



**Standard Chartered Kenya Nominees Limited (As nominees of the Trustees of Standard Chartered Kenya Pension Fund) v Njeru (Sued as the personal representative of Samwel Njeru Muthi (Deceased)) & 3 others (Civil Application E586 of 2023) [2024] KECA 512 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KECA 512 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E586 OF 2023  
SG KAIRU, F TUIYOTT & GWN MACHARIA, JJA  
APRIL 26, 2024**

**BETWEEN**

**STANDARD CHARTERED KENYA NOMINEES LIMITED (AS NOMINEES OF THE TRUSTEES OF STANDARD CHARTERED KENYA PENSION FUND) ..... APPLICANT**

**AND**

**FRANCIS NYAGA NJERU (SUED AS THE PERSONAL REPRESENTATIVE OF SAMWEL NJERU MUTHI (DECEASED)) ..... 1<sup>ST</sup> RESPONDENT**  
**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**  
**REGISTRAR OF TITLES ..... 3<sup>RD</sup> RESPONDENT**  
**DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for injunction pending the hearing and determination of an intended appeal against the Ruling and order of the Environment and Land Court at Nairobi (Wabwoto, J.) made on 9<sup>th</sup> November 2023 in ELC Case No. 537 of 2018)*

**RULING**

- Standard Chartered Kenya Nominees Limited as nominees of the Trustees of Standard Chartered Kenya Pension Fund, as applicants seek injunctive orders to restrain Francis Nyaga Njeru (sued as the personal representative of Samwel Njeru Muthi (deceased), the 1<sup>st</sup> respondent, either through himself or through its agents, servants, employees from entering upon, remaining, trespassing upon LR. No. 214/12 situate in Muthaiga Nairobi or destroying, demolishing, pulling down or damaging the wall and gate erected by the applicant on the said land or carrying out any destruction, demolition or damage thereon pending the hearing and determination of the intended appeal from the ruling and



order of the Environment and Land Court (Wabwoto, J) in ELC made on 9<sup>th</sup> November 2023 in ELC Case No. 537 of 2018 (the suit). The orders are sought in an application dated 13<sup>th</sup> December 2023 brought under Rule 5(2)(b) of the *Court of Appeal Rules, 2022*.

2. By way of a plaint dated 13<sup>th</sup> December 2018, the applicant filed the suit seeking various reliefs against the 1<sup>st</sup> respondent together with the Chief Land Registrar (2<sup>nd</sup> respondent), the Registrar of Titles (3<sup>rd</sup> respondent) and the Director of Surveys (the 4<sup>th</sup> respondent) in relation to the suit property in which the applicant's case was that public records pertaining to the property had gone missing and with the 1<sup>st</sup> respondent suddenly laying a claim of a portion of the suit property on the strength of a different title document. The applicant asserted itself as the owner on the basis of holding the original indenture instrument together with a conveyance by which the property was transferred to it from the previous owner, Registered Trustees of Gertrude's Garden.
3. The applicant suffered a setback when the suit was dismissed on 9<sup>th</sup> November 2023 and aggrieved by that order lodged, seemingly, two notices of appeal dated 16<sup>th</sup> November 2023 against the decision. In an affidavit sworn by Fred Waswa on 13<sup>th</sup> December 2023, the applicant explains why it is now before us.
4. It is contended that on 16<sup>th</sup> November 2023 the 1<sup>st</sup> respondent evinced an intention to interfere with the suit property, announced himself as owner and bulldozer in tow, threatened to bring down, pull down and/or demolish an existing perimeter wall and security constructions to allow access. The applicant asserts that while the 1<sup>st</sup> respondent brandished the dismissal order, that order could not grant him the right to possession as he did not have any counterclaim against the applicant nor did he obtain positive orders affirming his ownership to the suit property.
5. The applicant proffers reasons why it thought its intended appeal to be arguable and why it would be rendered nugatory if the injunctive orders are not granted, reasons we shall consider.
6. In resisting the application, the 1<sup>st</sup> respondent deposes that as no memorandum of appeal has been filed, the applicant is in breach of Rule 85 of the Rules of this Court and the notice of appeal is deemed to be withdrawn; further, absent a memorandum of appeal, there is nothing to guide this Court as to arguability of the appeal; the purported intended appeal merely seeks this Court to substitute the discretion exercised by the trial judge; that the deceased father is the duly registered proprietor of property known as LR. 214/91, distinct from the suit property; his father's right to his property is not liable to be defeated; no copy of the orders or decree to be appealed from has been displayed; and there is no indication as to which of the three rulings rendered on 9<sup>th</sup> November 2023 aggrieves the applicant. The 1<sup>st</sup> respondent also contends that the appeal is a non-starter.
7. We have read the material before us, the written submissions filed by the applicant and the highlights at plenary by Mr Mbaluto learned counsel appearing for the applicant and Ms Sheuda learned counsel holding brief for Mr Osundwa for the 1<sup>st</sup> respondent.
8. We start by considering some preliminary issues raised by the applicant. The first is that as no appeal has been instituted as at the date of the application the notice of appeal should be deemed as withdrawn. This is not a matter on which we should make a call as we do not have a formal application under Rule 85 for the deeming orders requested by the 1<sup>st</sup> respondent. Second, we see a letter dated 17<sup>th</sup> November 2023 by counsel for the applicant to Court and copied to counsel for the respondents bespeaking proceedings. It is not obvious to us that the intended appeal is late as the applicant may benefit from the exclusion of time contemplated by Rule 84(1) and (2).



