



**Gitau v Kariuki & 3 others (Environment & Land Case E132 of 2024) [2024] KEELC 3421 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3421 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E132 OF 2024**

**MD MWANGI, J  
APRIL 23, 2024**

**BETWEEN**

**MWANGI GITAU ..... APPLICANT**

**AND**

**GEORGE KIMANI KARIUKI ..... 1<sup>ST</sup> RESPONDENT**

**NAOMI WANJIKU KARUMBA ..... 2<sup>ND</sup> RESPONDENT**

**THOME FARMERS COMPANY NO. 1 LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT**

*(In respect to the Notice of Motion Application seeking an order of temporary injunction under Order 40 of the Civil Procedure Rules)*

**RULING**

**Background**

1. The application under consideration is a Notice of Motion dated 2<sup>nd</sup> April, 2024 brought principally under the provisions of Order 40 of the Civil Procedure Rules. The Plaintiff prays for the order restraining the 1<sup>st</sup> to the 4<sup>th</sup> Defendants/Respondents, their servants, agents and or all those acting under their instructions from trespassing on, transferring, wasting, erecting, damping, developing and or adversely dealing with the suit property Nrb/Block 110/553 situated at Thome within Nairobi City County pending the hearing and determination of the substantive suit.
2. The Plaintiff claims legal/beneficial ownership of plot No. 478 (now Block 110/553). He alleges that he acquired the same for valuable consideration from one Irene W. Njonjo vide an agreement for sale dated 15<sup>th</sup> January, 1987. Irene W. Njonjo was a shareholder of the 3<sup>rd</sup> Respondent Company having been issued with a Share Certificate No. 950 certifying her as the registered proprietor of the plot.



3. The Plaintiff avers that he recently discovered that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents had acquired separate title Deeds in their respective names purportedly confirming ownership of the suit property and are in actual physical possession of the suit property. The 3<sup>rd</sup> Defendant/Respondent has however, and in writing confirmed the Plaintiff as the legal owner of the suit property vide a letter dated 15<sup>th</sup> September, 2023 addressed to the Ministry of Lands instructing the Ministry to process title documents for the Plaintiff.
4. The Plaintiff states that he is apprehensive that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents may adversely deal with the suit property and prejudice his interests therein. That is his justification for seeking the temporary orders of injunction pending hearing and determination of this suit.
5. The application is supported by the affidavit of the Plaintiff sworn on 2<sup>nd</sup> April, 2024 wherein the Plaintiff reiterates the averments/grounds on the face of the application.
6. The Plaintiff filed an affidavit of service confirming service upon the Defendants/Respondents. None of the Defendants/Respondents has filed a response to the Plaintiff's application.

#### **Determination:**

7. I have carefully perused the Plaintiff's application together with the supporting affidavit as well as the Plaintiff's pleadings dated 2<sup>nd</sup> April, 2024. In the said pleadings, the Plaintiff avers that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have titles to the suit property in their respective names. Additionally, they have also developed the suit property and are in actual and physical possession.
8. The above facts are relevant in my consideration of the kind of interim orders that are appropriate in this case for purposes only of preserving the suit property pending hearing and determination of this suit.
9. Section 13(7) of the *Environment and Land Court Act* empowers this Court, in exercising its jurisdiction under the Act, to make and grant any relief as the Court deems fit and just including interim preservation orders. Interim preservation orders are meant to preserve the substratum of the suit awaiting final determination of the suit.
10. In an interlocutory application as the one before me, the Court is not required to make any conclusive or definitive findings of fact or Law rather, the Court's responsibility is only to preserve the state of things awaiting the final determination.
11. The Provisions of Section 13 (7) of the ELC Act are in agreement with the doctrine of 'Lis Pendens'. The doctrine, 'Lis Pendens' is defined in the Black's Law Dictionary, 9<sup>th</sup> Edition, as the 'jurisdictional power or control acquired by a Court over property while legal action is pending'.
12. Madan, J (as he then was) in the case of *Mawji v US International University & another* (1976) KLR 185 observed that the doctrine of Lis Pendens is necessary in adjudication, especially of land matters, particularly for its expediency and the orderly and efficacious disposal of justice.
13. The Court of Appeal in the case of *Ruth Kinyua v Patrick Thuita Gichure & Another* (2015) eKLR embraced the doctrine of 'Lis Pendens' noting that a Plaintiff would be liable in every case to be defeated by the Defendant's alienation of the subject property before conclusion of the case and would be forced to commence his proceedings de novo subject again and again to defeat by the same course of proceedings, if alienation 'pendent lite' was permitted to prevail.
14. The Court further held that the doctrine is still applicable in Kenya even after the repeal of the Indian Transfer of Property Act (ITPA), by virtue of Section 3(1) of the *Judicature Act*, Cap 8 Laws of Kenya,



which identifies the Substance of Common Law, the Doctrines of Equity and the Statutes of General Application in force in England on the 12<sup>th</sup> August 1997, as applicable in Kenya.

15. In this case, guided by the foregoing, I am of the view that the appropriate order in this matter at this interim stage is an order of Status Quo to preserve the suit property pending the hearing and determination of this suit. The situation to remain as it is. The Defendants should therefore not transfer, sell and or dispose off the suit property(s) pending the final determination of this case.
16. From the exhibits annexed to the supporting affidavit, I note that the suit property is charged in favour of Consolidated Bank of Kenya Ltd. It is appropriate that the said bank be joined into these proceedings as an Interested Party. The Plaintiff should therefore amend his plaint and include the said bank as an Interested Party and thereafter serve it with all the pleadings herein.
17. The costs of the application to be in the cause.

**Final Disposition.**

18. For avoidance of any doubt, the court issues an order of status quo in this matter and particularly directs that the Defendants should not transfer, sell and or dispose of the suit property(s), Nrb/Block 110/553 situated at Thome within Nairobi City County pending the final determination of this case. Further, the Plaintiff is ordered to amend his plaint and include Consolidated Bank of Kenya Ltd as an Interested Party in this case and thereafter serve it with all the pleadings herein.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI ON THIS 23<sup>RD</sup> DAY OF APRIL, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

No appearance by the parties.

Court Assistant: Yvette.

