



Full Gospel Churches of Kenya – Nchaure Branch Through its Registered Trustees v M’ramare & another (Being Sued as the Legal Representatives of M’ramare Nkunga alias Ramare Nkunga - Deceased) (Environment & Land Case E014 of 2023) [2024] KEELC 1439 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E014 OF 2023**

CK NZILI, J

MARCH 13, 2024

BETWEEN

FULL GOSPEL CHURCHES OF KENYA – NCHAURE BRANCH THROUGH ITS REGISTERED TRUSTEES PLAINTIFF

AND

M’RUKARIA M’RAMARE AND M’MARETE M’RAMARE (BEING SUED AS THE LEGAL REPRESENTATIVES OF M’RAMARE NKUNGA ALIAS RAMARE NKUNGA - DECEASED) DEFENDANT

RULING

1. By an application dated December 11, 2023, the court is asked to inhibit and issue a temporary injunction barring and restraining the respondents, its agents, servants or employees or contractors from occupying, entering, remaining, dealing with and or effecting any transaction over and in any way whatsoever interfering with the plaintiff’s occupation or use of 0.202 ha out of L.R No. Ntima/ Ntakira/1129 pending hearing and determination of this suit. The grounds are set out on the face of the application and in the supporting affidavit of bishop Gerald Mugo Wachira sworn on an even date.
2. Briefly, the plaintiff avers the respondents are the legal representatives of the late M’Ramare Nkanga alias Ramare Nkunga pursuant to a grant issued to them and that the suit land is now registered in the name of M’RukariaM’Ramare as per the attached copy of grant and register of titles as annexures marked BGMW "3 & 4".
3. The applicants aver that as an incorporated entity going by an attached certificate marked BGMW "1," they have been in occupation of a portion of the subject land in excess of 12 years, running a school, following a purchase of the land by a sale agreement dated March 11, 2011 and attached as annexure marked BGMW "5". It is averred that the portions are extensively developed as per the photographs



- attached as an annexure marked BGMW "6" since the defendant's title has been extinguished, the applicant now urges the court to find that they are entitled to orders sought that the respondents do execute all consents, mutation form and documents to effect.
4. The application is opposed through a replying affidavit by M'Rukaria M'Ramare sworn on December 18, 2023 for being a sham, malicious, res judicata, vexatious, lacking merits and as an abuse of the court process. The respondent avers the applicant has failed to disclose that in Meru H.C Succession case No. 422 of 2011, it has been irregularly listed as a beneficiary to the deceased's estate, which was revoked by a ruling dated July 25, 2017, on account of Section 47 of the [Law of Succession Act](#); for being unlawful, fraudulent and as amounting to intermeddling with the deceased's estate. The ruling is attached as an annexure marked MM "1".
 5. The respondent avers that the applicant at the High Court had admitted the entry was permissive going by his affidavit thereto as MM" 2". The respondent avers that if there was any adverse occupation, the same was interrupted by the probate cause, whose outcome was the distribution of the estate to its beneficiaries, which the applicant is aware of and is only forum shopping before this court seeking underserved reliefs.
 6. The applicant's case is based on an originating summons dated 11.12.2023, which is supported by an affidavit, a list of witness statements and documents, among them the sale agreement, confirmed grant dated July 27, 2023, chamber summons for revocation of grant dated 8.11.2022 and a valuation report dated October 26, 2023.
 7. The 1st respondent has filed a statement of defence and counterclaim dated October 19, 2023, admitting that the applicant had raised its claim in the probate cause as a purchaser for value. The 1st respondent, in paragraph 7 of the statement of defence, admits that the estate is yet to be shared out, though the grant was rectified on July 27, 2023. He terms the sale agreement as illegal, for the 1st defendant could not sell the land. By way of a counterclaim, the 1st defendant has termed the applicant as a trespasser who illegally occupies the suit land and prays for an eviction.
 8. A party seeking an inhibition and temporary injunction has to establish a *prima facie* case with a probability of success, prove that he stands to suffer irreparable loss and damage if the orders are not granted and lastly, that the balance of convenience tilts in favour of granting the orders sought.
 9. A *prima facie* case is established where, looking at the material before the trial court a right seems to have been infringed to call for a rebuttal or explanation from the opposite party. See [Mrao Ltd v First American Bank Ltd & 2 others](#) (2003) eKLR. Irreparable loss or damage refers to damage or loss that cannot be mathematically quantified or ascertained. [Nguruman Ltd v Jan Bonde Nielsen](#) (2014) eKLR. Regarding the balance of convenience, if the injunction is not granted and the suit is ultimately decided in favour of the applicant, the inconvenience caused to him would be more significant than that which would be caused to the respondent if an injunction is granted, but the suit is ultimately dismissed.
 10. It is upon the party to show the inconvenience caused to it would be more significant than which may be caused to the respondent, and should the inconvenience be equal, it is he who will suffer more. See [Brayan Chebii Kipkoeh v Barnabas Tuitoek Bargarioria & another](#) (2019) eKLR.
 11. How, then, does a court establish that the above ingredients have been met? The court does not hold a minitrial but is guided by the material placed before it by the parties. The applicant must disclose all material facts and documents. The applicant must have locus standi. He must raise serious issues to be tried. The applicant must show that damages would not be an adequate remedy and that the balance of convenience lies in favour of granting the orders sought. He must show proof that the suit property was in danger of being wasted, damaged or alienated under Order 40 Rule 1 of the [Civil Procedure](#)



