



**Wainana v Njii & another (Environment & Land Case
E233 of 2023) [2024] KEELC 3514 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E233 OF 2023
EK WABWOTO, J
APRIL 30, 2024**

BETWEEN

SAMUEL NGUGI WAINANA PLAINTIFF

AND

SIMON MWANGI NJII 1ST RESPONDENT

**ERIC MUHINDI MUIGAI (SUED AS THE ADMINISTRATOR OF THE ESTATE
OF THE LATE MUIGAI MWAURA) 2ND RESPONDENT**

RULING

1. This ruling is in respect to the Applicant’s Notice of Motion dated 23rd June 2023 wherein the applicant sought:
 - a.spent.
 - b.spent.
 - c. The Honorable Court be and is hereby pleased to issue appropriate directions on the expedited inter partes hearing for the application herein on such date and at a time
 - d. Pending the hearing and final determination of this suit, the Honorable Court be pleased to issue an order restraining the Defendants/Respondents either by themselves or through their agents from implementing and/or enforcing the Eviction Notice dated 23rd May 2023, demolishing the development undertaken by the Plaintiff on the suit property and evicting the Tenants of the Plaintiff and in any way howsoever interfering with peaceful enjoyment or obstructing the Tenants’ right of ingress and/or egress into and/or out of the Residential Apartments erected on Land Parcel no 209/11388/40(I.R. no 65953) located in Huruma Estate, Nairobi City County
- (c) The costs of this application be provided for



2. The application was premised on the main ground that the 1st Defendant/Respondent has now purported to issue the Plaintiff with an eviction notice dated 23rd May 2023 directing all the tenants to vacate the suit property and remove structures by 30th June 2023, failure of which the 1st Defendant threatens to enter the suit premises and demolish the developments.
3. On 29th June 2023, the Court granted interim orders barring eviction of the Plaintiff and tenants. The Plaintiff filed submissions dated 30th October 2023 and a supplementary affidavit by Samuel Ngugi Wainana dated 26th September 2023. The application was opposed vide a Replying affidavit dated 7th August 2023 sworn by Simon Mwangi Njii and submissions dated 22nd January 2024.
4. The Applicant's case is that he acquired proprietary interest over the suit property having been in occupation since 1994 when he entered it and began construction works of a six-storey building which was completed in 1996 and currently which was valued at the sum of over KSHS. 24 Million. Further, the Applicant's claimed that he constructed in good faith and for value without notice. The 1st Respondent purported to issue an eviction notice dated 23rd May, 2023 directing all the tenant to vacate the suit property and remove the structures built therein by 30th June, 2023. It was the Plaintiff's submission that the said Notice dated 23rd May, 2023 is in contravention of Section 152(E) of the Land Act and is incapable of enforcement hence should be stayed by the court.
5. The 1st Respondent's title to the suit property was disputed by alleging that he only learned about it following the judgment delivered by the Hon. Justice Oguttu Mboya on 2nd February, 2023 in Milimani ELC No. E023 (OS). Further, that the 1st Respondent's claim over the suit property is marred with inconsistencies and fraud hence he has no right to evict the Applicant and his action are unlawful the Applicant having acquired interest over the suit property.
6. It was also argued that unless the orders of injunction are granted, he will be exposed to grave irreparable harm as the structures and/or developments shall be demolished or the Respondents shall take possession of the suit property together with the development which shall amount to unjust enrichment and thus he stands to suffer losses running into millions for which an award of damages will not adequately compensate the Applicant having spent a large sum of Kshs. 24 Million in constructing the six-storey building.
7. The 1st Respondent's case is that the Application is bad in law, grossly misconceived and an abuse of the court process. It was further argued that the Application together with the entire suit is *Res Judicata* as the fact and issues raised herein are similar to the issues and facts raised in Milimani ELC Case No. E023 of 2022 (O.S) Samuel Ngugi Wainaina versus Simon Mwangi Njii The Estate Of Muigai Mwaura. ("The Previous suit"), which was finally determined by the Hon Justice Oguttu Mboya vide a judgement delivered on 2nd February, 2023.
8. It was also submitted that the entire suit herein is a clear case of forum shopping. The Applicant cannot hinge his Application on a notice purportedly dated 24th May, 2023, yet a proper notice was issued on 14th March, 2022 which was the basis of his Application in Milimani ELC Case No. E023 OF 2022 and the same is still in force.
9. Lastly, it was emphasized that the Applicant's entry onto the suit property was unlawful authority hence he cannot seek relief from the Honourable court based on an illegality.
10. The court has considered the application as well as the parties' affidavits and submissions made for and against the application. The main issue for determination is whether the application is merited to warrant the grant of the injunctive orders sought herein.



11. In considering whether the threshold for injunctive orders has been met, the Court must pronounce itself on whether the provisions of Section 152E of the Land Laws (Amendment) Act No. 28 of 2016 have been upheld. It is undisputed that the Land owner who seeks to procure and or obtain an order of eviction is obliged to issue and serve an eviction notice not only upon the unlawful occupant but also the Deputy County Commissioner in charge of the area and the Officer Commanding the police division of the area.
12. In the instant case, the court has perused the eviction notices dated 7th December 2021 and 14th March, 2022- being letters addressed to Simon Wainana. The Court further takes note that the eviction notice dated 24th March 2023 was a mere notice on the wall of the premises for which personal service could not be ascertained. No further evidence or affidavit of service was produced to confirm service upon the Deputy County Commissioner and Officer Commanding the police division of the area.
13. My interpretation of Section 152E is that the prescribed process is not only mandatory upon the landowner but is also all encompassing. Therefore, failure to serve even one of the prescribed parties is insufficient service.
14. In view of the foregoing, the court finds that there lacked full compliance with Section 152E of the Land Laws (Amendment) Act No. 28 of 2016 by the Defendants. Accordingly, based on a balance of convenience, the Notice of Motion dated 23rd June 2023 is merited and the same is hereby allowed in the following terms:
 - a. Pending the hearing and final determination of this suit an order is hereby issued restraining the Defendants/Respondents either by themselves or through their agents from implementing and/or enforcing the Eviction Notice dated 23rd May 2023, demolishing the development undertaken by the Plaintiff on the suit property and evicting the Tenants of the Plaintiff on the Residential Apartments erected on Land Parcel no 209/11388/40(I.R. No 65953) located in Huruma Estate, Nairobi City County.
 - b. Each party shall bear own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2024.

E.K. WABWOTO

JUDGE

In the virtual presence of:-

Ms. Jane Onyango for the Plaintiff/Applicant.

Ms. Wayua for the 1st Defendant/Respondent.

Mr. Munyua for the 2nd Defendant/Respondent.

Court Assistant: Caroline Nafuna.

