



**Komu (Suing Through the Estate of John Kamau Komu - Deceased) v The Administrators of the Estate of the Late Gerishon Kirima Teresia Wairimu Kirima and Anne Wangari Kirima & another (Environment & Land Case E342 of 2021) [2024] KEELC 3377 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3377 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E342 OF 2021**

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

**BETWEEN**

**LEAH NGENDO KOMU (SUING THROUGH THE ESTATE OF JOHN KAMAU KOMU - DECEASED) ..... APPLICANT**

**AND**

**THE ADMINISTRATORS OF THE ESTATE OF THE LATE GERISHON KIRIMA TERESIA WAIRIMU KIRIMA AND ANNE WANGARI KIRIMA ..... 1<sup>ST</sup> RESPONDENT  
JOHN GERISHON KIRIMA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Plaintiff's Notice of Motion application dated 2.11.2023 is for determination. She seeks an injunction restraining the Respondents from interfering with her quiet enjoyment of 0.9142 acres within parcel LR 5908/8.
2. The application is premised on grounds on its face and on the Applicant's supporting affidavit sworn on 2.11.2023. She avers that judgment was delivered on 23.10.2013 in Nairobi 252 of 2001, ELC 509 of 2014, 1490 of 2013, 1318 of 2013 and 850 of 2014. That the effect of the said judgment was an order of eviction against the Plaintiff in the matter, yet she was occupying 1 acre on the Respondents' land known as LR No. 5908/8.
3. She contends that she is apprehensive that she will be evicted from her parcel in contravention of Section 152 B, 152 C and 152 D of the Land Act, 2012 and the United nations guidelines on evictions.
4. The Applicant also filed a further affidavit sworn on 19.1.2024 by Seth Ojienda, Advocate in conduct of her matter. He avers that there is a stay of judgment granted in ELC 1257 of 2014 John Otieno



Obade & 299 others v Teresia Wairimu & 6 others which is the main suit giving rise to this matter thus stay should also be granted in this suit.

5. On 25.1.2024, the case against the 2<sup>nd</sup> Respondent was withdrawn by counsel for the Applicant.
6. The application is opposed by the 1<sup>st</sup> Respondent vide the Replying Affidavit sworn on 18.1.2024 by Teresia Wairimu Kirima. She avers that in ELC 1257 of 2014 consolidated with other cases, the court rendered judgment on 23.10.2023 touching on LR 5908/8 and LR No. 6825/2 belonging to the estate of Gerishon Kamau Kirima and that the plaintiff was not a party to the said cases.
7. She avers that the Plaintiff's claim is based on contract whose limitation time lapsed over 20 years ago as the sale agreement herein was signed on 15.6.1992.
8. That no notice to vacate has been issued pursuant to Section 155 of the Land Act, 2012, thus the application ought to be dismissed.
9. I have duly considered all the issues raised herein including the rival submissions. To grant or not to grant the injunctive orders in favour of the plaintiff is the issue for determination.
10. Conditions for grant of injunctions were stated in *Giella v Cassman Brown* (1973) EA 358 and were reiterated in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No. 77 of 2012 [2014] eKLR where the Court of Appeal stated 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.

11. The plaintiff's claim is based on a sale agreement signed on 15.6.1992 between her late husband Johnson Kamau Komu and the late Gerishon Kamau Kirima. As pointed out by the respondents, the issue of limitation glares as a subject of contest. Where was the plaintiff when all the other claimants were pursuing their rights and interests in the various matters?.
12. Secondly, I note that in the judgment in ELC 1257 OF 2014, *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) delivered on 23.10.2023, the administrators of the estate of Kirima were directed to complete the sale of numerous parcels of land within parcel 5908/8 to the various purchasers. All the said parcels are properly identified with a specific number after stroke - 8, 649-665, which means that parcel 5908/8 must have been subdivided into many parcels. (See paragraph 294 g-m of the said judgment). The plaintiff's parcel is simply identified as a corner shop measuring 0.9142 of parcel 5908/8. Thus as at now, the plaintiff has not been able to ascertain the extent and identification of her plot within the expansive parcel 5908/8.
13. This far, I find that the applicant has not established a prima facie case. She has also not demonstrated that damages would not suffice. All the conditions for issuance of injunctive orders have to be surmounted sequentially. The plaintiff was not able meet the set out criterias for issuance of an injunction. Thus the application dated 2.11.2023 is hereby dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**



## **JUDGE**

In the presence of:-

Onduso and Mwenesi for Teresia for 1<sup>st</sup> Respondent

Rao holding brief for Dr. Ojiambo for Ann Wangari (also 1<sup>st</sup> Respondent)

Court assistant: Eddel

