



**Wanyoike v Land Registrar Nyeri & another (Environment and Land Case E013 of 2022) [2024] KEELC 19 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 19 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND CASE E013 OF 2022  
JO OLOLA, J  
JANUARY 19, 2024**

**BETWEEN**

**DAMARIS WANJUGU WANYOIKE ..... PLAINTIFF**

**AND**

**THE LAND REGISTRAR NYERI ..... 1<sup>ST</sup> DEFENDANT**

**KATHERINE WANJIKI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 7<sup>th</sup> June 2022 Damaris Wanjugu Wanyoike (Suing for and on behalf of the Estate of Mwangi Njogu (the Plaintiff) prays for orders:-
  1. ....
  2. That this Honourable Court be pleased to issue temporary orders preventing the 1<sup>st</sup> Interested Party and her servants, employees or agents from encroaching, alienating or in any way dealing with all that property known as LR. No. Konyu/Baricho/1393 (the suit property) measuring 0.40 Ha pending the hearing and determination of this suit;
  3. That this Honourable Court be pleased to grant a temporary injunction preventing the 2<sup>nd</sup> Interested Party from paying out compensation relating to the suit property to the 1<sup>st</sup> Interested Party, her agents and /or servants; and
  4. That the costs of and incidental to this application be provided for.
2. The application is supported by an affidavit sworn by the Plaintiff wherein she deposes that the suit property was family land owned by her father the late Mwangi Njagu. The Plaintiff asserts that the said Mwangi Njagu had a protracted court case over the suit property with one Meshack Mbogo Wambugu who transferred the suit property to third parties in the course of the trial.



3. It is the Plaintiff's case that consequent upon the irregular transfers, the suit property was on 1<sup>st</sup> August 1997 registered in the name of Duncan Wachira Kabethi who was the husband to the 1<sup>st</sup> Interested Party. The Plaintiff asserts that following a Judgment delivered by the High Court on 15<sup>th</sup> February 2018 in HCCA No. 239 of 1990, the ownership of the suit property effectively reverted back to the Estate of Mwangi Njagu.
4. The Plaintiff avers that the 2<sup>nd</sup> Interested Party has since commenced the process of compulsorily acquiring a section of the suit property for purposes of expanding the Kenol- Sagana- Marua Road Project and urges the court to restrain the 2<sup>nd</sup> Interested Party from paying out compensation to the 1<sup>st</sup> Interested Party.
5. But in her Replying Affidavit sworn on 30<sup>th</sup> September 2022, Kathleen Wanjiku Wanjira (the 1<sup>st</sup> Interested Party) avers that neither her husband, the late Duncan Wachira nor herself, are aware of the suit between the said Meshack Mbogo and Mwangi Njagu.
6. The 1<sup>st</sup> Interested Party asserts that based on information well known to her as well as the records available, the suit property is duly registered under the name of her husband and therefore constitutes part of his estate to which she is the Administrator.
7. The 1<sup>st</sup> Interested Party avers that her husband acquired the suit property from one Michael Kareri Kanyotu who from a perusal of the pleadings attached to the Plaintiff's Supporting Affidavit, was also not a party to the cited suit.
8. On its part, the Kenya National Highways Authority has taken a neutral stand to the application. In a Replying Affidavit sworn on its behalf by its Senior Surveyor, Directorate of Highway Design and Safety, one Samuel Njoroge Mwangi, the 2<sup>nd</sup> Interested Party confirms that it is presently undertaking the construction of the Kenol- Sagana- Marua Road Project and that the suit property is one of the parcels of land that was identified for compulsory acquisition.
9. The 2<sup>nd</sup> Interested Party asserts that as part of their due diligence they conducted a search at the Nyeri Land Registry which revealed that the land is registered in the name of Duncan Kabethi Wachira. Upon the Authority being notified of the cases cited by the Plaintiff however, they withheld the compensation due and payable in respect of the property pending the court's determination of the rightful owner thereof.
10. I have carefully perused and considered both the application as well as the respective responses by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties. I have equally perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
11. By this application, the Plaintiff prays for a temporary order of injunction to issue restraining the 1<sup>st</sup> Interested Party from encroaching, alienating or in any way dealing with all that property known as LR. N0. Konyu/Baricho/1393 and said to be measuring 0.40 Ha. pending the hearing and determination of this suit. In addition, the Plaintiff urges the court to be pleased to grant a temporary order of injunction preventing the 2<sup>nd</sup> Interested Party from paying compensation relating to its compulsory acquisition of a portion of the said property to the 1<sup>st</sup> Interested Party.
12. The law that governs application for injunction is premised under Order 40 Rule 1 of the [\*Civil Procedure Rules 2010\*](#) which provides as follows:-

