



**Moko v Mwithiga & 3 others (Environment & Land Case
E216 of 2023) [2024] KEELC 3401 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E216 OF 2023**

LN MBUGUA, J

APRIL 24, 2024

BETWEEN

JANE WAMBUI MOKO PLAINTIFF

AND

PATRICK KARIUKI MWITHIGA 1ST DEFENDANT

GEORGE MWANGI WAKANGU 2ND DEFENDANT

HERMAN NJUGUNA WAGECHE 3RD DEFENDANT

MONROSS HARDWARE LIMITED 4TH DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated 19.12.2023 filed contemporaneously with the plaint, where the plaintiff is seeking orders that;
 - a. Spent
 - b. Pending the inter-partes hearing and determination of this application, an order be issued restraining the Defendant/Respondents herein or their agents, servants, employees and or any person whomsoever acting under their instructions, from forcefully entering, trespassing, accessing, demolishing, putting up structures, building, constructing, harassing, threatening or interfering with the Plaintiff's/Applicant's peaceful enjoyment and occupation of LR No. Nairobi/Block 105/2042 and that the Officer in Charge of Ruai Police Station assist in supervision and enforcement of the order herein.
 - c. Pending the hearing and determination of this suit, an order be and is hereby issued restraining the Respondents from demolishing the property erected in LR No. Nairobi/Block 105/2024 and restraining the Defendants/Respondents or their agents, servants, employees and or any person whomsoever acting under their instructions, from forcefully entering, trespassing,



accessing, demolishing, putting up structures, building, constructing, harassing, threatening or interfering with the Plaintiff/Applicants' peaceful enjoyment and occupation of LR No. Nairobi/Block 105/2042 and that the Officer in Charge of Ruai Police Station assist in supervision and enforcement of the order herein.

- d. The Defendant/Respondents be condemned to pay costs of this application.
 - e. Any other remedies or reliefs that this Honourable Court may deem fit in the circumstances.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the applicant. She contends that although she is the lawful owner of the suit property, the defendants invaded the land on 18.12.2023 and began to demolish her fence and they started depositing building materials. She fears that her house could be demolished.
 3. The application was served but no responses were filed.
 4. I find that the plaintiff has availed her certificate of the lease to the suit land, thus she has established a *prima facie case* as set out in *Giella v Cassman Brown* (1973) EA and reiterated in several case laws including *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR.
 5. The court need not interrogate the other criteria seeing that the application is unopposed. Thus the application dated 19.12.2023 is allowed as drawn, but the restraining orders shall remain in force for a period of one year only.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Ngori for Plaintiff

Court assistant: Eddel

