



**Muhia v Muhia (Environment and Land Case 306 of 2017)
[2017] KEELC 1162 (KLR) (12 October 2017) (Ruling)**

Agnes Wambui Muhia v Agnes Wangui Muhia [2017] eKLR

Neutral citation: [2017] KEELC 1162 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 306 OF 2017**

JG KEMEL, J

OCTOBER 12, 2017

BETWEEN

AGNES WAMBUI MUHIA PLAINTIFF

AND

AGNES WANGUI MUHIA DEFENDANT

RULING

1. This application is brought by way of Notice of Motion dated the 19th April 2017 by the defendant/ Applicant against the plaintiff/respondent seeking to stop the respondent from interfering with the quiet possession and occupation of a portion of one acre of land on property title No. LOC.15/ MUGEKA/6X3 which the Applicant contends belonged to her late husband, the late WM who died in 1996.
2. The Application is based on the grounds cited as follows;
 - a) The applicant has been residing in this suit property since 1996.
 - b) The Applicant's husband WM acquired two acres of land from the late Miitei Njara Imwe way back in 1975 and the said Miitei Njara Imwe only transferred one acre to WM as parcel no. LOC.15/MUGEKA/6X2 and promised to transfer the other one acre later.
 - c) The applicant is opposed to the respondent obtaining consent of the Land Board to subdivide and sell the suit property (6X3).
 - d) The respondent has now started fencing part of the suit property blocking the applicant from accessing her property LOC.15/MUGEKA/6X2 and a portion of LOC.15/MUGEKA/6X3 of which the applicant has been in possession and cultivating since 1975.



- e) The applicant is now unable to access her home and the respondent has denied her quiet enjoyment of her property.
3. The application is supported by the affidavit of Agnes Wangui Muhia the defendant herein. Annexed to the affidavit are copies of the Agreement, green card, official search and photographs from the scene where access to her property is blocked.
4. The Counsel for the respondent filed her defence to the counterclaim on the 2nd of May 2017. The respondent avers that the counterclaim is statute barred as it is based on a claim of fraud which ought to be brought within three years. The respondent prayed for the same to be dismissed with costs.
5. The Applicant then filed her reply to the defence to counterclaim on 22nd May 2017. The applicant in reply to her claim being statute barred avers that since she and her husband have been in possession and occupation of the suit property since the year 1975, she is entitled to be registered as the owner by adverse possession.
6. The learned Counsels for both the applicant and the respondent chose to canvas the application by way of written submissions which I have duly reviewed.
7. The Applicant submitted that her claim meets the three fold requirements set out in *Giella v. Cassman Brown* (1973) EA 358 for the court to grant her an interlocutory injunction pending determination of the suit. She has tendered documentary evidence to prove that a portion of the suit property was actually sold to her late husband by the original owner of the land who is also deceased. She has referred the court to various case law which the Court has duly noted. That she has a valid claim with high chances of success. That unless the respondent is restrained from continuing to interfere with her portion of the suit property she will continue to suffer irreparable loss.
8. The respondent vehemently opposed the application in that it fails to meet the threshold required in *Giella v. Cassman Brown* (1973) E.A on grounds that the claim is statute barred as the alleged cause of action is fraud which ought to be brought within three years, yet the counterclaim has been brought twelve years after the alleged fraud. Secondly that the applicant's claim for adverse possession ought to have been brought by way of originating summons as opposed to the counterclaim. The application is therefore not anchored in law and thus the claim does not establish a prima facie case. Thirdly the respondent contends that the suit property was sold to her late husband, she has not placed before the court a Grant of letters of administration to his estate therefore she lacks locus to bring the present application. That the applicant has failed to prove that she will suffer irreparable loss and demonstrate that balance of convenience tilts in her favor. The respondent prayed for the application to be dismissed with costs.
9. The principles on which the Courts will grant an injunction are well known. This Court restated those principles in *NGURUMAN LIMITED V. JAN BONDE NIELSEN & 2 OTHERS, CA NO. 77 OF 2012*, together with the mode of their application as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) if any doubts as to (b) by showing that the balance of convenience is in his favour.



These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between." (Emphasis added).

If the court is satisfied the above threshold is met, it has the discretion to so grant. Please see MRAO LTD V. FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS [2003] KLR 125.

10. Has the applicant demonstrated a prima facie case? The applicant avers that she succeeded her husband who acquired 2 acres of land from Miitei Njara Imwe way back in 1975. She has attached copies of the agreements of sale marked AWTI dated the 17/2/75, 21/6/75 which shows the 2 acres of land was sold at Kshs 3000/- of which the full purchase price was made. That it is upon completion of the payment of the purchase price that her husband was put in possession by the vendor of one acre (land Reference 6X2) and the second one acre remained in the larger remainder LR NO 6X3 which was owned by the vendor. That he was however given possession of the second one acre which he was cultivating. It would appear that the L. R No 6X2 has no dispute and the subject of this suit is the second one acre portion within L. R No 6X3.
11. It is the applicant's case that she is the rightful owner of a portion of one acre of land comprised in L.R No 6X3 having acquired ownership through adverse possession as a result of occupation for over 12 years. It is this land that is subject of her quest for an interim injunction.
12. I have had a second look at the agreement for sale and it would appear that the details of the land that was being transacted between the applicant's husband and the previous owner Miitei Njara Imwe is not indicated. The applicant has stated that the land in reference was the original of which the two parcels L.R NO 6X2 and 6X3 were excised from. This has not been controverted by the respondent. I have seen the caution lodged by the applicant on L.R No 6X3 on 12.11.2008 claiming purchaser's interest. It is not clear whether this is in pursuance of the interest capitulated in the aforesaid agreements.
13. The respondent has raised an issue in respect to the fact that the applicant has no locus to bring this application. This being a claim that she alleges to have arisen out of succession of her husband, it was her responsibility to present to Court letters of grant of administration giving her the Authority and legal capacity to pursue the claim. It is difficult for the Court to hold her as clothed with such legal capacity in the absence of letters of representation.
14. Other issues raised by the respondent such as time bar on the counterclaim, incompetence of the claim of adverse possession are issues that can be properly canvassed at the trial and I hesitate to venture into it at the interlocutory stage.
15. In the end, having carefully considered the pleadings and the submissions by both parties I consider that the Application is devoid of merit and the application is hereby dismissed with costs to the respondent.



DATED AND DELIVERED AT MURANG'A THIS 12TH DAY OF OCTOBER 2017.

J.G. KEMEI

JUDGE

