



De Masi (The Administrator of the Estate of Dominico De Masi) v Anne Wangari Kirima & Teresia Wairimu Kirima (Being Sued as Administrators, Court – Appointed Administrators, Trustees or Signatories of the Estate of Gerishon Kamau Kirima - Deceased) & 5 others (Environment & Land Case E187 of 2023) [2024] KEELC 3405 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3405 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E187 OF 2023**

**LN MBUGUA, J
APRIL 18, 2024**

BETWEEN

BERNADO VICEZO DE MASI (THE ADMINISTRATOR OF THE ESTATE OF DOMINICO DE MASI) PLAINTIFF

AND

ANNE WANGARI KIRIMA & TERESIA WAIRIMU KIRIMA (BEING SUED AS ADMINISTRATORS, COURT – APPOINTED ADMINISTRATORS, TRUSTEES OR SIGNATORIES OF THE ESTATE OF GERISHON KAMAU KIRIMA - DECEASED) 1ST DEFENDANT

JOHN GARISHON KIRIMA 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

MINISTRY OF LANDS & HOUSING 4TH DEFENDANT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 5TH DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 6TH DEFENDANT

RULING

1. This suit was filed by way of a plaint dated 22.11.2023 where the plaintiff avers that his father Dominico De Masi was the legal owner of the parcel of land known as parcel LR. 5908/8, and seeks orders inter alia, a declaration that the said property belongs to the estate of his father.
2. The suit was contemporaneously filed with a Notice of Motion application dated 10.11.2023, amended on 11.1.2024 which is for determination. He seeks an interim order to preserve parcel LR No.



- 5908/8 and to restrain the Defendants from interfering with its current status in terms of occupation and in the alternative, an order of maintenance of status quo be issued.
3. He also seeks an order directing the 3rd Respondent to undertake forensic investigations on the documents held by the 1st Defendant and the transfer and registration documents in their custody and file a report in this court as expert evidence to assist this court unravel this matter expeditiously.
 4. The application is premised on grounds on the face of the application and Plaintiff's amended supporting affidavit sworn on 11.1.2024. He avers that the late Dominico De Masi was the legal and rightful owner of the suit property which has since been devolved to the beneficiaries of his estate pursuant to issuance of a certificate of confirmation of grant by the family court.
 5. That the said estate has recently learnt through the media of a judgment delivered by this Court to the effect that the estate of Gerishon Kirima (deceased) has been declared as the legitimate owner of the subject property and if executed, more than 25,000 people who reside on the suit parcel shall be rendered homeless.
 6. He denies that his father ever sold the suit land to Gerishon Kirima at any one time, thus the title held by the late Gerishon Kirima is a product of fraud and a serious and well-orchestrated scheme to deprive the Plaintiff of his land of which the estate of Dominico De Masi had requested the Director of Criminal Investigations and the Registrar of Titles to investigate.
 7. He contends that the 1st Defendant has already sent out threats to persons in occupation of the suit parcel and has started negotiations with some of them and will invariably end up getting funds purported as purchase price if the orders sought are not issued and his claim will be defeated and cause irreparable damage.
 8. The application is opposed by the 1st Defendant vide a replying affidavit sworn on 18.2.2024 by Anne Wangari Kirima. She avers that the Plaintiff has no legal authority to deal with parcel LR No. 5908/8 for lack of a legal title in favour of the late Dominico De Masi. She avers that the alleged confirmed Grant issued in year 2011 in Nairobi Succession Cause No. 625 of 2009 was annulled by Hon. Justice Onyiego on 6.11.2018.
 9. That the application is an abuse of the court process and is solely meant to frustrate the 1st Defendant's enjoyment of the fruits of the judgment delivered on 23.10.2023 where ownership of the suit parcel was canvassed, thus this suit and the application violates the provisions of Section 7 of the [Civil Procedure Act](#).
 10. She further avers that the Plaintiff seeks to contest the sale of the suit property between the late Gerishon Kirima and Dominico De Masi which occurred over 50 years ago and if his claim is to be believed, he would be grossly guilty of laches as the suit is time barred.
 11. She points out that the copy of indenture presented to the court as proof of ownership by the late Dominico De Masi was for a period of 99 years from 1.8.1904 to 1.8.2003. She is aware that it is the remainder of the interest through an indenture of assignment of 16.6.1970 that was transferred to the late Kirima by the late De Masi sometime in the year 1979 and if the same were false, the Plaintiff would be in possession of an extension to the expired indenture effective year 2003 as proof of ownership.
 12. The application is also opposed by the 6th defendant vide a Replying Affidavit sworn on 24.1.2024 by Cecilia Kogu, its Chief Officer, Lands. She avers that the application does not raise any issue against the 6th Defendant and that the Plaintiff has not stated what reliefs he seeks against it.



