Kalondu & 3 others (Suing on Behalf of the Estate of the Late Mildred Mbuya Joel - Deceased) v Sayianka & 2 others (Environment & Land Case E042 of 2023) [2025] KEELC 789 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEELC 789 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENT & LAND CASE E042 OF 2023

AY KOROSS, J

FEBRUARY 25, 2025

BETWEEN

MELISAH TABITHA KALONDU ..... 1ST PLAINTIFF

SANDRA WANZA MBULI ..... 2ND PLAINTIFF

SAMUEL MULI MUTISYO ..... 3RD PLAINTIFF

JESSE MULI NGOVE ..... 4TH PLAINTIFF

SUING ON BEHALF OF THE ESTATE OF THE LATE MILDRED MBUYA JOEL - DECEASED

AND

SARIS SAMWEL SAYIANKA ..... 1ST DEFENDANT

JOSHUA GATIMU NGIGI ..... 2ND DEFENDANT

THE CHIEF LAND REGISTRAR ..... 3RD DEFENDANT

RULING

1. This ruling seeks to determine the notice of motion dated 12/08/2023 that the plaintiff filed and she seeks several reliefs from this court: -

    a. The motion be certified extremely urgent, service be dispensed with in the first instance, and the matter be heard exparte.

    b. Pending hearing and determination of the motion, a temporary injunction be issued against the defendants restraining them from dealing or transferring land parcel no. L.R. no 12715/154 situated at Mavoko municipality in Machakos district, Kenya,

c. Costs of the motion be in the cause.

d. Any further alternative relief that this Hon. Court deems fit to grant.

2. The motion is supported by the grounds set out on the body thereof and on the affidavit of Jesse Muli Ngove who is one of the administrators of the plaintiff's estate. This affidavit does not disclose the date it was sworn.

3. In summary, it is his position that as an administrator of the deceased's estate, he has a legitimate interest in the deceased's estate and L.R. no 12715/154 (suit property) belonged to the plaintiff.

4. According to him, the plaintiff died on 22/05/2016 and at the time, she was still the registered owner of the suit property. Nevertheless, he states sometime on 21/06/2021, the 1st and 2nd defendants fraudulently caused the suit property to be transferred to their names.

5. He states these defendants have now commenced the process of subdividing the suit property as evidenced by survey records thus, the resultant effect is that it may defeat the plaintiff's claim over it.

6. Furthermore, he avers an attempt to preserve the suit property by way of lodging a caveat was rebuffed by the 3rd defendant and thus the plaintiff will suffer irreparable loss and damage. He urged the court to order the 3rd defendant to register the caveat.

7. Despite service, none of the defendants filed any documents in opposition to the motion and as it is, the motion is unopposed. Nonetheless, from the record, the 1st and 2nd defendants are represented while the office of the AG has never entered an appearance for the 3rd defendant.

8. The plaintiff's counsel did not attend court on the scheduled mention date of 20/1/2025 and had not complied with court directions on filing written submissions. Consequently, the matter was reserved for ruling today.

9. Having considered the motion, grounds, supporting affidavit and annexures thereto, the following issues commend themselves for resolution: -

a. Whether the substantive reliefs sought are spent.

b. What orders should this court issue including an order as to costs?

10. These interrelated issues shall be handled cumulatively.

11. On the 1st issue, my invitation to intervene has been moved by Section 63 (e) of the *Civil Procedure Act* and this provision of law including Subsection (c) thereof states as follows: -

> " In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed —
>
> (a) .....
>
> (b) .....
>
> (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold;
>
> (d) .....

(e) make such other interlocutory orders as may appear to the court to be just and convenient"

12. Order 40 Rule 1 of the Civil Procedure Rules gives effect to this provision of law and empowers this court to grant an injunctive relief by stating as follows: -

" Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

13. Interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.

14. The decision of Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003] KLR reminds this court that its power in an application for interlocutory injunction is discretionary. Such discretion is judicial and as is always the case, judicial discretion has to be exercised based on the law and evidence.

15. The principles that guide this court in determining whether a temporary injunction ought to be issued are settled in the celebrated caserf of Giella vs. Cassman Brown & Co. Ltd [1973] EA 358.

16. Having laid down the legal framework on injunctions, I will now turn to the peculiar circumstances of this case where the plaintiff has only sought a temporary injunction pending a hearing and determination of the motion. This relief is spent.

17. In other words, she did not seek an injunction pending the hearing and determination of the suit. Therefore, I must find and hold there is nothing left for this court to determine.

18. Ultimately, for the reasons and finding stated herein above, I find the notice of motion dated 12/10/2023 not merited and I hereby dismiss it with no orders as to costs. I hereby issue the following final disposal orders: -

a. The notice of motion dated 12/10/2023 is hereby dismissed with no orders as to costs.

b. Parties to comply with Order 11 of the Civil Procedure Rules within 30 days hereof.

c. The plaintiff does file a return of service showing summons to enter appearance were served upon the 3rd defendant and office of the attorney general.

d. Suit shall be mentioned for pretrial directions on 15.05.2025

It is so ordered.

DATED AT MACHAKOS THIS 25TH DAY OF FEBRUARY, 2025

HON A. Y. KOROSS

JUDGE

25.02.2025

Delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Marvel Oloo for Applicant

Mr Nafula for 1st & 2nd Defendant

Miss Kathurima for 2nd Defendant

Ms Kanja- Court Assistant