



**Mwatha v Muinde (As the Legal Administrator of the Estate of Peter Muinde Nthenge (Deceased)); Kariuki (Interested Party); Maina (Proposed Interested Party) (Environment & Land Case 25 of 2013) [2025] KEELC 805 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 805 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 25 OF 2013  
NA MATHEKA, J  
FEBRUARY 26, 2025**

**BETWEEN**

**JANET NZAU MWATHA ..... PLAINTIFF**

**AND**

**REGINA MUTINDI MUINDE ..... DEFENDANT**

**AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF PETER MUINDE  
NTHENGE (DECEASED)**

**AND**

**MICHAEL MAINA KARIUKI ..... INTERESTED PARTY**

**AND**

**JAMES MWANGI MAINA ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The application is dated 21<sup>st</sup> June 2024 and brought under order 1 rule 3 & 7, order 8 rule 3 and order 40 of the Civil Procedure Rules seeking the following orders;
  1. This application be heard ex-parte in the first instance and be certified urgent for hearing on priority basis.
  2. An order of temporary injunction do issue barring the Defendant herein Regina Mutindi Muinde by herself or her agents or otherwise howsoever from transferring or alienating all that parcel of land known as Donyo Sabuk/Komarock Block 1/33224 pending the hearing and determination of this application.



3. An order of temporary injunction do issue barring the Proposed 2<sup>nd</sup> Interested Party herein James Mwangi Maina by himself or his agents or otherwise howsoever from transferring or alienating all that parcel of land known as Donyo Sabuk/Komarock Block 1/33223 pending the hearing and determination of this application.
  4. Leave be granted to the Plaintiff to amend her Plaint.
  5. An order of injunction do issue barring the Defendant herein Regina Mutindi Muinde by herself or her agents or otherwise howsoever from transferring or alienating all that parcel of land known as Donyo Sabuk/Komarock Block 1/33224 hearing and determination of the main suit.
  6. An order of injunction do issue barring James Mwangi Maina by himself or his agents or otherwise howsoever from transferring or alienating all that parcel of land known as Donyo Sabuk/Komarock Block 1/33223 until hearing and determination of the main suit.
  7. An order do issue to the Registrar of Lands directing the Registrar to register a restriction against the titles in respect of land parcels no. Donyo Sabuk/Komarock Block 1/33223 and Donyo Sabuk/Komarock Block 1/33224 thereby restricting any further dealings in the parcels of land until hearing and determination of the main suit.
  8. That costs of the application be in the cause.
2. It is supported by the annexed affidavit of JANE NZAU MWATHA and based on the ground that this suit was scheduled to come up of hearing on the 20<sup>th</sup> May, 2024 but it did not proceed principally because the Interested Party herein claimed that the suit property had been sold to a third party and sought leave to file witness statements and documents to that effect. The court adjourned the hearing to the 30<sup>th</sup> October, 2024 and directed the Interested Party and any other party to file and serve documents and witness statements within thirty days. On 19<sup>th</sup> June, 2024 the Interested Party served upon the Plaintiff a witness statement and list of documents both dated 18<sup>th</sup> May, 2018 whose purport was that the suit property Donyo Sabuk/Komarock Block 1/22243 had been subdivided into two parcels of land known as Donyo Sabuk/Komarock Block 1/33223 and Donyo Sabuk/Komarock Block 1/33224. Further, the Interested Party and the Defendant colluded to transfer Donyo Sabuk/Komarock Block 1/33223 to yet another third party known as James Mwangi Maina (the son of the 1<sup>st</sup> Interested Party) in the year 2022. Consequently, the parcel known as Donyo Sabuk/Komarock Block 1/33223 is now in the name of the said James Mwangi Maina while Donyo Sabuk/Komarock Block 1/33224 is in the name of the Defendant. Thus the Plaint dated 27<sup>th</sup> May, 2013 needs to be amended urgently in order to avoid the Defendants and the Interested Party stealing a march on the Plaintiff and also in order to determine the real issues in dispute. There is also an urgent need to amend the Plaint to include the said James Mwangi Maina as a party to this suit.
3. This court has considered the application, affidavits, annexures and submissions therein. The prayer for temporary injunction is well discussed in the celebrated case of *Giella vs Cassman Brown* (1973) EA 358. In *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [\*CA No.77 of 2012\*](#) (2014) eKLR the Court of Appeal held that;

in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.



These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

4. On the first pillar, the applicant states that she is a beneficial owners of the suit property Donyo Sabuk/Komarock Block 1/22243 having purchased the same. That the statement and documents dated 18<sup>th</sup> May, 2024 are that the suit property Donyo Sabuk/Komarock Block 1/22243 has been subdivided into two parcels of land known as Donyo Sabuk/Komarock Block 1/33223 and Donyo Sabuk/Komarock Block 1/33224. That, the Interested Party and the Defendant colluded to transfer Donyo Sabuk/Komarock Block 1/33223 to yet another third party known as James Mwangi Maina (the son of the 1<sup>st</sup> Interested Party) in the year 2022. That the current situation is that parcel known as Donyo Sabuk/Komarock Block 1/33223 is now in the name of the said James Mwangi Maina while Donyo Sabuk/Komarock Block 1/33224 is in the name of the Defendant. That there is also an urgent need to amend the Plaintiff in order to include the said James Mwangi Maina as a party to this suit.
5. Further, in order to avoid further alienation of the sub divisions of the suit property Donyo Sabuk/Komarock Block 1/22243 pending the determination of this suit, it is imperative that an injunction be issued restraining the Defendant and the Interested Party (Parties) from further alienating the suit property.
6. On the 2<sup>nd</sup> pillar of temporary injunctions, the plaintiff is required to show irreparable injury and I am guided by Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR where court held;

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

7. The applicant stated that, in order to avoid further alienation of the subdivisions of the suit property Donyo Sabuk/Komarock Block 1/22243 pending the determination of this suit, it is imperative that an injunction be issued restraining the Defendant and the Interested Party or parties from further alienating the suit property. Finally, there is also need for the court to issue a restriction order restricting any dealing in the sub divisions to the suit property to avoid unsuspecting members of the public from being enticed to buy the sub divisions of the suit property pending the determination of this suit.
8. The 3<sup>rd</sup> pillar which is the balance of convenience. In Pius Kipchirchir Kogo case (Supra) the court held;

The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.



9. The defendants/respondents submitted that they are the absolute registered proprietors of which the applicant claims to have purchased from her husband Peter Muinde Nthenge (Deceased) who has never been the proprietor whether by registration or otherwise. And the properties in question do not relate to the ones in the pleadings. The interested party stated that the applicant had not reached the threshold for granting the injunction. I find that from perusal of the court record and it is not disputed, the suit property Donyo Sabuk/Komarock Block 1/22243 has been subdivided into two parcels of land known as Donyo Sabuk/Komarock Block 1/33223 and Donyo Sabuk/Komarock Block 1/33224. It would be prudent to preserve the same subject matter from any further dealings. I find that the applicant has established a prima facie case. I find this application is merited and I order that the status quo be maintained pending the hearing and determination of this suit. Prayer 4 on the amendment of the plaint is granted as prayed. Costs of this application to be in the cause. Parties are advised to comply with order 11 and fix the matter for hearing.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26<sup>TH</sup> DAY OF FEBRUARY 2025.**

**N.A. MATHEKA**

**JUDGE**

