



**Karanca v County Government of Meru & 4 others (Environment & Land Case E008 of 2023) [2024] KEELC 1438 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1438 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E008 OF 2023  
CK NZILI, J  
MARCH 13, 2024**

**BETWEEN**

**GEOFFREY KINJA KARANCA ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF MERU ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, MERU ..... 3<sup>RD</sup> DEFENDANT**

**COUNTY DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT**

**NATIONAL HOUSING CORPORATION ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. By an application dated 23.10.2023, the court is asked to issue a temporary injunction compelling the 1<sup>st</sup> & 6<sup>th</sup> defendants to remove the fence erected on the plaintiff's L.R No. Meru Municipality Block 1/376 all the security personnel and equipment therein, restore the plaintiff's possession, user, quiet and peaceful enjoyment of the suit property pending hearing and determination of this suit. The second prayer is for a temporary injunction barring and restraining the defendants, their agents, servants, or employees from selling, alienating, transferring, dispossession, allotting, canceling, or interfering with the plaintiff's rights, title, interest, possession, proprietorship, peaceful and quiet enjoyment of L.R No. Meru Municipality Block 1/376 pending hearing and determination of this suit. The grounds are set on the face of the application and a supporting affidavit sworn by Geoffrey Kinja Karanca on 23.10.2023.
2. Briefly, the applicant avers he became the registered owner of the suit premises after acquiring an allotment in July 1997 and took vacant possession. Further, he says he acquired a lease dated 20.4.2023 and a certificate of the lease on 23.4.2023, all attached as annexures GKK "1" 1-2. The applicant says



- that on 10.8.2023, a neighbor informed him that the 1<sup>st</sup> defendant visited the suit land, cut off his fence, trees, and crops, and took possession of his land as per photographs attached on pages 16-26 after the 6<sup>th</sup> defendant had approved the invasion. It was averred that his suit land was merged with a plot belonging to the 6<sup>th</sup> defendant. The applicant avers he is unable to access his land, now illegally annexed rendering him landless. The applicant avers that the 1<sup>st</sup> and 6<sup>th</sup> defendants have stationed guards on his land, preventing him from ingressing or egressing his land contrary to Article 40 of the Constitution.
3. When the matter came for an interparty hearing on 21.11.2023, Miss Mbaikyatta learned litigation counsel, representing the 2<sup>nd</sup> – 5<sup>th</sup> defendants, told the court that her clients were not opposed to prayer No. 3 of the application for the parties to hear the main suit. Counsel for the applicant told the court there was a likelihood of construction commencing on the suit land. There was no appearance for the 1<sup>st</sup> & 6<sup>th</sup> defendants despite a memorandum of appearance dated 14.11.2023 by K.N Nyambare, Advocates for the 6<sup>th</sup> defendant.
  4. Therefore, prayer number 3 was granted by consent whole prayer number 2 was declined until a land registrar and land surveyors report could be filed before the mention on 7.12.2023 to fix a ruling date.
  5. On 7.12.2023, Miss Maina appeared for the 2<sup>nd</sup> – 5<sup>th</sup> respondents while Mr. Opolu appeared for the applicant plaintiff, Miss Gakuya appeared for the 6<sup>th</sup> respondent, who confirmed that there was no scene visit as ordered, since the two officers did not understand what they were supposed to do at the site in the absence of an amendment of the order. Learned counsel also to that the 6<sup>th</sup> defendant was unable to file any replying affidavit and required more time. The court gave a ruling date of 13.3.2024.
  6. The 6<sup>th</sup> defendant opposed the application through a replying affidavit sworn by Joshua Odege Sanduk, a land surveyor. It was averred that the 6<sup>th</sup> defendant was an allottee of Meru Municipality Block 1/357 measuring 0.9556 ha as per a certificate of lease issued on 23.11.2016, which parcel is adjacent to the plaintiff's parcel that is distinct with clear boundaries. The 6<sup>th</sup> respondent denied the alleged merger or interference with the applicant's parcel, which he is able to use, enjoy, and access from the two sides that border the road.
  7. The 6<sup>th</sup> respondent avers that the applicant was allocated an unsurveyed residential plot that was subject to an adjustment on the survey but there was no claim for reduction in the area of the survey as per the allotment letter dated 1.7.1997. On the other hand, the 6<sup>th</sup> respondent averred it was allocated the parcel on 27.9.2010 and acquired a part development plan no. 107 dated 10.8.2010, and therefore, both parcels are surveyed to fix boundaries survey standard as per the Survey Act Cap 291.
  8. The 6<sup>th</sup> respondent averred it had not, before this suit was filed, received a complaint from the applicant regarding any wrongdoing, and none has been shown to date, including a demand to the National Land Commission (NLC). The 6<sup>th</sup> respondent averred that it is currently implementing the affordable housing project on its parcel of land in line with the government and NHC mandate to provide housing to Kenyans, which plot is approximately 120 meters away from the applicant's land; hence, there was no interference as alleged or at all.
  9. As indicated above, no land registrar's report was availed as of 7.12.2023 to confirm the status on the ground regarding the two parcels of land said to have been merged, fenced off, or trespassed into by the 1<sup>st</sup> & 6<sup>th</sup> respondents, to the extent of 0.556 ha.
  10. The applicant is seeking a mandatory injunction for the removal of the fence allegedly erected on his land, the equipment stationed therein, and the personnel, for the restoration of possession, user, quiet, and peaceful enjoyment of his parcel of land, pending hearing and determination of this suit.



11. A mandatory injunction is ordinarily not issued at the interlocutory in the absence of exceptional circumstances unless the case is clear and the court thinks it ought to be decided at once. See [Joseph Kaloki t/a Royal Family Assembly vs Nancy Atieno Ouma](#) (2020) eKLR.
12. In [Shariff Abdi Hassan vs Nadhif Juma Adan](#) (2006) eKLR, the court held that courts were reluctant to grant a mandatory injunction at the interlocutory stage unless prima facie evidence was available that the respondent was in the wrong.
13. The applicant has not brought any land registrars or surveyors report to ascertain the nature, extent and manner of encroachment of his land by the 1<sup>st</sup> & 6<sup>th</sup> respondents. The alleged trespass occurred on 10.8.2023, while this suit was filed on 27.10.2023. The delay in moving to court for reprieve has not been explained. There is no evidence that the applicant sought the services of the 3<sup>rd</sup> & 5<sup>th</sup> respondents under Sections 14 – 21 of the [Land Registration Act](#) to ascertain the boundaries before moving to court.
14. The applicant has failed to establish exceptional circumstances to warrant a temporary mandatory injunction. As to prayer number 3, the same was consented to by the 2<sup>nd</sup> – 5<sup>th</sup> respondents. The 1<sup>st</sup> & 6<sup>th</sup> respondents have not sought for its recall setting aside or vacation. In any event, the 6<sup>th</sup> respondent has said its development are over 200 meters from the plaintiff's parcel of land.
15. Since pleadings are yet to be closed, I find the application dated 30.1.2024 by the 6<sup>th</sup> defendant premature. The same is dismissed with costs. Parties are directed to file and exchange pleadings within 30 days and comply with Order 11 [Civil Procedure Rules](#).
16. Mention on 14.5.2024 for case conference.

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

**In presence of**

C.A Kananu

Plaintiff

Opulu for the plaintiff

Mwirigi B for the 1<sup>st</sup> defendant

**HON. C K NZILI**

**JUDGE**