9. On the criticism that no decree of the order intended to be appealed from has been attached to the application, we are not aware of any such requirement at this stage. In any event, there is a concession by the 1<sup>st</sup> respondent that a dismissal order was indeed made by the ELC on 9<sup>th</sup> November 2023 and a photograph of the 1<sup>st</sup> respondent brandishing a copy of that order at the time he sought to demolish the wall is attached to the application.
10. Regarding the matter of which rulings are impugned, there are two notices of appeal one of which specifically targets the dismissal order.
11. One other argument made by the 1<sup>st</sup> respondent which is just as weak is that the order cannot be granted because what is sought to be stayed is a dismissal order, a negative order. Had the 1<sup>st</sup> respondent been keen he would have noticed that the applicant seeks protection through an order of injunction and not stay. An injunction is grantable where deserved even if the nature of the order under challenge is in the negative.
12. A grievance raised by the applicant is that the learned trial Judge misdirected himself in dismissing his case without allowing the witnesses present on either side opportunity to be heard, which resulted in determining a contentious land dispute without a consideration of the merits. While this argument may not in the end prevail, we do not think it to be frivolous and even if it were the only single point, it deserves the consideration of the bench that will hear the appeal. (See *Stanley Kang'ethe Kinyanjui v Tony Keter & 5 Others* [2013] eKLR.)
13. As to whether the appeal will be rendered nugatory if we do not grant the injunction, we think that the argument made by the 1<sup>st</sup> respondent that he is attempting to assert ownership over property which is different from the subject matter of the suit before the ELC to be disingenuous. Why then would he be resisting the application if it did not affect him? We are persuaded that allowing the 1<sup>st</sup> respondent to demolish the developments on the disputed property and to take possession will be to so considerably alter or change the character of the property that the damage will be irreversible and likely to render the appeal nugatory.
14. The motion is for allowing and the application dated 13<sup>th</sup> December 2023 is hereby allowed in terms of prayers (b) and (c). In the result, pending the hearing and determination of the applicant's appeal, the respondent by himself, his servants, employees or agents is hereby restrained, by order of injunction, from entering upon, remaining, or trespassing upon, or from destroying, demolishing, pulling down or damaging the developments on the property known as L.R. No. 214/12, situate in Muthaiga Nairobi. Costs shall be in the intended appeal.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF APRIL 2024.**

**S. GATEMBU KAIRU, FCIArb.**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**G.W. NGENYE-MACHARIA**

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**JUDGE OF APPEAL**



I certify that this is a true copy of the original

SIGNED

**DEPUTY REGISTRAR**

