of 2024)  
[2025] KEELC 240 (KLR) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 240 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E17 OF 2024  
A NYUKURI, J  
JANUARY 22, 2025**

**BETWEEN**

**ANNE NKATHA MUSAU ..... PLAINTIFF**

**AND**

**MAHAT SHIRE ..... DEFENDANT**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 18th March 2024 filed by the plaintiff seeking orders that a temporary injunction be issued restraining the defendant by himself, his relatives, servants, employees, agents, assignees or anybody claiming under his name, from entering, accessing, trespassing, encroaching or in any way whatsoever interfering with the plaintiff's quiet possession, use and possession of all that parcel of land known as LR Number 12715 / 656 I. R Number 47967 situate in the district of Machakos N.W of Athi River location within Machakos County pending hearing and determination of this suit. The plaintiff further sought for orders that the officer in charge of Syokimau Police Station or any other police station within the Republic of Kenya to provide security to the plaintiff during the enforcement of the court order.
2. The application is based on the grounds on its face together with the affidavit sworn by Anne Nkatha Musau dated 18<sup>th</sup> March 2024. The applicants' case is that she is the executrix of the estate of Agnes Mumbua Mbatha Kithimba (deceased) pursuant to a confirmed grant of letters of administration made to her dated 16<sup>th</sup> June 2021. She stated that she has power and authority to manage the deceased's properties including L.R No. 12715/656 I.R. No. 47967 (the suit property). Further that the suit property belonged to the deceased and the same had been leased to Christ Is The Answer Ministries (CITAM) who currently occupy the same for purposes of worship. She added that the respondent who is claiming ownership has been a constant nuisance by unreasonably threatening to evict the church which amounts to trespass.



3. She further averred that the defendant has instructed the church to remove its tent from the property whereof he stormed the suit property and in the company of other strangers armed with crude weapons proceeded to disrupt the church activities thereby violating the rights of the church members and interfering with the applicant's peaceful occupation of the suit property. She attached confirmed grant dated 16<sup>th</sup> June 2021; copy of title; Payment of rent; and an agreement between the plaintiff and Christ Is The Answer Ministries.
4. The application was opposed. Mahat Shire, the defendant in this matter, filed a replying affidavit sworn on 25<sup>th</sup> March 2024 stating that he was a director of Blue Lime Company Limited which company is the registered owner of the suit property and which has already been subdivided into 37 plots. He stated that the company purchased the suit property from a Mr. Wahome on 2<sup>nd</sup> January 2009 at Kshs. 12 Million and that Mr. Wahome had purchased the property from the original shareholder Mr. Mbatha Kithimba and was issued with the original historical documents being the share certificate; letter of allotment and share subscription receipts. According to the respondent, Mr. Wahome purchased the suit property in the presence of Agnes Mumbua Mbatha who signed and thumb printed the agreement of 9<sup>th</sup> June 1989. He stated that the deceased's thumbprint was confirmed as belonging to the deceased by the National Registration Bureau on 13<sup>th</sup> December 2023. He also stated that the suit property originally belonged to Syokimau Farm Limited and was a subdivision of L. R Number 7149/ 11/ R.
5. The respondent stated that Mr. Kithimba, the father of the applicant was a shareholder at Syokimau Farm Limited and was allocated share numbers 2241-2250 for five acres of land and issued with a letter of allotment number 225 dated 3<sup>rd</sup> November 1980. He stated that when the Blue Lime company Limited purchased the suit property, the title deed had not been processed and that what was transferred to the company were historical ownership documents by Syokimau Farm Limited to enable it process a title deed. He insisted that his company had been in possession of the suit property and had even constructed a perimeter wall. He maintained that the deceased has never owned the suit property and that Mr. Kithimba, the original owner is still alive and able to substantiate allegations by the applicant.
6. Regarding the applicants position that the suit property had been charged to Daima Bank, he stated that the said bank was not claiming any interest and had not been joined as party to the suit. Further that the applicant had not attached a search certificate showing the name of the late Agnes Mumbua Mbatha. He stated that this matter had been investigated by the police and the Minister of lands and in their letter of 14<sup>th</sup> August 2020 they confirmed that the property belongs to the defendant's company. He insisted that the documents relied upon by the applicant were fraudulent and made through collusion with some of the officials at the Lands Registry and that they hold a legitimate title which should be protected. He also averred that the orders sought should not be granted as he stood to suffer prejudice.
7. He attached copy of title; sale agreements dated 2<sup>nd</sup> January 2009 and 7<sup>th</sup> June 1989; letter concerning the verification of the deceased's finger prints dated 13<sup>th</sup> December 2023; documents from Syokimau Farm Limited; and letter from the Ministry of lands.
8. In a rejoinder, the applicant filed a supplementary affidavit dated 26<sup>th</sup> April 2024 where she stated that the affidavit of the respondent was malicious, full of half-truths and in bad faith concealing many facts. He stated that there was no CR12 of the purported Blue Lime company attached to show that the respondent was a director of the said company. He insisted that as at the time the company of the defendant was alleged to have been formed, the law required a minimum of two directors and therefore the defendant alone could not have registered a company in 2009 under sole directorship. On allegations of the defendants that the suit property had been subdivided into 37 plots, he stated



that that position is not reflected at the Land Registry and that the title in the name of the defendant's company does not exist within the records of the lands registry in Machakos.

