



**Marete v Kiogora (Environment & Land Case E001 of 2024)  
[2024] KEELC 1722 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1722 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E001 OF 2024**

**CK NZILI, J**

**MARCH 20, 2024**

**BETWEEN**

**ELIZABETH KATHURE R MARETE ..... PLAINTIFF**

**AND**

**MUGAMBI SOLOMON KIOGORA ..... DEFENDANT**

**RULING**

1. The application before the court is the one dated January 24, 2024 seeking a temporary order of injunction barring and restraining the defendant, his agents, servants, or employees from trespassing into, entering, building, excavating, subdividing, selling, leasing, fencing, or in any way whatsoever interfering with L.R Meru Municipality Block II/312, pending the hearing and determination of this suit and if the orders are granted the O.C.S. Meru Police station to supervise their implementation.
2. The application is based on the reasons on the face of the application and in a supporting affidavit sworn by Elizabeth Kathure Marete.
3. The applicant avers she is the registered owner of the suit land as per the annexed certificate of lease and search marked as E.K.K. "1" and "2". It is averred that the suit land was first registered under the applicant husband's name in 1992, who has made developments including permanent and semi-permanent houses, some with residential and commercial business rental tenants with regular property tax payments, photographs, lease agreements, and payment receipts to the County Government of Meru marked as E.K.K. "3, 4 & 5". The applicant avers that on December 21, 2023, the respondent illegally and unlawfully encroached and trespassed into the land without her consent and damaged the property, including nappier grass, bananas, avocado, moringa trees, and fenced off a portion thereof as per photographs of damage marked E.K.K. "6".
4. The applicant avers that after an inquiry from the respondent why he was trespassing into the land; he retorted that the land was his and that she would go nowhere, after which she made a report to Meru



- Police Station, who refused to take any action in the absence of a court order. She annexed a copy of O.B. No. 39/21/12/23 marked as E.K.K. 7.
5. The applicant aver she wrote a demand letter to the defendant dated 10.1.2024 attached as E.K.K "8" who called to say the land belonged to him subsequent to which an agricultural officer assessment of the damage was Kshs.74,139/= attached as E.K.K "9".
  6. The applicant avers the defendant was a stranger to her who appeared from the blues to claim land in the area, threatening to be an advocate. She averred that the respondent engaged together with his agents in damaging, encroaching and alienating her land regardless of whether she goes to court or not.
  7. The applicant avers that she stands to suffer grave loss and damage, due to the interference and wasteful activities perpetrated by the respondent and his agents.
  8. The defendant was served with a summons to enter appearance and the application and an affidavit of service filed by Paul Irungu Mwangi on February 1, 2024. No replying affidavit was filed to oppose the claim or the application.
  9. A party seeking temporary injunction orders must establish a prima facie case with a probability of success, show that he will suffer irreparable loss and damage, and lastly, that the balance of convenience tilts in favor of granting the orders sought.
  10. A prima facie case is established if, looking at the material placed before the court right has been infringed to call for an explanation from the opposite party. See *Mrao Ltd v First American Bank* (2003) eKLR. An applicant must raise serious questions to be tried by the court. In *Nguruman Limited v Jan Nelson Bonde* (2014) eKLR, the court said irreparable loss and damage refers to that which may not be mathematically quantified.
  11. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018)eKLR, irreparable damage was defined as one that cannot be adequately compensated and where there are no other means or remedy open for an applicant to protect himself from the consequences of the apprehended injury. As to balance of convenience, the court said it means that if an injunction is not granted and the suit ultimately succeeds in his favor, the inconvenience caused to him would be greater than that which would be caused to the defendant if an injunction is granted but the suit is ultimately dismissed. The court said an applicant must show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting.
  12. Where doubt exists as to the applicant's right or if the right is not disputed but its violation is denied, the court in *Paul Gitonga Wanjau v Gatbuti Tea Factory W Ltd & others* (2016) eKLR, held it would take into consideration the balance of convenience, the nature of the injury that the respondent would suffer if the injunction is granted and he should ultimately turn out to be correct and vice versa to the applicant. The court in *Amir Suleiman v Amboseli Resort Ltd* (2004) eKLR said that in an interim injunction, it should opt for the lower rather than the higher risk of injustices.
  13. Applying the case-law cited, the applicant has attached copies of a lease, official search, garage, lease, agreement, demand notice, agricultural assessment report, and pictorial evidence. Her right to the ownership of suit land is not disputed. The respondent was duly notified of the alleged illegal acts and rights of ownership. Service of the summons is acknowledged vide an affidavit of service and a letter dated February 21, 2024 to the Deputy Registrar of this court.
  14. The illegal erection of a fence, the blockage of access to the suit land and the hiving off of a portion by the respondent or his agents, servants, or employees have been demonstrated by the applicant. Efforts to involve the police to stop the said acts have been futile.



15. In *Joseph Kaloki t/a Royal Family Assembly v. Nancy Atieno Ouma* (2020) eKLR, the court cited and affirmed the case of *Kenya Breweries Limited and another v. Washington Okeyo* (2002) eKLR that a mandatory injunction is only granted at the interlocutory stage, where there are exceptional circumstances.
16. The applicant has not brought before any land registrar's or land surveyor's report ascertaining her boundary with the neighborhood in general and, in particular, the respondent. That notwithstanding, I find the inconvenience to the applicant in not granting the application will be greater than what the respondent would suffer in granting the application, especially for lack of a replying affidavits despite service with the application and the orders of status quo. The respondent, despite service with the application, did not oppose it. The application for review or setting aside has come too late is filed by a law firm not on record, does not address the issues of encroachment and its justification.
17. The upshot is that I allow the application to stop the trespass, entry into construction, excavation subdivisions, selling, leasing, fencing off, or any other interference with Meru Municipality Block II/312 by the defendants or his agents or employees pending hearing and determination of this suit. The plaintiff shall execute an undertaking as to damages of Kshs.150,000/= within seven days from the date hereof; otherwise, the orders shall stand vacated. Mention on May 20, 2024 for case conference.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 20<sup>th</sup> DAY OF MARCH, 2024**

In presence of

C.A Kananu

Kava for Kiogora Mugambi for the defendant

Thangicia for the applicant

**HON. C K NZILI**

**JUDGE**

