



**Kangara v Mutunga & another (Environment & Land Case  
E077 of 2020) [2024] KEELC 1296 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1296 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E077 OF 2020  
MD MWANGI, J  
FEBRUARY 27, 2024**

**BETWEEN**

**MARTIN MUTHII KANGARA ..... PLAINTIFF**

**AND**

**JOHN NJARIA MUTUNGA ..... 1<sup>ST</sup> DEFENDANT**

**PENINAH KARITA NJARIA ..... 2<sup>ND</sup> DEFENDANT**

*(In respect of the Plaintiff's Application dated 20th July, 2023)*

**RULING**

**Background**

1. The Application for determination before this court is the Plaintiff's application dated 20th July, 2023 seeking for orders that:
  - a. A temporary injunction be issued restraining the Defendant/Respondents whether by themselves, their agents, servants, employees or otherwise howsoever from interfering, entering, depositing materials, occupying, erecting structures, or dealing with the subject matter in any manner that disturbs the status quo of all that Plot/parcel of land known as Nairobi Block 136 /1994, pending the hearing and determination of this suit.
  - b. The costs of this Application be provided for.
2. The Application is premised on the grounds inter alia, that the Defendant/Respondents have entered into the Plaintiff/Applicant's property known as Plot Number Nairobi Block 136/1994 and commenced illegal construction thereon before the conclusion of this matter.
3. The Applicant argues that the suit herein was commenced on the 19th August, 2020. The Plaintiff was accompanied by an application filed under certificate of urgency seeking interim injunctive orders to



restrain the Defendants from interfering with, entering into, depositing materials on, occupying and erecting structures on or in any manner disturbing the status quo relating to parcel Number Nairobi 136/1994.

4. The Applicant avers that the court delivered its Ruling in respect of the application on 30th September, 2021 directing that status quo relating to the Title Number Block 136/ 1994 was to be maintained for a period of twelve (12) months, meaning that no registration would be effected on the parcel's register and no development would be undertaken on the land for the said period. The Plaintiff was then directed to prosecute the suit and procure a determination within 12 months.
5. The Plaintiff argues that he has diligently endeavored to prosecute the suit. However, due to matters beyond his control, the same has not been possible.
6. Consequently, the status quo orders lapsed on 30th September, 2022. A further period of 10 months passed before the filing of the instant application. The status quo orders therefore lapsed yet the matter has not been concluded.
7. The Defendants have since trespassed into the suit property and commenced constructions. It is the Plaintiff's case that if the Defendants' actions are allowed to proceed it will cause him irreparable harm hence the orders sought herein. He avers that he is apprehensive that the suit might be rendered nugatory.
8. The Application is further supported by the Affidavit of Martin Muthii Kangara, the Applicant herein, deposed on the 20th July, 2023 restating the grounds in support of the application.

#### **Defendants' Replying Affidavit**

9. The application is opposed by the Defendants/Respondents through the Replying Affidavit of John Ngaria Mutunga deposed on the 12th September, 2023. The 1st Defendant deposes that he is married to the 2nd Defendant who is the registered proprietor of the suit property. That the 2nd Defendant acquired the suit property by way of a lease from the National Government by virtue of being a member of Embakasi Ranching Company Limited who had allocated her the plot as a shareholder.
10. The deponent states that the 2nd Defendant is the legal and lawful registered lessee of the suit property and the Plaintiff/Applicant has no legitimate claim over the same. He annexes a copy of the Certificate of Lease.
11. He confirms that indeed the court issued status quo orders on 30th September, 2021 to be maintained for 12 months which they complied with.
12. The deponent accuses the Plaintiff/Applicant of indolence in prosecuting the matter. He prays that the Application be dismissed with costs.

#### **Applicant's Further Affidavit**

13. The Plaintiff/Applicant filed a Further Affidavit deposed on the 27th November, 2023. He avers that the assertions on the 2nd Defendant's allocation and registration as the proprietor of the suit property as a Member of Embakasi Ranching Company Limited is unfounded and unsubstantiated. Contrary to the Defendants' assertions, the Applicant avers that he is the registered lessee of the suit property. He attaches a copy of the Certificate of Lease confirming his ownership.
14. He argues that he has not been indolent in prosecuting the suit. He further asserts that he has a prima facie case and prays that the court extends the interim orders. This will allow him to prosecute the suit while the suit property is preserved.



## **Court's directions**

15. The court directed that the application be dispensed with by way of written submissions. Both parties complied. The Plaintiff/Applicant's submissions are dated 27th November, 2023 whereas the Defendant/Respondent's submissions are dated 16th January, 2024. The Court has had a chance to read through the said submissions and considered them accordingly.

## **Issues for determination**

16. Having considered application, the affidavits filed thereto, the rival submissions, authorities relied on and the relevant provisions of the appropriate and enabling laws, I am of the view that the issues for determination are;
- a. Whether the Plaintiff/Applicant's application is merited.
  - b. Which orders should the court issue?

## **Analysis and determination**

17. It is evident from the record that the Plaintiff herein filed an application dated 19/8/2020 contemporaneously with the Plaint seeking an interlocutory injunctive order restraining the defendants against interfering with, entering into, depositing materials on, occupying, erecting structures on, or in any manner dealing with or disturbing the status quo relating to Land Parcel Number Nairobi Block 136/1994 (the suit Property).
18. The Application was duly determined by the court and a Ruling delivered on the 30th September, 2021. The Learned Judge E. Eboso disposed the application dated 19/8/2020 in the following terms: -
- a. The status quo relating to Title Number Nairobi Block 136/1994 shall be maintained for a period of twelve (12) months, meaning that no registration shall be effected on the parcel register and no developments shall be undertaken on the land for the said period.
  - b. The plaintiff shall prosecute this suit and procure a determination within 12 months.
  - c. Each party shall within 30 days file, and serve a single bound, paginated and indexed bundle of pleadings, witness statements and documentary evidence to facilitate prompt trial.
  - d. Costs of the application dated 19/8/2020 shall be in the cause.
  - e. Mention before the Deputy Registrar at Milimani ELC on a date to be set at the time of rendering this ruling.
19. The Learned Judge analyzed the principles for grant of injunctive orders and declined to issue injunctive orders but opted to issue status quo orders as above to preserve the suit property in the interest of justice.
20. The said orders have since lapsed before the hearing and determination of the suit. The Plaintiff/Applicant has filed a replica of the earlier application before this court again. He avers that the reasons why the suit was not determined within one year are beyond his control such as the Covid- 19 pandemic. He is therefore apprehensive that the suit will be rendered nugatory as the Defendants will proceed with constructions before a determination of his proprietary rights in the suit property is made.
21. I agree with the Defendants' submissions that this application is without doubt, res judicata.



22. In the case of the *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR) the Supreme Court had this to say on the doctrine of *res judicata*;-

“The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.

23. The issue whether or not an interlocutory injunction should issue in this matter has already been determined by a competent court. I therefore proceed to strike out the application with costs to the Defendants.

24. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**M.D. MWANGI**

**JUDGE.**

**In the virtual presence of:**

Mr. Waweru Wanjau h/b for Mr. Nyamu for the Plaintiff/Applicant

Mr. B.M Musyoka for the Defendants

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE.**