9. Regarding the sale agreements produced by the respondent, she stated that Mr. James Wahome had no capacity to transfer any legal interest in the suit property, the agreement is not valid and the same is a forgery because Mr. James Wahome has never acquired the property in the manner alleged and therefore had no capacity to transfer its interest by way of sale to the said company. She further stated that the respondent had conveniently not indicated the identity card number of the alleged Mr. James Wahome Kariuki in the two agreements presented. Concerning the letter alleged to have verified the deceased's signature, she stated that the same was a mockery to the court as its source could not be authenticated and examination of signatures and thumb prints are not presented in the manner and nature shown by the defendant.
10. Further that Mr. Mbatha Kithimba never executed the alleged agreements of 7<sup>th</sup> June 1989 and 14<sup>th</sup> August 2023 and that since Mr. Kithimba did not own the suit property he had no capacity to sell it.
11. She further stated that advocate Meshack Obura who is alleged to have drawn the agreements was struck off the Roll of advocates by the Chief Registrar of the Judiciary.
12. She stated that Mr. Anthony M. Mulekyo Advocate who is alleged to have drawn the agreement dated 7<sup>th</sup> June 1989 was still an undergraduate student as at the date of the agreement as he joined the University of Nairobi to study law on 2<sup>nd</sup> October 1989.
13. She further stated that the signatures on the agreement dated 7<sup>th</sup> June 1989 look as recent as the handwriting captured on 14<sup>th</sup> August 2023, hence the same were forgeries.
14. She also stated that the suit property was purchased by Agnes Mumbua from Syokimau Farm Limited and registered in her name on 27<sup>th</sup> March 1990 and thereafter charged to Daima Bank Ltd on 15<sup>th</sup> October 1997 for a sum of Kshs. 500,000/= and the same is yet to be discharged to-date. That the suit property cannot change ownership until the charge is discharged. She stated that the suit property has never had a perimeter wall as it only has a barbed wire. She further stated that the plaintiff has been in quiet enjoyment of the suit property having put up a three-bedroom house, and a borehole which was approved by Water Resources Authority Machakos vide their letter of 13<sup>th</sup> July 2015. She attached a charge document dated 7<sup>th</sup> October 1997; search certificate; photographs of the house and fence on the suit property; and a letter from Water Resources Management Authority of 13<sup>th</sup> July 2015
15. The application was disposed by way of written and oral submissions. On record are the plaintiff/applicant's submissions dated 30<sup>th</sup> April 2024 and the defendant/respondent's submissions dated 15<sup>th</sup> April 2024.

### **Applicant's submissions**

16. Mr. Oriwo, counsel for the applicant submitted that the applicant had met conditions for grant of temporary injunction set out in the case of *Giella v Cassman Brown* (1973) EA 358. He argued that the applicant had demonstrated a *prima facie* case with chances of success; that she will suffer irreparable loss and damage if the injunction is denied and that the balance of convenience tilted in favour of granting the orders sought.
17. On whether the applicant has demonstrated a prima facie case, counsel relied on the case of *Mrao Ltd v First American Bank Limited & 2 Others* [2003] e KLR 125 and submitted that the applicant had produced a certificate of title and search certificate showing that she owned the suit property. Further that she had demonstrated a three-bedroom house, barbed wire fence and borehole on the suit property



where she has been in possession for fourteen years until the defendant interfered with her possession thereof. He further argued that there is a lease between the Applicant and CITAM Church.

18. He urged the court to disregard the respondent's arguments of purchase and submitted that the respondent has never been in possession of the suit property and that his allegations of having erected a wall thereon were not true. It was further submitted that the title of the suit property demonstrated that the same had been charged to Daima Bank Ltd which is yet to be discharged and therefore no dealings can be registered in regard to the suit property. On the question of irreparable loss, counsel relied on the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] e KLR and submitted that the court ought to consider the amount of inconvenience that will be suffered by the applicant vis a vis the respondent if the injunction is not granted.

