Karani v Ndirangu & 2 others (Environment and Land Appeal E039 of 2024) [2025] KEELC 7172 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7172 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT AND LAND APPEAL E039 OF 2024

JA MOGENI, J

OCTOBER 15, 2025

BETWEEN

JAMES MWIHIA KARANI ..... APPELLANT

AND

JOSEPH GITHOGORI NDIRANGU ..... 1ST RESPONDENT

HEKIMA HOLDINGS LIMITED ..... 2ND RESPONDENT

MWALIMU INVESTMENT COMPANY LIMITED ..... 3RD RESPONDENT

RULING

1. The Application before me is an Application brought inter alia under the provisions of Order 40 Rule 1, 2 and 4 (1). It is an Application for injunction. The Applicant wants the Defendant/Respondents restrained from dealing with land parcel Plot No. 923 also known as Ruiru.Ruiru Block 3/1746 ('the suit land'). It is the claim of the Applicant that the 1st Respondent unlawfully, illegally and fraudulently transferred Title Deed of Land parcel Ruiru.Ruiru Block 3/1746 to the 2nd Respondent and the 2nd Respondent has the intention of sub-dividing, wasting, damaging, alienating, selling, removing or disposing of the said parcel pending the hearing and determination of the suit, that the 1st and 2nd Respondents ought to be restrained from interfering with the suit property which the Applicant claims to own.

2. It is the Applicant's contention that sometimes in 1982 he was introduced by his brother Stephen Mathenge Mwihia to the 2nd Respondent which was an Investment Company for any willing teacher. The 2nd Respondent offered to its members for sale a land situated off Kangundo road within Thika District.

3. It is the Applicant's position that he applied for four acres in the intended scheme and was issued with a letter of provisional offer on 6/01/1983 where he was to pay Kesh 3,600 as initial cost of the plot and a further Kesh 1,440 as legal fees, service and stamp duty as evidenced by per annexure 'JMK1' as the

provisional letter, annexure 'JMK2' a copy of the receipt and annexure 3 which is a copy of the receipt showing payment of Kesh 2,200 which the Applicant alleges was paid to allow him to be able to ballot and that he was given a number and plot number by the 3rd Respondent and he was allocated number MICL/02/711 for balloting.

4. On 10/12/1983 he was issued with a ballot paper which confirmed that he was allotted Plot Number 923 as per annexure 'JMK4 (a) and (b)' being the copies of the ballot and the ballot paper for Plot 923. That it was then the duty of the 3rd Respondent to follow up on the issuance of title deed. This was confirmed vide a letter from the 2nd Respondent dated 24/09/1990 to Applicant which alerted him that the processing of his title for plot 923 was in the final stages.

5. It is the Applicant's contention that despite his effort to pursue his title it came to his knowledge that the parcel Ruiru.Ruiru Block 3/1746 was now registered in the names of the 1st Respondent. That he lodged a complaint with the Criminal Investigation Department (CID) Headquarters Kiambu and they placed a restriction as per annexure 'JMK6' which shows the restriction. Although a second search on 5/11/2015 established that the parcel of land had been transferred to the 2nd Respondent as per annexure 'JMK7' which is the copy of the official search.

6. It is the Applicant's contention that issuance of the title deed to the 1st Respondent is illegal and void ab initio and that in his suit in the lower Court being RUIRU CMELC NO. E005 of 2023 James Mwihia Karani versus Joseph Githogori Ndirangu & 2 Others he was inviting the Court to order for the cancellation of the title to the 1st Respondent but his suit was dismissed without being heard on merit by the trial Court on 11/04/2024 as shown by annexure 'JMK8'.

7. The Applicant contends that his case was not heard on merit and that he has lodged the instant Appeal and that it is only fair that the suit property be preserved so that the Appeal is not rendered a pure academic exercise as the 2nd Respondent intends unless restrained by the Court to continue trespassing, remaining on the said parcel of land, constructing a building on it illegally and disposing the land thus denying the Applicant the use and enjoyment of the same.

8. The Applicant avers that there is real danger that the 1st and 2nd Respondents intend to use the fraudulent Title Deed issued to sell and transfer his parcel of land to unsuspecting third parties and that it is in the interest of justice that an injunction be granted.

9. The 1st and 2nd Respondents filed a Replying Affidavit sworn by James Muriuki a Director of the 2nd Respondent and duly authorized to swear the Affidavit dated 12/08/2024 and averred that the suit that is the subject of this Appeal was filed over 8 years ago on 26/10/2016 at the High Court of Kenya as Nairobi HCCC (ELC) No. 1222 of 2016. That whereas the case was transferred to Thika Environment and Land Court and given the number ELC 386 of 2016, that after many adjournments and lengthy delay to list the matter for hearing and prosecution of the suit by the Appellant, the Honorable Court issued a Notice to Show Cause and listed the matter for dismissal on 31/10/2022 and the Appellant was directed to list the matter for hearing and determination within 60 days from the said date. That the Appellant failed to comply with the terms of the Court Order despite the suit having been listed for hearing on 19th and 23rd November 2023 but the Appellant filed an Application to have the suit transferred to Ruiru Law Courts and the Court directed that the suit be transferred.

