



Kiugu & another v Mwiti & another (Sued as the legal representatives of the Estate of the Late M'Ikiome M'Twerandu - Deceased) (Environment and Land Appeal E054 of 2023) [2024] KEELC 4334 (KLR) (22 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4334 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E054 OF 2023**

CK NZILI, J

MAY 22, 2024

BETWEEN

STANLEY KIUGU 1ST APPELLANT

ISAAC KIRIMI 2ND APPELLANT

AND

JOHN MWITI 1ST RESPONDENT

PAUL NTEERE M'IKIOME 2ND RESPONDENT

**SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
M'IKIOME M'TWERANDU - DECEASED**

RULING

1. What the court is asked to grant is an order of inhibition and a temporary injunction restraining the respondents from entering, remaining, occupying, or in any way interfering with the plaintiff's enjoyment of 2 acres out of the suit land, pending hearing and determination of this appeal. The facts and grounds are set on the face of the application and in a supporting affidavit of Stanley Kiugu sworn on 5.3.2024. The applicants state the suit at the lower court was based on trust; a warning for forceful eviction has been issued, which will render them landless, there is a need to preserve the subject property to await the outcome of the appeal, and that there will be no prejudice to the respondents if the orders sought are granted, given the extensive developments carried out by them on the suit land for the last forty years. The applicant has annexed the memorandum of appeal, a letter dated 1.12.2023, and a ruling delivered on 29.11.2023 as annexures marked SK "1" & "2".
2. Although the respondents were served with the notice of motion and an affidavit of service filed on 1.3.2024, sworn by Joshua Mwiti advocate, no response has been filed to oppose the application.



3. An appellate court has discretion to grant an injunction pending appeal on such terms as are just. In *Madhupaper vs Kerr* (1985) eKLR, the court held that there must be a demonstration of exceptional circumstances why an injunction pending appeal should be granted. Among the factors to consider is whether a party has a good reason to claim the preservation of the property until the appeal is heard and whether the appeal is arguable.
4. In *S.K Macharia & another vs. Simon Njoroge Muchiri & others*, Court of Appeal Civil Application No. NRB 218 of 2006, the court observed the untenability of the intended appeal to displace the prima facie evidence of ownership of the company as held in the company registry. The court also considered the delay and the change of status of the respondents during the said period. The court held that the appeal was not arguable. In *Patricia Njeri vs National Museum of Kenya* (2004) eKLR, the court observed that the discretion should be refused where it would inflict more significant hardship than it would avoid and that a party must show that if the order is refused, the appeal would be rendered nugatory.
5. As to inhibition, it is in the nature of a prohibitory injunction. A party must meet the principles set in *Giella vs Cassman Brown Co. Limited* (1973) E.A 358 principles. A copy of the search has not been attached to the application. Evidence of the alleged developments, their nature, status, and value has been left as guesswork.
6. The trial court merely struck out the appellant's suit on account of res judicata. There was no positive order made in favour of the respondents. The applicants have not denied the pendency and determination in the previous Environment Land Court suit.
7. The two issues go to the jurisdiction of the trial court and this court. For this court to disturb the decision of the trial court, the applicant must demonstrate some arguable issues deserving the court's consideration on appeal. See *Ecobank (K) Ltd vs First Choice Mega Stores Ltd* Kisii ELC Misc Civil Application No. 20 of 2017. There must be a demonstration of how the appeal would be rendered nugatory.
8. The hardship likely to be suffered by the applicants more than the respondents would suffer if the orders are not granted must also be demonstrated. The applicant has merely mentioned in his affidavit extensive developments without further demonstration. There is, therefore scanty information provided to meet the threshold set by the cited case law.
9. The upshot is that I find the application lacking merits. The same is dismissed with costs.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 22ND DAY OF MAY, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

Mwirigi B for Mwiti for the applicants