### **Respondent's submissions**

19. Ms Wangusi, counsel for the respondent submitted that the defendant was a director of Blue Lime Company Limited who are the bona fide owners of the suit property and that he had presented a title document and sale agreements showing purchase. It was her submission that the said company had been in possession of the suit property since 2009 upon purchasing the same from one James Wahome Kariuki who had bought it from the Plaintiff's father Mbatha Kithimba. Counsel also submitted that it is not disputed that the suit property was once owned by Syokimau Farm Limited and that the plaintiff's father acquired it and sold it to James Wahome Kariuki in the presence of the plaintiff's mother who is the deceased herein and that the defendant has produced documents to show that the signature on the sale agreement belonged to the deceased plaintiff's mother. Counsel also submitted that the defendant having produced title documents and that the plaintiff's father is still alive and has not been called to comment on the sale agreement, therefore the plaintiff does not deserve the orders sought.
20. Regarding the lease agreement with CITAM Church, counsel argued that the same was a fabricated document as it did not demonstrate payment of stamp duty. Reliance was placed on the case of Giella (supra) and counsel submitted that no prejudice shall be suffered by the plaintiff if the orders sought are not granted.
21. In a rejoinder, Mr. Oriwo for the applicant submitted that the search certificate produced by the applicant demonstrates that the late Agnes owned the suit property. He faulted the sale agreements and submitted that Mr. Meshack Obura had been struck off the Roll of Advocates while Mr. Antony M. Mulekyo had not become an advocate in 1989, as he was still a student when the agreement of 1989 was allegedly drawn. Counsel also pointed out that the said purchaser James Wahome Kariuki's identity card was not indicated in the agreement. Counsel argued that an agreement of 1989 could not conform with that of 2014 and that the same raises more questions than answers. Counsel further argued that there was need for a forensic investigation of the defendant's documents as the plaintiff's father who is said to have sold the suit property is unwell and hospitalized at Nairobi hospital, unable to do anything in his condition.

### **Analysis and determination**

22. The court has carefully considered the application, the response, the annexures produced by the parties and their respective submissions. The only issue that arise for this court's determination is whether the applicant has met the conditions for grant of a temporary injunction.
23. Order 40 Rule 1 of the *Civil Procedure Rules* grants this court the jurisdiction to grant a temporary injunction where it is demonstrated that the disputed property is in danger of being wasted, damaged, alienated or wrongfully sold in execution of a decree or where the defendant threatens or intends to



remove or dispose the suit property in circumstances that would show reasonable probability that the plaintiff may be obstructed or delayed in execution of any decree that may be passed in his or her favour.

24. To succeed in an application for temporary injunction, an applicant must demonstrate that they have a prima facie case with chances of success; that they stand to suffer irreparable loss that may not be compensated in damages if the injunction is denied and that the balance of convenience tilts in their favour. (See *Giella v Cassman Brown & Co. Ltd* [1973] EA 358)

25. A prima facie case was described in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003)e KLR, as follows;

So what is a prima facie case? I would say that in civil cases it is a case in 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.

26. In the instant case, both the plaintiff and defendant claim ownership of the suit property, as they have each presented titles thereto. The plaintiff produced a title and search showing that the suit property L.R No. 12715/656 I. R No. 47967 was first registered in the name of Syokimau Farm Limited on 24<sup>th</sup> July 1989 and subsequently transferred to Agnes Mumbua Kithimba on 27<sup>th</sup> March 1990. That later the said title was charged to Daima Bank Limited on 3<sup>rd</sup> November 1997 for a facility of Kshs 500, 000/= . The applicant also produced property rates payment requests from Mavoko subcounty for the period between 2012 to 2015; a charge document in favour of Daima Bank Limited dated 7<sup>th</sup> October 1997; photographs showing a house, a barbed wire fence and a letter dated 13<sup>th</sup> July 2015 from the Water Resources Management Authority authorizing the deceased to drill a borehole on the suit property.

27. On the other hand, the defendant's title shows that L.R No. 12715/656 I.R No. 205592 was registered in the name of Syokimau Farm limited on 12<sup>th</sup> February 2020 and on 10<sup>th</sup> March 2020 it was transferred to James Wahome Kariuki and subsequently transferred to Blue Lime Limited on 20<sup>th</sup> September 2022. He also produced a sale agreement dated 2<sup>nd</sup> January 2009 between James Wahome Kariuki and Blue Lime Limited and an agreement dated 7<sup>th</sup> June 1989 between Mbatha Kithimba and James Wahome.

