



REPUBLIC OF KENYA



**Mutei v Wanjiru (Environment & Land Case E014 of 2023)
[2024] KEELC 1090 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E014 OF 2023**

JG KEMEI, J

FEBRUARY 29, 2024

BETWEEN

JOHN WAMBUA MUTEI PLAINTIFF

AND

HELLEN WANJIRU DEFENDANT

RULING

1. Vide his Notice of Motion Application dated 31/7/2023 the Plaintiff asks this Court for Orders that;
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing of this Application, the Honorable Court be pleased to grant a permanent injunction restraining the Defendant either by herself, her servants, employees, agent or any party acting on her behalf from further constructing, subdividing, selling, offering for sale, developing in any way or interfering with the suit land Title No Kiambu/kilimambogo/1-3860 in the Kilimambogo Settlement Scheme of Wendano, CBD Mukunike 'A' and Mukunike 'B' village formally public land.
 - d. This matter be consolidated with ELC Petition No 11 of 2018 at Environment and Land Court Thika.
 - e. Costs be in the cause.
2. The Application is based on grounds that the Plaintiff has been in occupation of the part of Title No Kiambu/Kilimabogo/1-3860 in the Kilimambogo settlement scheme comprised of Wendano, CBD Mukunike 'A' and Mukunike 'B' villages formerly public land which suit land is the subject of Thika ELC Petition No 11 of 2018 (hereinafter the Petition). That the Plaintiff is one of the petitioners in the Petition in which this Court granted orders of temporary injunction pending its hearing and



- determination. That the Defendant herein is a police officer and has unlawfully trespassed into the Plaintiff's land and is constructing a permanent house. That the Defendant is using her position to intimidate, harass and arrest anyone attempting to stop her from construction hence the Application.
3. The Application is supported by the Affidavit of even date of John Wambua Mutei, the Plaintiff. Reiterating the above grounds, the Plaintiff annexed copies of the list of petitioners in the Petition, photos of the house and Plaintiff's charge sheet in Thika CMCC Criminal case No 1457 of 2020 marked as JWM-1, 2 & 3 respectively.
 4. The Application is not opposed despite service. See Return of Service sworn by J. Maina, Process Server on 7/8/2023.
 5. The Plaintiff, acting in person, argued the Application orally in Court on 23/10/2023.
 6. Urging the Court to grant injunctive reliefs, he stated that the Defendant is destroying his crops and interfering with his boundary and at the same time threatening him. That there is a pending case touching on the suit land ELC Petition 11 of 2018 though the Defendant is not a party to the case. The Plaintiff also sought compensation for damages caused by the Defendant.
 7. The sole issue for determination is whether the Application is merited.
 8. Whereas the Application does not disclose the rules it is premised on, and cognizant that it is not fatal to the merits of the case, it is notable that prayers therein are inelegantly drafted.
 9. The Applicant in Prayer No 2 urges the Court to grant temporary injunction pending interpartes hearing of the Application. This prayer is now overtaken by events and cannot issue in the circumstances.
 10. Further Prayer No 3 seeks a permanent injunction pending the determination of the Application. A permanent injunction is final in nature issued upon determination of the parties' rights and therefore cannot be granted at the preliminary stage as in this case unless special conditions are proven. The circumstances under which the Court would grant a mandatory (permanent) injunction was well stated out by the Court of Appeal in the case of Malier Unissa Karim v Edward Oluoch Odumbe (2015) eKLR that;

"The test for granting a Mandatory Injunction is different from that enunciated in the "*Giella v Cassman Brown* case which is the locus classicus case of Prohibitory Injunctions. The threshold in Mandatory is higher than the case of Prohibitory Injunction and the Court of Appeal in the case of "*Kenya Breweries Ltd v Washington Okeyo* (2002) EA 109" had the occasion to discuss and consider the principles that govern the grant of a Mandatory Injunction was correctly stated in Vol. 24 Halsbury Laws of England 4th Edition Paragraph 948 which states as follows:-

"A Mandatory Injunction can be granted on an interlocutory Application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However, it the case is clear and one which the Court thinks ought to be decided at once or if the act done is simple and summary one which can be easily remedied, or if the Defendant attempts to steal a match on the Plaintiff, a Mandatory Injunction will be granted on an Interlocutory Application."

11. From the record before Court, I am not persuaded that the Applicant has established special circumstances for granting Permanent injunction at the interlocutory stage.



12. Last but not least, the Applicant in Prayer No 4 is seeking consolidation of this suit with Thika ELC Petition 11 of 2018. The Court’s jurisdiction to consolidate suits is anchored in Order 11 Rule 3 of the Civil Procedure Rules. The Supreme Court in the appeal by Law Society of Kenya v Center for Human Rights & Democracy & 12 others [2014] eKLR, held: -

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”

13. In the case of Nyati Security Guards & Services Ltd v Municipal Council of Mombasa [2000] eKLR, the Court held: -

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same Court where: -

- a. Some common questions of law or fact arises in both or all of them.
- b. The rights or reliefs claimed in them are in respect of the same transactions;
- c. For some other reasons, it is desirable to make an order for consolidating them.”

14. The Plaintiff averred that he is one of the Petitioners in the Petition and by his own admission added that the Defendant is not a party in the Petition. He has not established whether common questions of law or fact arise in this suit and the Petition. Neither has he demonstrated that the reliefs he is seeking herein are in respect of the same transactions as in the Petition. Lastly the Applicant has not established the nexus between this suit and the Petition which by their respective unique nature, accord different outcomes.

15. In the end, the Application is not merited.

16. It is struck out with no orders as to costs.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 29TH DAY OF FEBRUARY, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of;

Plaintiff – present in person

Defendant - Absent

Court Assistants – Phyllis/Oliver

