



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C CASE NO. 516 OF 2017 (O.S)

PERSI NJERI MUIRURI.....1ST PLAINTIFF
MAXWELL MUIRURI GATETE.....2ND PLAINTIFF
HARRISON GICHUIRI MUIRURI.....3RD PLAINTIFF
EVANSON NGUGI.....4TH PLAINTIFF
CHARLES GICHARU MUIRURI.....5TH PLAINTIFF
SAMUEL RURII MUIRURI.....6TH PLAINTIFF
ANNIE WANJIKU KAMANDE.....7TH PLAINTIFF
KENNEDY MICHAEL EVANSON NGUGI.....8TH PLAINTIFF
STEPHEN MUIRURI NGUGI.....9TH PLAINTIFF
MARY WANJIKU WAHOMBA.....10TH PLAINTIFF
EDWARD KAMAU IHOMBA.....11TH PLAINTIFF
JOHN MUIRURI IHOMBA.....12TH PLAINTIFF
PETER MUNGAI IHOMBA.....13TH PLAINTIFF

VS

MUIRURI GATETE.....1ST DEFENDANT
KAMANDE NJUGUNA.....2ND DEFENDANT
MWEA NJUGUNA.....3RD DEFENDANT
MUIRURI NJUGUNA (representatives of the Estate of the Late Njuguna Gatete)....4TH DEFENDANT

RULING

1. On the 20/12/2017 the Applicants filed a Notice of Motion against the Respondents seeking the following orders:-

a. Spent.

b. That a temporary injunction be issued restraining the Defendants from evicting the Plaintiff's from the parcel of land known as **TITLE Nos. LOC.6/GIATHAINI-511, LOC.6/GIATHAINI-1031, LOC.6/GIATHAINI-992** (suit lands) or from demolishing or fencing in the Plaintiffs' buildings or interfering with the Plaintiffs possession of the same or alienating, transferring, disposing off or

dealing with the suit lands in any manner whatsoever pending hearing and determination of this application.

c. That a temporary injunction be issued restraining the Defendants from evicting the Plaintiffs from the parcel of land known as Title Nos. LOC.6/GIATHAINI-511, LOC.6/GIATHAINI-1031, LOC.6/GIATHAINI-992 (suit lands) or from demolishing or fencing in the Plaintiff's buildings or interfering with the Plaintiffs possession of the same or alienating, transferring, disposing off or dealing with the suit lands in payment in any manner whatsoever pending hearing and determination of the main suit.

d. That costs be provided for.

2. The application is based on the following grounds; That the Plaintiffs have occupied the suit land since 1993 and have constructed dwelling houses therein; that the Defendants have threatened to forcefully evict the plaintiffs and demolish their dwelling houses by issuing a notice to vacate; the Plaintiffs have a *prima facie* case by virtue of their continuous open and uninterrupted occupation of the suit land; the Plaintiffs will suffer irreparable loss.

3. The application is supported by the affidavit sworn by Peris Njeri Muiruri sworn on her behalf and that of the other 12 Plaintiffs/Applicants. She has reiterated the grounds above cited. That their claim in the suit is adverse possession on account of long occupation and stay. That although the Defendants have obtained an order for eviction against them in Succession cause PMCC No 164 of 1986- Thika, 12 years has elapsed before the execution of the said order which is now stale.

4. The application was opposed by the Respondents who through Muiruri Gatete swore a replying affidavit on the 12/2/18. He posited that the Applicants have not disclosed a prima facie case to warrant a grant of injunction. That the Applicant's occupation of the land has not been continuous and uninterrupted. He argued that the occupation has been subject to various suits and has been interrupted by HCCC NO 625 of 2002, HCCC No 348 of 2003 and the Land Disputes Tribunal inter alia. Further that the Respondents succeeded the suit lands vide Succ Cause CMCC NO 164 OF 1986. That the Defendants have not sought to revoke the said succession orders to date. That they secured orders for eviction of the respondents from the suit land on 26/5/1986 which orders have neither been set aside nor appealed against. That they are registered owners of the suit lands.

5. Parties filed written submissions which I have read and considered.

6. The question for determination before this Court is whether the Applicants are entitled to the order of temporary injunction pending the determination of this suit.

7. It is now trite law that the conditions of granting interlocutory injunction as stated in the case of **Giella vs Cassman Brown and Co. Ltd (1973) EA 358** are: that firstly, an Applicant must show a prima facie case with a probability of success, secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages, and thirdly, if the Court is in doubt, it will decide the application on a balance of convenience. The Court of Appeal in **Mrao vs First American Bank of Kenya Ltd & 2 Others C.A. No. 39 OF 2002 (2003 eK.L.R)** defined a prima facie case in the following terms;

“A prima facie case in a civil application include but is not confined to a genuine and arguable case. It 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”.

8. It is not in dispute that the Defendants are the registered owners of the suit lands. It is also not in dispute that the parties are all related having a common ancestor namely Gatumuta Gatete. The Plaintiffs have demonstrated that despite the Defendants becoming registered as owners of the suit lands vide Succession Cause No PMCC NO 164 of 1986, they have been on the suit land since 1993. Their claim in the main case is based on adverse possession. This is a matter for trial as to whether the nature of possession is such as qualifies for entitlement to an establishment of title by way of adverse possession. What is obvious at this stage is that they are in possession. They have annexed pictures to depict farm activities and occupation. This is shown by the attempt by the Defendants to evict them through a Court order in PMCC No 164 of 1986. This leads the Court to reach an irresistible conclusion that the Plaintiffs have proved a prima facie case with a probability of success.

9. In the case of **Muiruri Vs Bank of Baroda (Kenya) Limited (2001) KLR 183 at page 188** it was pointed out that; -

“besides, disputes over land in Kenya evoke a lot of emotion and except in very clear cases, it cannot be said that damages will adequately compensate a party for its loss”.

10. In the instant case the Plaintiffs have asserted that this is the only land they call home and if they are evicted they will suffer irreparable harm. Finally, the balance of convenience tilts to the Court granting an injunction in the terms below in favour of the Plaintiffs and guided by Order 40 rule, I so grant.

11. In the upshot, this Court makes the following orders; -

a. That a temporary injunction be issued restraining the Defendants from evicting the Plaintiffs from the parcel of land known as Title Nos. LOC.6/GIATHAINI-511, LOC.6/GIATHAINI-1031, LOC.6/GIATHAINI-992 (suit lands) or from demolishing or fencing in the Plaintiff's buildings or interfering with the Plaintiffs possession of the same or alienating, transferring, disposing off or dealing with the suit lands in payment in any manner whatsoever for a period of 6 months from the date of this ruling. On expiry of the 6 months the orders shall lapse automatically.

b. The Respondent to pay the costs of this application.

c. The parties to take the liberty to expedite compliance with the provisions of Order 11 of the Civil Procedure Rules and set down the suit for hearing and determination within the next 45 days.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF SEPTEMBER 2018.

J. G. KEMEI

JUDGE

In the presence of:

Ms Kiama for the Applicants/Plaintiffs 1- 13

Respondents/Defendants 1-4; Absent

Ms.Irene and Ms Njeri, Court Assistants.