



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Land Registrar Nyandarua & 4 others; Ngugi (Exparte Applicant) (Environment and Land Miscellaneous Application 9 of 2023) [2024] KEELC 1425 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1425 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 9 OF 2023**

**YM ANGIMA, J**

**MARCH 14, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**LAND REGISTRAR NYANDARUA ..... 1<sup>ST</sup> RESPONDENT**

**PETER NGUGI KAINAMIA ..... 2<sup>ND</sup> RESPONDENT**

**JOHNMURAYA KAINAMIA ..... 3<sup>RD</sup> RESPONDENT**

**PETER MURAYA KAINAMIA ..... 4<sup>TH</sup> RESPONDENT**

**MICHAEL NGOTHO GITAHU ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**ELIZABETH WANGARI NGUGI ..... EXPARTE APPLICANT**

**RULING**

1. By a notice of motion dated 03.07.2023 expressed to be filed pursuant to Sections 1A, 1B, 3A & 63 of the [Civil Procedure Act](#) (Cap.21), Order 40 Rules 1 & 2 and Order 51 Rule 1 of the [Civil Procedure Rules](#), 2010 and Article 40 of [the Constitution](#) of Kenya, 2010 the ex parte Applicant (the Applicant) sought the following interim orders:
  - a. Spent;
  - b. Spent;
  - c. Spent;
  - d. That this honourable court be pleased to issue a temporary order of injunction restraining the Interested Parties by themselves, their servants, agents, assignees or any person claiming



title from constructing, alienating, selling, transferring or disposing off or in any other manner whatsoever dealing with LR. Nyandarua/Ol'Kalou South/173 pending hearing and determination of the main suit.

- e. Spent;
  - f. That the 4<sup>th</sup> Interested Party be compelled to pay for damages caused on LR. Nyandarua/Ol'Kalou South/173.
2. The application was based upon the grounds set out on the face of the motion and the contents of the Applicant's supporting affidavit sworn on 03.07.2023 and a further affidavit sworn on 11.09.2023 and the annexures thereto. The Applicant contended that the late Stephen Munyao Kakunia (the deceased) was the legitimate owner of Title No. Nyandarua/Ol'Kalou South/90 of which Title No. Nyandarua/Ol'Kalou South/173 was a sub-division. It was contended that Tabitha Wambui Kakunia was the administrator of the estate of the deceased and that she had given her a general power of attorney to enable her prosecute the application for judicial review and the instant proceedings.
  3. The Applicant's case was that the 4<sup>th</sup> Interested Party (now 5<sup>th</sup> Respondent) had on or about 11.02.2023 illegally and forcibly entered Parcel 173 and undertaken some activities thereon which caused massive damage to the land such as felling trees and undertaking excavations. The Applicant further stated that she was apprehensive that the 5<sup>th</sup> Respondent may dispose of Parcel 173 to third parties with the consequence that the beneficiaries of the estate of the deceased may suffer irreparable loss and injury. She did not, however, specify the nature of the apprehended loss or injury and why it could not be adequately compensated by an award of damages.
  4. The Respondents were granted an opportunity to file their responses to the application. The 1<sup>st</sup> Respondent did not file any response thereto probably because no orders were sought against him in the application. The 2<sup>nd</sup> – 4<sup>th</sup> Respondents informed the court that they did not wish to file any response to the application whereas the 5<sup>th</sup> Respondent filed grounds of opposition on 18.12.2023 opposing the same on various grounds.
  5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The record shows that the Applicant's written submissions were filed on or about 20.11.2023 whereas the 5<sup>th</sup> Respondent's submissions were filed on 18.12.2023. The 2<sup>nd</sup> – 4<sup>th</sup> Respondents informed the court that they did not wish to file any submissions.
  6. The court has perused the Applicant's notice of motion dated 03.07.2023, the 5<sup>th</sup> Respondent's grounds of opposition as well as the material on record. The court is of the opinion that there are two main issues which arise for determination herein. Firstly, whether the Applicant has made out a case for the grant of the temporary injunction sought. Secondly, whether the Applicant is entitled to damages at the interlocutory stage.
  7. The court has considered the material and submissions on record on the first issue. The Applicant contended that Parcel 173 was part of the estate of the deceased and that Tabitha Wambui was the legal administrator of his estate. In a bid to demonstrate her claim she exhibited a copy of a certificate of confirmation of grant dated 01.04.2011 in Nakuru High Court Succession Cause No. 330 of 2009 – In the matter of the estate of the late Stephen Munyao Kakunia (deceased). A perusal of the said certificate, however, reveals that the property which was distributed by the High Court was Title No. Nyandarua/Ol'Kalou South/174 and not Parcel 173. In the event, the court finds no evidence to demonstrate that the deceased was the owner of Parcel 173 at the time of his death or at the time the succession proceedings were concluded.



8. In the absence of prima facie evidence that Parcel 173 belonged to the deceased at the time of his demise the court is unable to find that the Applicant has demonstrated a prima facie case with a probability of success at the trial in line with the authorities which were cited by the Applicant herself. The Applicant relied upon the well known cases of *Giella v Cassman Brown & Co.* [1973] EA 358, *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR and *Mrao Limited v First American Bank of Kenya Ltd* [2003] eKLR on the requirements to be satisfied in an application for an interim injunction.
9. Given that the Applicant has failed to satisfy the first principle of demonstrating a prima facie case with a probability of success at the trial, then it is not necessary for the court to consider the other two principles on irreparable injury and balance of convenience. The Applicant's application has simply failed at the first hurdle. In the premises, the court finds and holds that the Applicant has failed to demonstrate a case for the grant of the interim injunction sought hence the court is not inclined to grant the same.
10. The court has considered the material and submissions on the second issue. The court has noted that the Applicant did not pursue the issue of damages for the damage allegedly caused by the 5<sup>th</sup> Respondent on Parcel 173 in her written submissions. It is not clear if she abandoned this prayer or she decided to defer it until the hearing of the substantive application for judicial review. Nevertheless, the court is of the view that a claim for damages as a form of compensation should await until the hearing of the substantive suit since the alleged damage has to be proved at the trial. The claim for damages cannot, therefore, be granted as an interim remedy since it is in the nature of a final relief. As a result, the court is not inclined to award any damages at the interim stage.
11. The upshot of the foregoing is that the court finds no merit in the application for interim orders. As a consequence, the Applicant's notice of motion dated 03.07.2023 is hereby dismissed with costs to the 5<sup>th</sup> Respondent who opposed the application. The 1<sup>st</sup> – 4<sup>th</sup> Respondents shall not be awarded costs since they did not oppose the application.

It is so ordered.

**RULING DATED AND SIGNED AT NYANDARUA THIS 14TH DAY OF MARCH, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

**Elizabeth Ngugi for the Applicant**

**N/A for the Attorney General for the 1<sup>st</sup> Respondent**

**Mr.Nderitu Komu holding brief for Mr. Ndichu for the 2<sup>nd</sup> – 4<sup>th</sup> Respondents**

**Mr. Nderitu Komu for the 5<sup>th</sup> Respondent**

**C/A - Carol**

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**Y. M. ANGIMA**

**JUDGE**