13. I have considered all the rival arguments. The Plaintiff seeks an order for preservation of parcel LR No. 5908/8 on the basis that it belongs to the estate of Dominico De Masi. The court takes cognizance of the fact that persons in actual occupation of the suit property were ordered to vacate and handover the suit property to the estate of Gerishon Kirima in the case *Obade & 299 others & 10 others v Kirima & 60 others* (Environment and Land Case Civil Suit 1257 of 2014 & 252 of 2011 & Environment & Land Case 509 & 850 of 2014 & 1496 & 1318 of 2013 (Consolidated)) [2023] KEELC 20868 (KLR) (23 October 2023) (Judgment).
14. Further in the said matter, persons claiming portions of the said property on the basis of purchase were granted specific performance orders. Specifically at paragraph 294 (g-h) of the aforementioned judgment, the court directed the estate of Gerishon Kirima to complete sale to various parcels within the suit property. To that end, the court stated as follows:

“...I am satisfied that the claimants who purchased portions of L.R. No. 5908/8 from G.K. Kirima have made out a case for specific performance. Those who are entitled to the order are those holding original deed plans for the plots in respect of which they have brought the claims and evidence of payment made either directly to G.K. Kirima or to Embakasi Ring Road Developers.”
15. Therefore, as things stand, there are persons who are currently on the suit parcel on the basis of the aforementioned judgment, while others have been directed to vacate. The said decision has not been quashed or set aside, it must be accepted as incontrovertibly correct.
16. Bearing the above position in mind, should the preservative orders sought be issued?. In *Rose Njeri Ndegwa v Samuel Sobi J. Misingu* [2019] eKLR, the court stated that;

“preservatory orders are in essence similar to injunctive orders where an Applicant has to make out a prima case and show that s(he) will suffer irreparable loss if the order sought is not granted.”
17. The principles for issuance of injunctions are enunciated in the case of *Giella v Cassman Brown and Another* [1973] EA 358 and reiterated in *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No. 77 of 2012 (2014) eKLR where 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....”
18. Has the Plaintiff established a prima facie case? A copy of the indenture presented to the court as proof of ownership of the suit parcel by the late Dominico De Masi indicates that the lease expired in year 2003. For that reason, there is no prima facie case established.
19. Further, the Plaintiffs did not establish that the estate of De Masi will suffer irreparable injury if the orders sought are not granted. They are not in occupation of the suit parcel and have not made any developments thereon.
20. The court also takes cognizance that there was an avalanche of cases filed after delivery of the judgment in the case ELC 1257 OF 2014 (consolidated with others), whereby there are competing claims over the suit parcel. One of such cases is Petition No. 25 of 2023 where the current plaintiff alongside the



administrators of the estate of Kirima have been sued by hundreds of persons. Granting any orders at this stage would only convolute the dispute further.

21. As for the prayer that the 3rd Respondent undertakes forensic investigations on the registration documents held by the 1st Respondent, I opine that no basis was laid by the Plaintiff for this court to grant the said order at this preliminary stage, when even the pleadings have not closed. On the same breadth the issue of limitation shall only be considered once the Respondents have filed their pleadings.
22. I must also point out that the averments made at paragraph 7 of the Replying Affidavit of Anne Wangari Kirima dated 18.2.2024 to the effect that the Grant issued in year 2011 in the succession cause 625 of 2009 was set aside on 6.11.2015 have not been rebutted.
23. The upshot of the findings herein is that the application is not merited, the same is hereby dismissed with costs to the 1st and 6th respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mathenge and Ngwandara for Plaintiff

Onduso and Mwenesi for Teresia Wairimu

Rao holding brief for Dr. Ojiambo

Kiima for 6th Defendant

Ochieng holding brief for Ataka for John Gerishon

Court assistant: Eddel