“ 1. Where in any suit it is proved by affidavit or otherwise-



- a). That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b). That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

13. As was stated in the celebrated case of *Giella – vs- Cassman Brown & Co. Ltd* (1973) EA 358, in order to qualify for an order of injunction, the applicant must first 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 harm which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
14. As to what would amount to a prima facie case, the Court of Appeal observed as follows in *Mrao Ltd –vs- First American Bank of Kenya & 2 Others* [2003]eKLR.
 

“...a prima facie case in a civil application includes 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.”
15. In the matter before me, the Plaintiff brings the suit as the Administrator of the Estate of one Mwangi Njagu. It is her case that the suit property was initially their family land registered in the name of her father the late Mwangi Njagu. It is her case that sometime in the year 1980, one Meshack Mbogo Wambugu (now deceased) filed Nyeri RMCC No. 214 of 1980 claiming purchaser’s interest over the suit property against her father.
16. The Plaintiff further asserted that on 16<sup>th</sup> September 1985, the Magistrates Court made a determination that the said Meshack Mbogo Wambugu was the rightful owner of the suit property and that her father then lodged an Appeal to the High Court being Nairobi HCCA No. 239/ 1990. Immediately after the determination by the Lower Court however, the suit property was transferred to the said Meshack Mbogo Wambugu who proceeded to transfer the property to some third parties during the pendency of the Appeal.
17. From a perusal of a copy of the Green Card produced by the Plaintiff, it was apparent that the suit property was initially registered in the name of the Plaintiff’s father the said Mwangi Njagu. It was also apparent from a perusal of the Court’s Ruling annexed to the Supporting Affidavit and dated 16<sup>th</sup> September 1985 that one Meshack Mbogo Wambugu had indeed sued the said Mwangi Njagu in Nyeri RMCC No. 214 of 1980 claiming to have purchased the suit property from Mwangi Njagu in 1979.
18. By the decision rendered by the court on the said 16<sup>th</sup> September 1985, the court found in favour of the said Meshack Mbogo Wambugu and it would appear that the said Meshack Mbogo Wambugu disposed of the suit property thereafter.
19. From the materials produced by the Plaintiff, on 5<sup>th</sup> July 1988, the property was registered in the name of Esther Mumbi. On 19<sup>th</sup> March 1990, a caution was registered over the suit property in favour of



Mwangi Njagu while on 12th September 1991, an inhibition was registered on the property restraining the said Esther Mumbi from any dealings with the land until High Court Civil Appeal No. 239 of 1990 was determined.

20. For some unclear reason, that Appeal would remain in the court corridors for some 25 years and was only determined on 15<sup>th</sup> February 2018. In support of her case, the 1<sup>st</sup> Interested Party asserts that the suit property was purchased by her husband, the late Duncan Wachira Kabethi on 1<sup>st</sup> August 1997 from one Michael Kareri Kanyotu. It was however not clear to me how the said Michael Kareri Kanyotu acquired the property while the Appeal remained undetermined.
21. As it were, the effect of the Judgment of the Honourable Justice Mbogholi Msagha as delivered on 15<sup>th</sup> February 2018, is that the determination made by the Lower Court in 1985 was set aside. That Judgment by the High Court has not been appealed, set aside and /or varied. Accordingly, I am satisfied that the Plaintiff has made out a prima facie case with the probability of success.
22. It was also clear to me that the Plaintiff stands to suffer irreparable loss as the suit property has remained in the hands of the 1<sup>st</sup> Interested Party for an incredible period of time.
23. It follows that I find merit in the Motion dated 7<sup>th</sup> June 2022. I allow the same in terms of prayers No. 2 and 3 with costs on the cause.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF JANUARY, 2024.**

In the presence of:

Ms. Ataka for the Plaintiff/Applicant.

No appearance for the Respondent.

No appearance for the interested Party.

Court Assistant: Kendi

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**J. O. OLOLA**  
**JUDGE**

