



REPUBLIC OF KENYA



**Gakungu & 2 others v Pureto & 2 others (Environment & Land Case E037 of 2023) [2024] KEELC 996 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 996 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E037 OF 2023  
MN GICHERU, J  
FEBRUARY 27, 2024**

**BETWEEN**

**JOSEPH GIOKO GAKUNGU ..... 1<sup>ST</sup> PLAINTIFF**

**DOMINIC NGARE ..... 2<sup>ND</sup> PLAINTIFF**

**FRANCIS MICHAEL MWANGI GACHOYA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**PANUAT OLE PURETO ..... 1<sup>ST</sup> DEFENDANT**

**SOPIATO PARMUAT ..... 2<sup>ND</sup> DEFENDANT**

**NKIMIYA PARMUAT ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 20/4/2023. The motion which is by the plaintiffs is brought under Sections 13(1) and (2), 16A (1) and (2) and 19(1) and (2) of the [Environment and Land Court Act](#), 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#), Articles 48, 50 and 159 (2) (d) of the [Constitution](#) and all enabling provisions of the law.
2. The motion seeks the following residual prayers.
  - iii. A temporary injunction to restrain the defendants whether by themselves, their agents, servants and/or relatives from trespassing, gaining entry, access, wasting, damaging, grazing on, constructing on, alienating or otherwise interfering or dealing in any manner whatsoever with the plaintiff's possession, peaceful occupation, enjoyment and use of their property being L.R. Kajiado/Kipeto/3095, suit land pending the hearing and determination of the suit herein.
  - iv. The OCS Ngong Police Station do enforce compliance of the orders above.



- v. The court to make such further or other orders as it may deem just and expedient in the circumstances of this case.
  - vi. The cost of this application be provided for.
3. The application is based on nine (9) grounds and is supported by an affidavit sworn by Joseph Gioko Gakungu, the first plaintiff, which has four (4) annexures. The gist of the above material is as follows.
  4. Firstly, the plaintiffs are the registered owners of the suit land which they bought from Mary Kagure Kariuki who was the previous registered owner. In purchasing the land the plaintiffs complied with all the legal requirements as can be seen from the annexures which include copy of the title deed dated 27/3/2023, certificate of official search dated 16/3/2023 and transfer of land form dated 1/2/2011.
  5. Secondly, the defendants who claim to have sold the suit land to Nkonene Ole Risa who sold it to Mary Kagure who sold it to the plaintiff are saying that the suit land is three (3) acres bigger than it should be and they now want their 3 acres back. Due to this false claim, the defendants are now trying to extend their land by 3 acres into the plaintiffs land. That in a nutshell is what has precipitated this dispute.
  6. The motion is opposed by the respondents and to this end, the first defendant, Panuat Ole Pareto, has sworn a replying affidavit dated 25/10/2022 in which he replies as follows.

Firstly, they do not know Mary Kagure or Nkonene Ole Risaas and they have never sold any land to any of them.

Secondly, they are in occupation of the suit land.

7. I have carefully considered the motion in its entirety including the grounds, affidavits and annexures and I find that this application though not specifically brought under Order 40 *Civil Procedure Rules* is basically an application for a temporary injunction. That being the case, there are three prerequisites to the grant of an order of injunction as per the case of *Giella –versus- Cassman Brown Co. Ltd* (1973) EA 358. For an order of injunction to issue, the plaintiff must establish a *prima facie* case with a probability of success.

Secondly, one must prove loss that cannot be adequately compensated with an award of damages, and finally, if the court is not sure of the above, it should look at the balance of convenience.

8. Applying the above test to this case, I find that the plaintiffs have established a *prima facie* case with a probability of success. They have proved that they are the registered owners of the suit land. Under Section 26(1) of the *Land Registration Act*, a certificate of title is *prima facie* evidence of ownership. In contrast, the defendants have nothing to prove ownership of the suit land.

Secondly, the plaintiffs who are registered owners stand to lose their land if the defendants are not restrained from occupying it. In short, the plaintiffs have proved that they will suffer loss if the application is not allowed.

Having found in favour of the plaintiffs on those two limbs, I need not look at the third one.

I find merit in the application dated 20/4/2023 and I allow it in terms of prayers 3 and 4. Costs in the cause.

It is so ordered.

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

**M.N. GICHERU**



**JUDGE**

