



**Macharia & another v Nine Sisters Limited & 2 others (Environment & Land
Case E017 of 2023) [2024] KEELC 1646 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E017 OF 2023**

**A OMBWAYO, J
MARCH 14, 2024**

BETWEEN

SAMUEL MACHARIA 1ST PLAINTIFF

JUDY NJERI THUO 2ND PLAINTIFF

AND

NINE SISTERS LIMITED 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Samuel Macharia and Judy Njeri Thuo have come to this court seeking orders that pending hearing and determination of this suit this Honorable Court be pleased to issue a temporary Injunction forbidding the Respondents either by themselves, their servants, employees and/or agents from trespassing or encroaching howsoever on Miti Mingi/Mbaru K Block 8/1354 (Kianjoya Miti Mingi/Mbaruk Block 8/1 353 (Kianjoya Miti Mingi/Mbaruk Block 8/1356 (Kianjoya(D))
2. Miti Mingi/^MBaruk Block 8/1357 (Kianjoya Miti Mingi/Mbaruk Block 8/1361 (Kianjoya Miti Mingi/Mbaruk Block 8/1358 (Kianjoya Miti Mingi/Mbaruk Block 8/1359 (Kianjoya Miti Mingi/Mbaruk Block 8/1360 (Kianjoya or adversely interfering with the Applicant's ownership, possession, use and enjoyment of the suit property.
3. Pending hearing and determination of this suit this Honorable Court be pleased to issue a temporary injunction forbidding the Respondents, either by themselves, their servants, employees and/or agents from advertising for sale, offering for sale, selling, transferring, sub-dividing and/or registering any subdivision over Miti Mingi/Mbaruk Block 8/1354 (Kianjoya Miti Mingi/Mbaruk Block 8/1353 (Kianjoya (D) Mingi/Mbaruk Block 8/1356 (Kianjoya)



4. Miti Mingi/Mbaruk Block 8/1357 (Kianjoya Miti Mingi/Mbaruk Block 8/1361 (Kianjoya Miti Mingi/Mbaruk Block 8/1358(Kianjoya Miti Mingi/Mbaruk Block 8/1359 (Kianjoya Miti Mingi/Mbaruk Block 8/1360 (Kianjoya
The costs herein be in the cause.
5. The application is supported by the affidavit of Samuel Macharia who states that he is the sole registered proprietor and owner of all those parcels of land referenced as Miti Mingi/Mbaruk Block 8/1354 (Kianjoya Miti Mingi/Mbaruk Block 8/1353 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1356 Kianjoya Miti Mingi/Mbaruk Block 8/1357 (Kianjoya annexed and marked as SM-OI hereto are copies of the Certificates of title. He has always been the registered owner of all these parcels of land since issuance of the Certificates of Title by the then Nakuru District Lands Registry on the 10th July 1997 to date a period of 26 years.
6. Prior to this, the parcels of land belonged to his late father Daniel Mwangi and devolved to him consequently thereafter from the Estate of his late father. He has always been the beneficial owner of the suit properties ever since registration with no other person having any competing interest averse to those of his own all evidenced by official searches carried out on the suit properties on diverse dates in the year 2019 & 2020.
7. In the year 2021 the Respondents through their affiliated company Kianjoya Enterprises Ltd placed a caution on the 2nd Applicants parcels of land in anticipation of the greater fraudulent acquisition to be performed by the Respondent.
8. In the year 2023 in the month of July he was informed that the Respondent through its servants, agents and or directors in collusion with officers at the Lands Registry at Naivasha had caused the disappearance and deletion of the original green cards over the suit properties in favor of new generated green cards that create ownership rights in favor of the Respondent contra the actual & true position.
9. In furtherance of the fraud above the Respondents have already acquired titles to the suit properties with sub-divisions currently ongoing for development purposes if not sale of his parcels of land to unscrupulous members of the public.
10. His right to ownership of property, possession of such property and security afforded by registration in all the suit properties has been greatly defeated with a real danger of them being lost out of the fraudulent acts perpetrated by the Respondent. According to the applicant, the respondent has no legal right or claim over the said parcels of land neither have they any valid ownership documents but for those obtained illegally, irregularly through fraud and misrepresentation,
11. The applicants contend that they are the legitimate registered proprietors of all the suit properties and were issued with title on 10th July 1997 and have been registered for the last 26 years. According to the respondents in collusion with the Land Registry in Naivasha caused the registry to issue new green cards to the respondent. That the same was done illegally, unlawfully and fraudulently. The applicant right to property is at risk.
12. In the replying affidavit of Hon Maina Wanjigi, the 1st respondent states that she is the owner of the suit property which initially were LR No.4630/7,8,9 and LR 8851/2 which were converted and registered under Registration of Land Act under various blocks including Miti Mingo/Mbaruk/Block 8 which was subdivided into several parcels for sale and most were sold to various purchasers between 1996-2005. The deponent is the legal owner. Block 8/1353 (Kianjoya D) 1354,1356,1357,1358,1359,1340,1361 were annexed to members register.



13. I have considered the application for injunction dated 10th January 2024 and do find that the applicants have demonstrated that they have title to suit property whereas the respondent have a members register indicating that the suit properties belongs to them.
14. The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
- Section 26 (1) of the Land Registration Act states as follows:
- “The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
15. The plaintiff have demonstrated that they are the registered owners of the suit parcels of land hence have a prima facie case with a likelihood of success.
16. On whether the plaintiff will suffer an irreparable loss that cannot be compensated with damages, I do find that the plaintiffs have demonstrated that if the suit property is occupied by the defendant and subdivided and sold the plaintiffs are likely to suffer irreparable damages as the defendants would have sold the property.
17. On a balance of convenience, I do find that the plaintiffs are likely to suffer inconvenience if the land is sold and they succeed in the suit as compared to the defendants who can be compensated with damages if they succeed in the case despite the injunction, having been granted.
18. The upshot of the above is that I do grant orders that Pending hearing and determination of this suit this Honorable Court be pleased to issue a temporary injunction forbidding the Respondents, either by themselves, their servants, employees and/or agents from advertising for sale, offering for sale, selling, transferring, sub-dividing and/or registering any subdivision over Miti Mingi/Mbaruk Block 8/1354 (Kianjoya Miti Mingi/Mbaruk Block 8/1353 (Kianjoya (d) Mingi/Mbaruk Block 8/1356 (Kianjoya).
19. Miti Mingi/Mbaruk Block 8/1357 (Kianjoya Miti Mingi/Mbaruk Block 8/1361 (Kianjoya Miti Mingi/Mbaruk Block 8/1358(kianjoya Miti Mingi/Mbaruk Block 8/1359 (Kianjoya Miti Mingi/Mbaruk Block 8/1360 (Kianjoya)

Costs herein be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF MARCH 2024.

A. O. OMBWAYO



JUDGE