10. That the matter was listed for hearing after the Appellant was granted a last adjournment the matter having been pending for over 8 years in various Courts on 26/03/2024 and set down for hearing on 11/04/2024 at 2:30 pm. Despite the 1st and 2nd Respondent being ready to proceed, the Appellant and his witnesses were absent and the Court declined to grant the adjournment sought and proceeded to dismiss the suit for want of prosecution and lack of evidence.

11. It is the averment of the Respondents that the Appellant and his witnesses have never attended Court during any of the scheduled hearings. Neither has the Respondent seen nor met the Appellant on the suit premises from which he claims ownership before or after filing of the suit. Thus, the Respondent is doubtful whether the Appellant is aware of the location of the suit property.

12. The 1st and 2nd Respondent therefore contend that the instant Application is dilatory and intended to keep this matter perpetually in Court without any hearing and determination on its merits. Further that the 3rd Respondent which was the land buying and selling Company that sold the suit property to the 1st Respondent and allegedly sold a plot of land to the Appellant has never been served with Summons to enter appearance and the Company has never participated in this suit from the onset.

13. That the Appellant is only interested in causing delays in the suit since he has not sufficiently explained the failure to attend Court that resulted in the dismissal of their Application dated 4/06/2024. Neither have the Appellant's Advocates exhibited to this Court any documentary evidence demonstrating the purported mis-diarisation of the hearing date.

14. In response to the averments in the Replying Affidavit, the Applicant filed a Further Affidavit sworn on 16/10/2024.

15. He reiterated some of the contents he averred to in the Supporting Affidavit and stated that he filed this suit on or about 6th October, 2016 vide Milimani ELC Case Number 1222 of 2016 and that failure to fix the same for hearing was not his making since they were waiting for the Court to fix the matter for hearing. That this was way before the establishment of the Environment and Land Court at Thika which now has the jurisdiction over the subject parcel of land.

16. It was his case that while they were waiting for the matter to be fixed for hearing, he was notified that the matter had been transferred to the Environment and Land Court in Thika having been established and the matter was registered as Thika ELC No. 386 of 2017 on or about 21/06/2017.

17. That whereas the matter was set for hearing expeditiously by the Court on 31/10/2022 and later set for hearing on 19/07/2023 and since the Court was not sitting even then another date was set for 2/11/2023. That to ensure expeditious hearing of the matter the Applicant made an Application to transfer the matter to Ruiru Law Court for hearing and the transfer was done on 2/11/2023.

18. According to the Applicant, the delay in prosecuting this matter was not in any way caused by any fault of his nor of his Advocates since the circumstances as explained above were beyond him and the same should not be visited upon him as an innocent Litigant.

19. He averred that he has been keenly following up the matter since 2016 and that it is not true that he has never visited the suit property since he has made frequent visits and that he is in possession of the maps and he sought time to file the same on 11/04/2024. Further that his failure to attend Court on 11/04/2024 was not deliberate and or a sign of not being interested in the matter as the same was occasioned by the Counsel he received from his Advocates on record that given the documents they were intending to introduce to Court he would seek an adjournment.

20. It was his statement that being a retired teacher and not in gainful employment he risked loosing his hard earned property title reference number of Plot No. 923 now Ruiru.Ruiru East Block 3/1746. That he is still keen to prosecute this matter to its logical conclusion.

21. That he will suffer irreparable loss and great prejudice if he is not heard on merit despite his best efforts to have his day in Court and that the instant Appeal will be rendered nugatory should the subject matter of the Appeal be interfered with.

22. He further stated that it is in the interest of justice that mistakes of the Counsel should not be visited upon innocent Litigants. Further he contends that the Respondents will not in any way be prejudiced if the orders sought are granted as they can be compensated by an award of thrown away costs and they have never filed a response to the Application dated 4/06/2024 despite having been served.

23. The Applicant stated that there is real danger that the 1st and 2nd Respondents intend to use the fraudulent title deed issued to sell and transfer the suit property to unsuspecting third parties with the sole intention of further perpetrating the illegal acts and clouding issues and it is in the interest of justice that an injunction be granted forthwith pending the hearing and determination of the Appeal.

24. When the parties appeared in Court on 4/02/2025 the Court issued Status Quo orders until the delivery of the Ruling. At the same time parties were directed to file their written submissions. The Applicant filed his submissions dated 22/11/2024 while the 1st and 2nd Respondent filed their submissions dated 30/01/2025. I have considered the submissions filed by both parties.