Rules. See *Giella v Cassman Brown & Co. Ltd* (1973) C.A 358, *American Cynamid Co. Ltd v Ethicon Ltd* (1975) ALL ER 504, *Wilfred Nyawira Maina v Peterson Oyiego Gichana* (2015) eKLR, *Kenleb Coms Ltd v New Gatitu Service Station Ltd & another* (1990) eKLR.

12. In this suit, the sale agreement dated March 11, 2011 was executed by the 1st defendant and the deponent to the supporting affidavit in this application or suit. The 1st defendant represented himself as a beneficial owner of the land. Under clause number 3, the 1st defendant undertook to file a succession cause to effect his share of the estate in favour of the applicant herein. He obtained monies from the applicant and authorized the applicant under clause 6 thereof, to take vacant possession, pending the probate cause, that would have paved the way for a formal transfer.
13. Therefore, the 1st respondent is estopped in law from denying that there exists a sale agreement that granted the applicant possessory, equitable and legal rights to occupy and develop the suit premises. The 1st respondent has not denied that the applicant has effected visible developments on the suit land, including a school whose beneficiaries are children enjoying their education rights.
14. The 1st respondent has admitted that he holds the land as a trustee of the beneficiaries, which is likely to change its status. The 1st respondent has also pleaded and sought eviction orders. He terms the applicant as a trespasser to the suit land. All these issues, in my view, are serious issues calling for determination by this court. The probate court's mandate is to gather the identity of beneficiaries and determine distribution on the free properties of a deceased estate. Claims by non-beneficiaries or third parties against the deceased estate fall under the jurisdiction of this court. See *Re-estate of Alice Mumbua Mutua (deceased)* (2017) eKLR.
15. If the property changes hands before the rights of the applicant herein are ascertained or established and, consequently, eviction occurs, there will be irreparable damage to the applicant. The balance of convenience tilts in favour of preserving the suit property, pending the hearing and determination of the suit. The court proceeds to grant an order of inhibition and temporary injunction stopping any sale, transfer, subdivision or eviction of the applicant from the suit land to last for one year only.
16. Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13th DAY OF MARCH, 2024

In presence of

C.A Kananu

Miss Mutegi for the Applicant

Miss Onyango for G.M Wanjohi for 1st Defendant

HON. C K NZILI

JUDGE

