



**Ouro v Anyieni (Environment & Land Case E039 of 2024)
[2025] KEELC 4554 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E039 OF 2024**

**CK NZILI, J
JUNE 16, 2025**

BETWEEN

GRACE KWAMBOKA OURO PLAINTIFF

AND

REBECCA ANYIENI DEFENDANT

RULING

1. The applicant by an application dated 8/10/2024 seeks temporary orders of injunction barring and restraining the respondent, her servants, employees, or agents, from trespassing onto, subdividing, transferring, damaging, cultivating, planting crops or laying claim or in any way interfering with the applicant's possession or ownership of plot known as Trans Nzoia/Gidea/4X4.
2. The reasons are set out on the face of the application and in a supporting affidavit of Grace Kwamboka Ouro sworn on 8/10/2024. It is deposed that the applicant is the registered owner of the land as per a title deed, official search certificate and green card attached as annexures GKO-1, 2 and 3, now trespassed onto by the respondent without any authority, permission or consent, hence denying her the right to use, possess and enjoy the suit property, despite requests to cease the unlawful acts.
3. The replying affidavit appears not to be on record.
4. A party seeking a temporary order of injunction has to establish a prima facie case with a probability of success, demonstrate that he will suffer irreparable damage in the absence of an injunction and lastly, that the balance of convenience tilts in favour of granting an injunction. A prima facie case is established where looking at the material placed before court, a right has been infringed to call for a rebuttal or explanation from the opposite side. An irreparable damage or loss cannot be quantified by way of damages or compensated in the absence of a temporary injunction. The balance of convenience, on the other hand, is the inconvenience to the plaintiff in the absence of an injunction if the suit were to ultimately succeed being greater than to the defendant if the injunction was refused and the



- sit ultimately succeeding. See *Mrao Ltd -vs- First American Bank of (K) Ltd* [2003] eKLR and *Pius Kipchirchir Kogo -vs- Frank Kimeti Tenai*.
5. In *Nguruman Ltd -vs- Jan Bonde Neilsen & 2 Others* [2014] eKLR, the court observed that there must be more than an unfounded fear or apprehension. Similarly, the court held that in establishing whether or not to grant an injunction, the court does not conduct a minitrial but on the material placed before it, establishes whether a right or interest has been disclosed and is threatened with violation or breach.
 6. In this suit, the applicant has supplied copies of a green card, title deed, and an official search certificate as prima facie evidence of ownership of the suit land to be entitled to enjoy proprietary rights to the exclusion of the defendant. On the other hand, the respondent by way of defence and a counterclaim states that the suit land was as per a sale agreement dated 13/7/1985, purchased by her husband Zephania Mogunde Anyieni from one Joseph Kigen, who was the original allottee of the suit land and took over payment of the balance due and owing to the Settlement Fund Trustees (S.F.T.), as initial Parcel No. 103 Gidea Settlement Scheme subdivided into the suit land.
 7. The respondent avers that she has occupied the land for 35 years, only for the applicant to lodge the suit after her husband passed on 29/3/2014 to evict her. The respondent terms the title deed held by the applicant as fraudulent. The respondent prays for a declaration that she exclusively owns the land, cancellation of the title held by the applicant, issuance of a title deed in her favour and a permanent injunction.
 8. The respondent attached a copy of a land sale agreement dated 13/7/1985, a repayment schedule to S.F.T, a letter dated 10/6/1987, a consent letter dated 23/1/1985 from S.F.T. and a letter dated 10/4/1989 in a list of documents dated 25/2/2025.
 9. It is trite law that a letter of offer is a mere invitation to treat which cannot defeat a title deed or amount to ownership of land. See *Dina Management Ltd -vs- County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) (2023) KESC 30 (KLR) 21 April 2023) and *Torino Enterprises Limited -vs- Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023). There is no evidence that the respondent holds letters of administration to the estate of her late husband as the owner of the suit land. There is also no evidence that the letter of offer had matured to ownership documents as of the date the late husband passed on in 2014.
 10. Further, there is no evidence that the respondent had superior ownership documents by 2014 or 16/5/2024 when the applicant became the registered owner of the suit land. The applicant has produced a letter of offer dated 15/8/2022, payments, transfer and a discharge of charge from the Land Settlement Fund for Parcel No. 4X4. There is no evidence that Plot No. 103 Gidea Settlement Scheme is related to the suit land.
 11. Between 1986, 1997 and 2022, there is no evidence that the respondent regularized her ownership of Plot No. 103 Gidea Settlement Scheme and was shown the land on the ground as falling under what was the applicant's.
 12. Trespass under Section 3(3) of the *Trespass Act* is defined as entry into and commission of unlawful acts on the private land of another without his permission, consent or approval. The respondent pleads that entry into the land was out of a sale of the land to her late husband by the original allottee.
 13. There is no evidence that the late Zephania Mogunde Anyieni paid stamp duty and conveyance fees as requested by a letter dated 10/6/1997 and paid the S.F.T. Kshs.43,810.50/= by 30/9/1986, to regularize the letter of offer of the initial allottee. The initial allottee had no better title to pass to the respondent's late husband. Equally, the late husband had no superior title over the applicant's land to



pass to the respondent as at his death, even if she was possessed of letters of administration of the late husband's estate.

14. I find that the title deed held by the applicant is prima facie evidence of ownership under Section 26(1) of the Land Registration Act to be entitled to protection under Article 40 of the Constitution as read together with Order 40 of the Civil Procedure Rules.
15. The upshot is I find the applicant has proved a prima facie case. She is also likely to suffer irreparable loss and damage. The balance of convenience tilts in favour of granting a temporary injunction. The application dated 8/10/2024 is allowed with costs.
16. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 16TH DAY OF JUNE 2025.

In the presence of:

Court Assistant Dennis

Ndege for the Applicant present

Mukunda for Nakitare for the Defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

