



**Kibunja v Githongori & another (Environment & Land Case  
E052 of 2023) [2024] KEELC 3529 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3529 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E052 OF 2023  
LC KOMINGOI, J  
APRIL 11, 2024**

**BETWEEN**

**MICHAEL NG'ANG'A KIBUNJA ..... PLAINTIFF**

**AND**

**MICHAEL GITHONGORI ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 13<sup>th</sup> June 2023 brought under ;  
  
(Order 40 Rule 1,2 & 3, Order 50 Rule 1 of the *Civil Procedure Act*, Section 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling Provisions of the Law).
2. It seeks Orders;
  1. Spent.
  2. Spent.
  3. That pending hearing and determination of this suit, interim orders of an injunction do issue, directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves or through their servants, agents or employees restraining them from interfering with and in manner dealing with Plot Number A250 (Formerly 45) Isinya or remaining thereon or from attempting to alienate or disposes the suit property from the Plaintiff.
  4. That the court be pleased to find that the letter dated 26<sup>th</sup> of January, 2023 from the 2<sup>nd</sup> Defendant County Land Registrar (Chairman ADRC) null and void in light of the judgement and Decree of the High Court ELC No. 771 of 2017.



5. That costs of this application be provided for in any event.
6. That any other order as the Court may deem necessary to grant.
3. The grounds are on the face of the application and are set out in Paragraphs 1 to 11.
4. The Notice of Motion is supported by the affidavit of Michael Ng'ang'a Kibunja, the Plaintiff/Applicant herein, sworn on the 13<sup>th</sup> June 2023.
5. The application is opposed. There is a replying affidavit sworn by Michael Githongori Wangigi, the 1<sup>st</sup> Defendant/Respondent, sworn on the 5<sup>th</sup> September 2023.
6. The 2<sup>nd</sup> Defendant filed a notice of Preliminary Objection dated 1<sup>st</sup> November 2023 but filed no response to the Notice of Motion dated 13<sup>th</sup> June 2023.
7. On the 13<sup>th</sup> December 2023 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.
8. It is the Plaintiff/Applicant's submission that the Decree in ELC 711 of 2017 Michael Nganga Kibunja v Michael Githongori which declared him the owner of the suit plot has never been reviewed and/or set aside. That in 2022 the 1<sup>st</sup> Defendant/Respondent emerged when the 2<sup>nd</sup> Defendant/Respondent was conducting verification exercise laying claim to the suit plot.
9. It is further submitted that the Plaintiff/Applicant presented his documents before the joint committee that made a decision to give plot A250 to the 1<sup>st</sup> Defendant. He has put forward the cases of *Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & another* (2022) eKLR; *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR. It is also submitted that the Plaintiff/Applicant will suffer irreparable damage if the plot is alienated by the Defendants. Further that the balance of convenience tilts in his favour.
10. It appears the 1<sup>st</sup> Defendant/Respondent did not put in any written submissions.
11. The 2<sup>nd</sup> Defendant/Respondent's submissions are in respect of the Notice of Preliminary Objection dated 1<sup>st</sup> November 2023 but not the Notice of Motion dated 13<sup>th</sup> June 2023. This court is yet to give directions on the Preliminary Objection.
12. I have considered the Notice of Motion, the affidavit in support, the responses thereto, the written submissions and the authorities cited. The issues for determination are;
  - i. Whether the Plaintiff/Applicant's application meets the threshold for grant of temporary injunction.
  - ii. Who should bear costs of the application?.
13. The principles were laid down in the precedent setting case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. They are as follows;

“first the applicant must show that he has a prima facie case with a probability of success at the trial. Secondly, normally an injunction will not be granted unless the applicant shows that damages would not be an adequate remedy for injury suffered or likely to be suffered unless the injunction is granted. Thirdly if the court is in doubt; it will decide the application on a balance of convenience.”



14. In the case of *Mrao Ltd v First American Bank Ltd & 20 Others* (2003) KLR 125, the Court of Appeal stated what amounts to a prima facie case.
15. It is the Plaintiff/Applicant's case that he bought the suit plot then known as plot 45 Isinya trading centre from Paul Saoli Ole Nchoke and has since been paying rates since 1991. That sometime in 2007 the 1<sup>st</sup> Defendant moved into the plot and started fencing it with the intention of developing it.
16. It is further that he Plaintiff/Applicant's case that he filed suit in Machakos which was later transferred to Kajiado as ELC 771 of 2017 where the court heard the suit and determined the same by judgement on the 10<sup>th</sup> June 2018 by Lady Justice C. Ochieng declaring the Plaintiff/Applicant as the owner of the plot.
17. It is his case that the 1<sup>st</sup> Defendant/Respondent never appealed the same decision but in 2022 he emerged again when the County Government of Kajiado started conducting a verification exercise with the intention of issuing title documents to allottees.
18. I am satisfied that the Plaintiff/Applicant has established a prima facie case with a probability of success at the trial. He has judgment in his favour which has not been set aside.
19. He is likely to suffer irreparable loss if these orders are not granted as the 1<sup>st</sup> Defendant/Respondent may be issued with title documents.
20. I am convinced that the balance of convenience tilts in favour of the Plaintiff/Applicant.
21. On the other hand the 1<sup>st</sup> Defendant/Respondent states that his plot is 442 Residential Isinya Trading Centre and not Plot No. 45.
22. In conclusion, I find merit in this application and the same is allowed in the following terms;
  - a. That a temporary injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants whether by themselves, their agents, servants and or employees from interfering with and or in any manner dealing with plot No. A 250 (Formerly 45) Isinya or remaining on, from alienating or disposing of the suit property pending the hearing and determination of the suit.
  - b. That costs of this application do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

Ms. Shannon Mogeni for the Plaintiff.

N/A for the 1<sup>st</sup> Defendant.

Mr. Ochieng for Mr. Jaoko for the second Defendant

Court Assistant – Mutisya.

