



**Gacheri v Gatobu (Environment and Land Appeal E041 of 2023)  
[2024] KEELC 734 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 734 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E041 OF 2023  
CK NZILI, J  
FEBRUARY 14, 2024**

**BETWEEN**

**JOYCE GACHERI ..... APPELLANT**

**AND**

**STANLEY GATOBU ..... RESPONDENT**

**RULING**

1. The court is asked by an application dated 16.11.2023 to
  - a. Inhibit any dealings over L.R No. Nyaki/Kithoka/Mwanika/524 pending hearing and determination of this appeal.
  - b. Issue temporary injunction barring and restraining the respondent, his agents, servants, or employees from in any way whatsoever interfering with L.R No. Nyaki/Kithoka/Mwanika/524.
2. The reasons are set on the face of the application and in the supporting and further affidavits sworn by Joyce Gacheri on 16.11.2023 and 15.1.2024, respectively. Briefly, the applicant avers she had bought 0.50 acres out of L.R No. Nyaki/Kithoka/73, by an agreement dated 9.8.2010 and through CM ELC No. 121 of 2019, she sought for specific performance.
3. It was averred during the trial that the respondent subdivided L.R No. 73 into four portions L.R No. Nyaki/Kithoka/521 – 524, L.R. No. 524 being the one she laid a claim on which she has extensively developed and has been in possession of, which after the judgment, the respondent has threatened to dispose of to third parties and evict her from the land.
4. The applicant averred that unless the orders sought were issued, she would suffer irreparable loss and damage. The applicant averred that she had previously sought an injunction but misinformed the advocate in the previous ruling to which she had deposited Kshs.100,000/= as security for



costs; otherwise, the previous orders related to L.R No. Nyaki/Kithoka/73 and not LR No. Nyaki/Kithoka/524, which should be preserved.

5. The application was opposed through a replying affidavit sworn by Stanley Gatobu on 24.11.2023. It was averred that out of a similar application dated 2.6.2023, that this court by a ruling dated 11.10.2023, pronounced itself on the issues, and, therefore, the instant application was a waste of precious judicial time.
6. The respondent averred that the appellant and her counsel could not feign ignorance of the change of particulars of the parcel of land in dispute right from the primary suit. Moreso, the respondent averred that the applicant has been indolent and lacks diligence; hence has been litigating in piecemeal; otherwise, if the court grants the application, costs should be provided for.
7. In a supplementary affidavit dated 15.1.2024, the applicant says when the previous application came up for hearing on 16.11.2023, the court requested a recent official search, which she obtained on 9.1.2024 attached as an annexure marked J.G. 1. Similarly, she applicant averred she has therefore appraised the court on the current status of the ownership and that there will be no prejudice occasioned to the respondent.
8. By a ruling delivered on 11.10.2023 similar orders as in the instant application were granted. The only new issue raised in the instant application is that at the time the orders were issued, the applicant was under the impression that L.R NO. Nyaki/Kithoka/Mwanika/73, the subject matter in the lower court was still intact. Therefore, the court issued the orders for a non-existent title number, hence rendering the orders academic.
9. From the official search dated 9.1.2024, it is apparent that on 5.4.2022, the respondent was issued with a title deed for L.R No. Nyaki/Kithoka/Mwanika/524, which was also inhibited by an order dated 11.1.2022 until ELC No. 121 of 2019 was heard and determined. So by the time judgment in the lower court was issued on 31.5.2023, L.R No. Nyaki/Kithoka/73 was already subdivided into L.R No's. 521 – 524.
10. The respondent has not said whether he had disclosed such facts at the lower court. Be that as it may, evidence is there from the official search that there were subsisting inhibition orders at the lower court which dissipated or were rendered in operational when the suit in the lower court was determined. The respondent has not opposed the application or denied the new facts, save the issue of costs. The applicant had complied by depositing the security of Kshs.100,000/= after the orders were issued on 11.10.2023. Consequently, I allow the application to the extent that the orders issued on 11.10.2023 for inhibition and temporary injunction be amended to reflect L.R No. Nyaki/Kithoka/Mwanika/524 instead of L.R No. Nyaki/Kithoka/Mwanika/73.
11. The order shall subsist for a period of one year. The lower court file be availed for the hearing of the appeal on a priority basis.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 14<sup>TH</sup> DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Respondent

Wambua for Hiram Kirimi for the Applicant



Mr. Mokuu for the Respondent

**HON. CK NZILI**

**JUDGE**

