



Emily & another v Nyakango & 2 others (Environment and Land Case E061 of 2024) [2025] KEELC 6658 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6658 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E061 OF 2024
A OMBWAYO, J
OCTOBER 3, 2025**

BETWEEN

EMILY 1ST PLAINTIFF

HENRY MUGO WAIHENYA 2ND PLAINTIFF

AND

PATRICIA NYAKANGO 1ST DEFENDANT

PERIS NJERI MWANGI & ANOTHER & ANOTHER 2ND DEFENDANT

RULING

1. The plaintiffs have come to this court vide application dated 18th September 2024 seeking orders that pending the hearing and determination of the suit an injunction be issued restraining the defendants and their agents from interfering, trespassing, taking possession of the property, charging, selling and any dealings with the parcels namely Dundori/Lanet Block 11/1217 (Muwa) Kiambogo/Kiambogo Block 2/15395 (Mwariki) moreover, an order of prohibition prohibiting the defendants from adverse dealings with the land. The plaintiff prays for a refund of Kshs434, 100 plus interest at 14% per annum. The plaintiffs pray for a mandatory injunction to defendants to immediately release to the plaintiff's title documents in respect of the suit parcel of land. The plaintiffs further pray that the agreement dated 13th September 2023 and the addendum thereto dated 30th November 2023 void ab-initio on grounds of fraud misrepresentation and illegality.
2. The application is based on grounds that the 1st plaintiffs and the 1st defendant entered into an agreement of sale whose terms were that the 1st defendant was to sell their parcel of land known as Njoro/Ngata Block 1 7755 in exchange for a deposit of Kshs8,000,000 by transferring Dundori/Lanet/Block 11/1217 (MUWA) and Kiambogo/ Kiambogo Block 2/15395.
3. The balance of Kshs9,000,000 has to be paid to the 1st defendant via equal monthly installments of Kshs100,000 with effects from 15th November 2023 until payment in full.



4. The 1st defendant was to surrender the titles of Njoro/Ngata/Block 1/7755 and the necessary documents for purposes of transfer. The 1st defendant moved out of the premises in anticipation and compliance with the agreement and the plaintiff moved in on 26th September 2023, the 1st plaintiff travelled to South Africa and on return in October, he found that the 1st defendant had re-taken possession despite the fact that the plaintiff had moved in with his furniture and other items valued at Kshs4,000,000.
5. The plaintiff also found out that the defendant had taken a loan of Kshs6,000,000 and used the property No. Nakuru/ Ngata Block 1/7755 as collected. The 1st defendant had failed to service the charge and the bank had invoked the right of statutory power of sale to recover the loan . The 1st defendant filed a suit to stop the sale of the property by public auction.
6. According to the 1st plaintiff the 1st defendant is unable to deliver Njoro/Ngata 2/1775 because it is encumbered and yet wants to sell the three portions that have been transferred to the defendant names. The 1st defendant had attempted to transfer the 3 parcels of land to 3rd party. The plaintiffs are apprehensive that if the injunctions is not issued the defendants may dispose of the property.
8. In reply the 1st defendant states that the applicant is guilty of forum shopping. He admits that he is the registered owner of Njoro/Ngata/1/1775 and that no orders are sought in respect of Njoro/Ngata/1/1775. She has filed a defence and counter claim but has not sought orders of specific performance. She states that the plaintiff will not suffer any prejudice if the orders sought are not granted.
9. I have considered the application and do find that the plaintiffs have established a prima facie case with a likelihood to succeed because the sale agreement is clear and executed by both parties. There is no counter claim to the allegations that the property No. Njoro/Ngata/1775 is charged to bank, a fact known by the 1st defendant but he did not disclose to the plaintiffs. The plaintiffs portions are already registered in the names of the 1st defendant and the allegations that she can sell the property is sound. On the issue of irreparable loss, I do find that if the three portions are sold by the 1st defendant, the plaintiffs will suffer irreparable loss that cannot be compensated by the 1st defendant, whose property was charged by the Family Bank and he has allegedly defaulted on loan. The balance of convenience tilts towards granting the temporary injunction because plaintiff is likely to suffer inconvenience if the orders are not granted and the property is sold but ultimately he succeeds in the suit. The defendant on the other hand is not likely to suffer inconvenience if the injunction is granted and the plaintiff does not succeed in the suit.
10. The upshot of the above is that the applications is allowed in terms that pending the hearing and determination of the suit an injunction be issued restraining the defendants and this agents from interfering, trespassing, taking possession of the property, charging, selling and any dealings with the parcels namely Dundori/Lanet Block 11/1217 (Muwa) Kiambogo/Kiambogo Block 2/15395 (Mwariki), moreover, an order of prohibition prohibiting the defendants and the Land Registrar Nakuru from adverse dealings with the land in dispute. Costs in the cause. Orders accordingly

SIGNED BY/FOR:

HON. JUSTICE ANTONY O. OMBWAYO

NAKURU ENVIRONMENT AND LAND COURT ENVIRONMENT AND LAND COURT