28. Section 25 of the *Land Registration Act* grants indefeasible and absolute rights to registered proprietors of land and therefore limiting the enjoyment of land by the registered proprietor by an injunction, ought only be made in deserving cases where the court is satisfied that the applicant has established a prima facies case as against the registered proprietor; where damages may not sufficiently compensate the applicant if the injunction is declined and where the balance of convenience tilts in favour of granting the injunction. While both parties herein have exhibited titles to the suit property, which means that the court will have opportunity to interrogate each party's evidence at the hearing to determine the true owner of the suit property, I however, take the view that where one party's documents are manifestly fraudulent, the court need not wait for trial to grant an injunction against such party so as to preserve the substratum of the suit and prevent waste and damage of the same.

29. I have considered the affidavits and submissions of the parties and it is clear that from the face of the defendant's documents, the same reeks of blatant forgeries. This is because the agreement dated 7<sup>th</sup> June 1989 refers to registered land being L.R. No. 12715/656, meaning that as of that date the suit property had already been titled, yet the title produced by the defendant shows that the first registration of that land was done on 12<sup>th</sup> February 2020 in the name of Syokimau Farm Limited. The defendant insisted in his affidavit that at the time of purchase in 1989, the suit property had no title and what was handed over to his company was the share certificate and other incidental documents, which clearly is a



contradiction of his narration as the land could not be untitled yet an agreement done in 1989 specifies the registration number thereof. This points to the fact that it cannot be correct or true that the suit property was first registered in 2020 and therefore it is clear from the defendant's own evidence that the defendant's title is prima facie a forgery.

30. In addition, the advocate who is alleged to have drawn the defendant's sale agreement of 1989, one Antony M. Mulekyo who the plaintiff says was still a student in 1989, was admitted to the Bar in 1995 as per the available records of the Law Society of Kenya, which are public records and which this court takes judicial notice of, as the said advocate is an officer of this court. Therefore, it is not possible that in 1989 Mr. Antony M. Mulekyo drew the said agreement presented by the defendant.
31. As pointed out by the plaintiff's counsel, the writings on the defendant's documents including the agreements, receipts, documents from Syokimau Farm Limited appear on the face of it, to have been done recently and by the same person. Further, the defendant did not disclose the identity of alleged person called James Wahome Kariuki who is said to have purchased the suit property from Mbatha Kithimba as no identity card number was indicated anywhere in his transactions. Therefore, whether or not such person exists, is not clear to this court.
32. Besides, the agreement presented by the defendant is signed by Blue Lime Limited but there is no indication of the name of the director who signed the same, yet a company is not a natural person capable of signing a document without its directors. In addition, the letter dated 13<sup>th</sup> December 2023 which is alleged to be from the Ministry of Interior and Coordination of National Government State Department of Interior, purports to contain evidence confirming that the fingerprints on the defendant's agreement belong to the deceased, mother of the plaintiff. However, that letter is not signed and therefore the author is unknown. In any event, evidence of confirmation or otherwise of a person's fingerprint is expert evidence and is ordinarily in form of a report by a finger print examiner who must compare the undisputed thumb print with the supplied specimen, indicate the methodology used in examination, and present the findings. That is not what is contained in the defendant's letter. A letter cannot amount to expert evidence. In short, it is apparent that the defendant's documents appear to be forged and cannot be relied upon.
33. Having considered the plaintiff's title; search certificate; rates requests and evidence of the plaintiff's occupation of the suit property, shown by a permanent house and barbed wire fence, the defendant's allegation that the same are forgeries were not supported by any evidence and therefore I am convinced at the prima facie level that the plaintiff has demonstrated ownership of the suit property and therefore shown a prima facie case with chances of success. On whether the plaintiff stands to suffer irreparable loss that cannot be compensated in damages, it is clear that the plaintiff has a home on the suit property and if the defendant is not stopped from interfering with same, she stands to suffer irreparable loss. The balance of convenience tilts in favour of the plaintiff in view of the fact that she is the registered proprietor and also in possession of the suit property.
34. The upshot is that the applicant has demonstrated that she deserves the orders sought and therefore I find and hold that her application dated 18<sup>th</sup> March 2024 has merit and the same is allowed as follows;
  - a. An order of temporary injunction is hereby issued restraining the defendant/respondent either by himself, his relatives, servants, employees, agents, assignees or anybody claiming under his name, from entering, accessing, trespassing, encroaching and/or in any way whatsoever interfering with the plaintiff's quiet possession, use and possession of all that parcel of land known as LR Number 12715 / 656 I. R Number 47967 situate in the District of Machakos N.W of Athi River location within Machakos County, pending hearing and determination of this suit.



- b. The officer in charge of Syokimau Police Station is directed to provide security to the plaintiff during the enforcement of the court order.
- c. The costs of the application shall be borne by the defendant.

35. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 22<sup>ND</sup> DAY OF JANUARY, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

Mr. Oriwo for the Plaintiff/Applicant.

Mr. Molla holding brief for Mr. Masake for the Defendant/Respondent.

Court Assistant: M. Nguyayi.

