



Ndirangu v Ngugi & 24 others (Environment and Land Case Civil Suit E441 of 2024) [2024] KEMC 178 (KLR) (11 November 2024) (Ruling)

Neutral citation: [2024] KEMC 178 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
ENVIRONMENT AND LAND CASE CIVIL SUIT E441 OF 2024
P ACHIENG, CM
NOVEMBER 11, 2024**

BETWEEN

RACHEAL WAIRIMU NDIRANGU PLAINTIFF

AND

SIMON KAHAHU NGUGI & 24 OTHERS RESPONDENT

RULING

1. The Plaintiff/Applicant filed the application dated 24th September 2024 seeking the following orders;
 1. Spent
 2. Spent
 3. That Pending the hearing and determination of the main suit, the Respondents by themselves, their servants, agents or assignees or otherwise howsoever, be restrained from continuing to build metal-clad houses on Nairobi/Block 66/7508 (formerly Dagoretti/Riruta/t.69).
 4. That the area O.C.S do enforce the orders sought.
 5. That the Honourable court do issue an order of injunction, restraining the Respondent from building and trespassing on the property Nairobi/Block 66/7508 (formerly Dagoretti/Riruta/t.69).
 6. That the Honourable court do issue a demolition order to enable plaintiff to demolish all the illegally erected houses in Nairobi/Block 66/7508 (formerly Dagoretti/Riruta/t.69).
 7. Any other order the Honourable Court deem fit to grant in the circumstances.
 8. The costs of this Application be borne by the Respondents.



2. The application is premised on grounds on its face and is supported by an Affidavit sworn by the Plaintiff/Applicant. The Application is opposed vide the Defendants' Replying Affidavit sworn on 8th October 2024. The application was canvassed by way of written submissions.
3. Briefly, it is the Plaintiff/Applicant's contention that she is the registered owner of land parcel Number Nairobi/Block 66/7508 (formerly Dagoretti/Riruta/t.69). Annexure "PEX-1" to her Supporting Affidavit is a copy of title to the property. The Plaintiff contends that the 1st to 25th Respondents have trespassed on the said parcel of land where they have set up metal-clad premises, and that the 25th Respondent has built a public lavatory, thus infringing on the Plaintiff's right to enjoy the property.
4. In reply to the application, the defendants challenge the jurisdiction of this Court to hear the dispute herein in the first instance, citing the provisions of Section 18(2) of the Land Registration Act. It is their contention that the Plaintiff did not observe the doctrine of exhaustion prior to bringing the present suit. They further contend that their businesses have not encroached or trespassed on the Plaintiff's land as alleged, since they are located on land parcel No. Dagoretti/Riruta/T.327.
5. I have considered the application, the respective responses filed and the written submissions. I will first and foremost address the issue that the present suit offends the provisions of Section 18(2) of the Land Registration Act, which provides as follows;

The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section."

6. The question therefore is whether the present dispute is a boundary dispute. A boundary dispute ordinarily occurs between land owners. In this case, the defendants are not the registered owners of land parcel No. Dagoretti/Riruta/T.327. They are also not claiming ownership of the said parcel of land. A boundary dispute referred to under Section 18(2) of the Land Registration Act cannot therefore be resolved between the Plaintiff and the defendants herein. The present suit relates to trespass to land. In the case of *Kiptarus & 3 others v Rono; Director of Surveys & 2 others (Interested Parties)* [2023] KEELC 18031 (KLR) the court held as follows:

Whilst it is true that the land registrar does not have power and/or jurisdiction to determine a case of trespass to land, it is the view of this court that there is a thin line between a case of trespass to land and a boundary dispute as in determining a boundary issue, the land registrar may end up with evidence capable of showing that one party to the dispute has encroached and/or trespassed into land belonging to another. In my view, such finding/determination, unless controverted by other evidence or it is demonstrated to be unreliable, is good evidence for purposes of determining a case of trespass or ownership of the area of land said to have been encroached onto."

7. The argument that the suit offends Section 18(2) of the Land Registration Act and that the Plaintiff did not observe the doctrine of exhaustion prior to commencing this suit is therefore not valid.
8. Prayers 5 and 6 in the present application cannot be granted at this juncture since a determination has not been made that indeed the defendants have trespassed on the Plaintiff's parcel of land Nairobi/Block 66/7508 (formerly Dagoretti/Riruta/t.69). The issue as to whether or not the defendants have trespassed on the Plaintiff's parcel of land will be considered during the hearing of the main suit. It is therefore crucial that before the said issue is determined, the defendants by themselves or their agents be restrained from continuing to put up any structures on the suit land. I therefore allow the application in terms of prayer 3 and order that Pending the hearing and determination of the main suit,



the Respondents by themselves, their servants, agents or assignees or otherwise howsoever, are hereby restrained from continuing to build metal-clad houses or any other structures on the suit property.

Costs of the application shall be in the cause.

DATED DELIVERED AND SIGNED AT NAIROBI THIS 11TH DAY OF NOVEMBER 2024

HON. P. ACHIENG

CHIEF MAGISTRATE

Plaintiff/applicant - Mr. Kamau

Defendants/respondents - Ms. Cuna

Court Assistant Newton