25. Having gone through the pleadings and submissions filed by both parties the 2nd Respondent appears to be the title holder to the suit property. The principles upon which the Court may consider an Application for injunction were laid out in the case of Giella v Cassman Brown (1973) EA 358. The Applicant must first demonstrated a prima facie case with a probability of success; secondly, the Court will not normally grant an injunction unless the Applicant stands to suffer irreparable loss which cannot be compensated by an award of damages; and finally where there is doubt the Court decides the matter on a balance of convenience. It should also always be remembered that the essence of an Application for injunction is for the Court to make an order on how the subject matter of the suit ought best to be preserved pending the substantive hearing of the matter.

26. I do note that this matter was not heard on merit but was dismissed for want of prosecution and for good reasons the Applicant/Appellant has failed on several occasions to prosecute their own suit. Whereas the Applicant blames the Counsel who he accuses of mis-diarization he has not presented before the Court any proof of the mis-diarization. The Applicant has also informed the Court that he made an Application which was granted to have this matter transferred to Ruiru Magistrate's Court for expeditious disposition of this matter yet it is at the Ruiru Magistrate's Court that he also failed to appear in Court for hearing of the suit for a date that was taken by both parties. This happened more than two times and the Court had no choice but to dismiss the Application and the suit too.

27. I wish to refer to the case of Mrao v First American Bank of Kenya Ltd & Two Others C.A Civil Appeal No. 39 of 2002 (2003) K.L.R 125 where the Court of Appeal described a prima facie case as follows:-

> " ..... is a case 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."

28. As already stated, from the title deed, it is evident that the 2nd Respondent is the registered proprietor of the suit land which was purchased from the 1st Respondent. The Applicant however contends that he purchased the suit land after being introduced to the scheme by the 3rd Respondent by his brother who was also a teacher and he purchased by paying Kesh 3660 for four acres. That he later obtained a ballot after making more payment and he was allotted Plot 923 which later became registered as Ruiru.Ruiru East Block 3/1746. That despite having fully paid the purchase price and legal fees for the four acres the 3rd Respondent failed to register him as the owner of the suit land.

29. He has furnished the Court with all the receipts that he alleges support his claim to the suit property having purchased the same in 1983. Although documents do not conclusively tell the story of how the

Applicant came to claim ownership of the suit property they do point to a tale about a process where there was an attempt from the Applicant to lay claim to the suit property. Whereas effort was made by the Applicant to want to own the suit property at this juncture I note that the 2nd Respondent is already the registered proprietor of the suit land and hence protected by Section 24 (a) of the *Land Registration Act* which provides:

> " Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto."

30. Further, Justice Sila Munyao in the case of Eldoret ELC NO. 65/2013, Christopher Kitur Kipwambok v Vipulratilal Dodhia & 3 ORS; held that Certificate of Lease just as a Certificate of Title was conclusive evidence of proprietorship, I find that since the suit land is already registered to the 2nd Respondent, the Applicant has failed to establish a prima facie case to warrant the orders of an injunction sought. On the second principle as to whether the Applicant will suffer irreparable loss which cannot be compensated by way of damages.

31. I do note that the Applicant is not the registered owner of the suit land. He has a claim against the 3rd Respondent. In the case of Nguruman Ltd. v. Jan Bonde Nielsen CA No. 77 of 2012, it was held that

> " ... the Applicant must establish that he 'might otherwise' suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot 'adequately' be compensated by an award of damages."

32. On the question of balance of convenience, from the evidence presented by the parties, I am not in doubt that since the 2nd Respondent is the registered proprietor of the suit land, the balance tilts in his favour.

33. In the case of Kenleb Cons Ltd v New Gatitu Services Station Ltd & Another 1990 KLR 557 Bosire J (as he then was) held that:-

> " To succeed in an Application for injunction an Applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the Application but must also show that he has a right, legal or equitable, which requires protection by injunction."

34. I am not satisfied that the Applicant deserves this kind of protection. I find that he has failed to establish a prima facie case with a probability of success at the trial.

35. I also find that the Plaintiff/Applicant has failed to demonstrate that he will suffer irreparably if the orders are not granted. He has not demonstrated that damages would not be an adequate remedy. I rely on the authority of Ooko v Barclays Bank of Kenya Ltd [2002] KLR 394.

36. The upshot of the matter is that I find no merit in this Application and the same is dismissed. The cost of the Application do abide the cost of the Appeal. Consequently, the interim status quo orders earlier granted are hereby vacated. It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 15TH DAY OF OCTOBER, 2025.

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MOGENI J

JUDGE

In the presence of:-

Mr. Kyalo holding brief for Mr. Mwihia for the Appellant

Ms. Maina holding brief for Mr. Nderitu for the 1st and 2nd Respondents

3rd Respondent - Absent

Melita – Court Assistant

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MOGENI J

JUDGE