



**Olkalou West Farmers Co-operative Society Limited v Kibue & another (Sued as the Legal Representative of the Estate of the Late David Kibue Kinyanjui) (Environment and Land Appeal 14 of 2023) [2024] KEELC 803 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 803 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL 14 OF 2023**

**YM ANGIMA, J**

**FEBRUARY 15, 2024**

**BETWEEN**

**OLKALOU WEST FARMERS CO-OPERATIVE SOCIETY  
LIMITED ..... APPELLANT**

**AND**

**FRANCIS KINYANJUI KIBUE ..... 1<sup>ST</sup> RESPONDENT  
MOSES NDUNGU KIBUE (SUED AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF THE LATE DAVID KIBUE KINYANJUI) ..... 2<sup>ND</sup> RESPONDENT  
SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE  
DAVID KIBUE KINYANJUI**

**RULING**

1. By a notice of motion dated 30.06.2023 expressed to be based upon Articles 23(3), 40, 48 & 159(2) (d) of the *Constitution* of Kenya, 2010, Sections 3 & 3A of the *Civil Procedure Act*, (Cap.21), Sections 24, 25 & 26 of the *Land Registration Act*, 2010, Order 40 Rules 1(a), (b), 3(3), 4(1)(3), Order 42 Rule 6(6), Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and other enabling provisions of the Law the Appellant sought a temporary injunction against the Respondents to restrain them from entering, encroaching, dealing with, erecting structures or interfering with Title No. Nyandarua/Ol Kalou West/879 (Parcel 879) pending the hearing and determination of the appeal. The Appellant also sought for costs of the application to be borne by the Respondents.
2. The application was based upon the 10 grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Samwel Wairagu on 30.06.2023. The Appellant contended that it was the absolute owner of Parcel 879 on which it had undertaken some developments some of which were leased out to tenants. It was contended that the Respondents had wrongfully and illegally invaded and taken over part of the said parcel. It was further contended that the appeal had high chances of



success and that the Appellant had demonstrated a prima facie case with a probability of success. The Appellant was apprehensive that its appeal may be rendered nugatory unless the injunction sought was granted.

3. The Respondents filed a joint replying affidavit sworn on 26.10.2023 in opposition to the application. It was contended that there was no pending appeal since the same was on merit and dismissed by this court on 13.02.2019. It was stated that they lawfully obtained a portion of one (1) acre out of Parcel 879 pursuant to the judgment and decree of the trial court which was affirmed on appeal. It was the Respondents' case that the Appellant's eviction from a portion of one acre was undertaken by court bailiffs, M/S Tango Auctioneers, in 2023 hence the Appellant had no legitimate complaint in that regard.
4. The Respondents contended that the instant application was incompetent, bad in law and an abuse of the court process hence the same ought to be dismissed with costs.
5. When the application was listed for inter-partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Respondents' submissions were filed on or about 15.01.2024 but the Appellant's submissions were not on record by the time of preparation of the ruling.
6. The court has considered the material and submissions on record in this matter. It is evident from the record that the Respondents' father successfully obtained a judgment against the Appellant in Nyahururu PMCC No. 116 of 2004. Being dissatisfied with the said judgment, the Appellant filed an appeal before the ELC at Nyahururu which was heard on merit and dismissed by this court on 13.02.2019. Although the Appellant intimated its intention to appeal further to the Court of Appeal, there is no indication on record to show whether or not the intended appeal was ever pursued.
7. The court is of the opinion that the rights of the parties on the matters in dispute were conclusively determined by the judgment of 13.02.2019. There is no pending appeal before this court and there are no legal rights to be protected by an interim injunction in the circumstances of this matter. The court fully agrees with the Respondents' contention that the instant application for an injunction to restrain the execution of a lawful decree is incompetent, bad in law and an abuse of the court process. The application is a perfect candidate for dismissal with costs.
8. The upshot of the foregoing is that the court finds absolutely no merit in the Appellant's application for an injunction post-judgment. The application is simply a non-starter and a complete waste of judicial time. As a consequence, the Appellant's notice of motion dated 30.06.2023 is hereby dismissed in its entirety with costs to the Respondents.

It is so ordered.

**RULING DATED AND SIGNED AT NYANDARUA THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

In the presence of:

Ms. Masheti holding brief for Mr. Karanja Mbugua for the Appellant

Ms. Mwangi for the Respondent

C/A - Carol

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**Y. M. ANGIMA**



**JUDGE**

