

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MURANG'A

E.L.C NO. 6 OF 2017

JENIFER CAROLINE GAKUNGA - PLAINTIFF/APPLICANT

VS

FRANCIS MURIGI KARIUKI - 1ST DEFENDANT/RESPONDENT

ORGAN PETROL STATION

KIRWARA - 2ND DEFENDANT/RESPONDENT

RULING

1. On the 17.7.17 the Plaintiff filed suit against the Defendants seeking an order directing the Defendants to cease trespassing on the suit property LR No.LOC.1/KIRWARA/23 and to vacate forthwith. Simultaneously she filed an application by way of Notice of Motion on even date seeking an order to restrain the Defendants from trespassing and erecting structures on the suit land pending the hearing and determination of the suit.
2. The application is premised on the grounds that the Defendants have unlawfully and without colour of right trespassed on the suit property and erected structures with a view to operate a petrol station on the suit land. Further that the estate of the Aloysius Ndungu Gakunga stands to suffer loss and damage from the continued trespass of the Defendants.
3. The application is supported by the Affidavit of the Applicant where she deponed that she has instituted the suit in her capacity as one of the administrators of the estate of the late Aloysius Ndungu Gakunga (deceased). Further the applicant avers that the said Aloysius Ndungu Gakunga with others are proprietors of the suit property as heirs of the estate of the late Ndungu Kingori vide Succession Cause No. 204 of 1977. She has attached a copy of the certificate of official search for the suit property, certificate of Succession Cause No. 204 of 1977 and a green card in support of her averments.
4. She posited that the deceased Aloysius Ndungu Gakunga and his co-proprietors were operating a petrol station on the suit land before the Shell Company withdrew their pumps. That in the month of December 2016 the Defendants without consent unlawfully trespassed on the said land and purported to erect structures for a petrol station.
5. The 1st Respondent in reply filed a Replying Affidavit in which he denied the allegations and states that he has no claim on the suit land and he is actually the owner of parcel No.Loc.1/Kirwara/47 through one of his Companies Contour International Ltd which has leased the land to the 2nd Defendant. He has attached documents of ownership marked FMK 1(a) – (h).
6. Parties were directed to file written submissions which the Respondent did. I have carefully considered the said written submissions and the application.
7. It is evident from the pleadings that Applicant and the Respondents own different plots and if that be the case then I agree with the Respondents submissions that the Applicant has no claim on the suit property. From the documents before me, the Applicants plot is LOC.1/KIRWARA/23 and the

Respondents Plot is No. Loc.1/Kirwara/47. Plot No. Loc.1/Kirwara/47 was allocated to Mbayani Investments by the County Council of Thika in 22/4/99. Evidence of payment of rates by the said proprietor has been produced. On the 9/3/2012 the Plot No LOC.1/Kirwara/47 changed hands from Mbayani Investments to Countour International Ltd., a Company that the 2nd Defendant avers to own and which has leased to the 1st Defendant. This evidence is consistent with the pleadings of the Respondent. The Applicant has failed to establish at least at the Prima facie stage that the parcel of land the Respondents are occupying is the same one that she has laid a claim. The Replying Affidavit has not been rebutted by the Applicant.

8. Prima facie the Applicant has failed to show that the Defendants have trespassed nor are occupying the suit property. The Applicant has also failed to demonstrate irreparable loss that she will incur in the circumstances. The balance of convenience does not tilt in favour of the Applicant.

9. The Respondents have invited the Court to strike out the Plaintiff for being frivolous vexatious and not disclosing any reasonable cause of action, an invite that I decline at this interlocutory stage. The Respondents have the liberty to file a formal application as they may deem fit.

10. In the end I therefore dismiss the application dated 17.1.17 with costs to the Respondents.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF JANUARY 2018.

J.G. KEMEI

JUDGE