



**Nyoike v Chief Land Registrar & 4 others (Environment & Land Case E197 of 2023) [2024] KEELC 3829 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3829 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E197 OF 2023**

**MD MWANGI, J  
MAY 14, 2024**

**BETWEEN**

**COSMUS KUSU NYOIKE ..... PLAINTIFF**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT**

**OCS GIGIRI POLICE STATION ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**MARY NJERI MUNJOGU (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF FREDRICK GACANJA MUNJOGU –  
DECEASED) ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

(In respect of the Notice of Motion application by the 5th Defendant/Applicant dated 23rd January, 2024 seeking an order of temporary injunction pending the hearing and determination of the suit

**Background**

1. On 19<sup>th</sup> December, 2023, this Court upon considering the Plaintiff’s unchallenged application dated 30<sup>th</sup> November, 2023 granted the Plaintiff/Applicant a number of orders, namely:
  - a. That an order is issued to the 1<sup>st</sup> Defendant to make available to the 3rd Defendant and the Plaintiff and or their respective authorized agents the file with respect to all that property known as L.R Number 12672/186



situated in Runda Gardens Estate along Blue Berry Drive for the purpose of ascertaining the records with respect to the said property.

- b. That the 3rd Defendant and or his representative Officers at DC1 Officers at Gigiri Police Station do immediately disclose to the Plaintiff the particulars of the alleged OB Number and complaint lodged against the Plaintiff together with the names of the Master and individuals who are currently occupying all that property known as L.R Number 12672/186 situated in Runda Gardens Estate along Blue Berry Drive.
  - c. That pending the hearing and determination of this suit, an order is issued granting the Plaintiff and or his authorized agents to have unfettered and unrestricted access on all that property known as L.R Number 12672/186 situated in Runda Gardens Estate along Blue Berry Drive which access should be supervised by the OCS Gigiri or his officers for purposes of maintaining Law and order.
  - d. That the 1<sup>st</sup> Defendant is hereby directed to prepare a report and submit before this Court ascertaining the status of the property with respect to ownership.
  - e. That costs of the Application shall be in the Cause.
  - f. That the matter fixed for mention on 20th February 2024 for pre-trial conference.
2. The 5<sup>th</sup> Defendant herein upon learning about the orders issued by the Court moved under certificate of urgency and filed a Notice of Motion application dated 23<sup>rd</sup> January, 2024 seeking to be joined into the case as a Defendant, and further seeking that the Court vacates, stays, varies or discharges the orders of 19<sup>th</sup> December, 2023 in respect of the suit property known as L.R. No. 12672/186 (hereinafter referred to as the suit property) and reinstate the status quo ante. The substantive prayer in the application is that of a temporary injunction restraining the Plaintiff whether by himself, his agents, servants and or anyone acting at his behest or otherwise howsoever from taking possession, trespassing and or in any manner occupying or undertaking any construction on the suit property and or dealing with the suit property in any manner likely to adversely affect the 5<sup>th</sup> Defendant's interest thereto pending hearing and determination of this suit.
  3. The application is premised on the grounds on the face of the application and on the supporting affidavit of Mary Njeri Munjogu.
  4. The court allowed the 5<sup>th</sup> Defendant to be joined as such in this suit under the provisions of order 1 rule 10 of the Civil Procedure Rules and directed service of the application for purposes of hearing and determining the other prayers therein.
  5. The 5<sup>th</sup> Defendant sues in her capacity as the personal representative of the Estate of Fredrick Gacanja Munjogu – deceased.
  6. On 7<sup>th</sup> February, 2024, when the matter came up for directions upon service of the 5<sup>th</sup> Defendant's application, the court temporarily varied its orders of 19<sup>th</sup> December, 2023, and directed that the status quo ante be maintained pending the hearing and determination of the 5<sup>th</sup> Defendant's application. The court further directed that the



5<sup>th</sup> Defendant's application be canvassed by way of written submissions. The ruling was reserved for 14<sup>th</sup> March, 2024.

7. On the date reserved for the ruling, the parties by consent, agreed to arrest the ruling to enable the Attorney General file replying affidavits enclosing the documents from the Lands Office in respect to the suit property. The Plaintiff and the 5<sup>th</sup> Defendants were granted corresponding leave to file any further affidavits, if need be, after service of the Replying affidavits by the Attorney General. Parties too were allowed the liberty to file supplementary submissions if they so wished.
8. From my perusal of the court record, the Plaintiff replied to the application by the 5<sup>th</sup> Defendant by way of a replying affidavit which he swore on 6<sup>th</sup> February, 2024. The 5<sup>th</sup> Defendant/Applicant filed a further affidavit sworn on 29<sup>th</sup> February, 2024.
9. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants on their part filed a total of 3 replying affidavits after the consent order of 14<sup>th</sup> March 2024. The 1<sup>st</sup> Defendant's replying affidavit is sworn by one Charles Kipkurui Ngetich, the Deputy Chief Land Registrar. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant's joint replying affidavit is sworn by Corporal Francis Mwenda, an investigator with the DCI, whereas the affidavit of the 4<sup>th</sup> Defendant is sworn by Wilfred Muchae, who is an Assistant Director of Surveys.
10. None of the parties filed any supplementary/further affidavits after the replying affidavits by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants despite leave of the court.

### **Court's Directions**

11. As noted earlier, the court's directions were that the 5<sup>th</sup> Defendant's application be canvassed by way of written submissions. Only the 5<sup>th</sup> Defendant filed written submissions which are dated 7<sup>th</sup> March, 2024 in support of her application. The court has had the opportunity to read and consider the same.

### **Issues for Determination**

12. The main issue for determination is whether the 5<sup>th</sup> Defendant's application is merited. The court too will consider whether the orders granted on 19<sup>th</sup> December 2023 ought to be varied, set aside or discharged in view of the evidence presented by the Chief Land Registrar. Of course, the court will make a determination on the issue of the costs of this application.

### **Determination**

13. In making this determination, I take cognizance of two facts which are undisputed. The first one is that the suit property herein was the subject of a Succession Cause in Naivasha High Court Succession Cause No. E012 of 2022 [in the matter of the Estate of Fredrick Gacanja Munjogu- deceased). The 5<sup>th</sup> Defendant/Applicant herein was issued with a grant of Letters of Administration Intestate by the High Court sitting in Naivasha on 27<sup>th</sup> October, 2022. The said grant was confirmed by the same court on 12<sup>th</sup> June, 2023 and the suit property L.R. No. 12672/186 (I.R. No. 89480) distributed wholly in favour of the 5<sup>th</sup> Defendant/Applicant, Mary Njeri Munjogu. Both grants have been exhibited by the 5<sup>th</sup> Defendant/Applicant.
14. The second fact that I take cognizance of is that the Chief Land Registrar has through his Deputy, on oath confirmed that from the records under his custody, the registered owner of Certificate of Title No. I.R. 89480 in respect of L.R. No. 12672/186 is Fredrick Gacanja Munjogu. Further that from the records, there are no further entries in the Certificate of title.



15. It has further been deposed on behalf of the Chief Land Registrar that the purported entries in the title produced by Cosmas Kusu Nyoike showing entries No. 2, to wit, a purported transfer to one Chege Richard Mwangi on 16<sup>th</sup> July, 2009, and registered as I.R. 89480/2 have no supporting records in the Ministry of Lands, Public Works, Housing and Urban Development. The same applies to the purported registrations I.R. 89480/3 of 25<sup>th</sup> September, 2013 and I.R. 89480/4 of 11<sup>th</sup> October, 2022 purportedly to the Plaintiff herein. The same have been termed as fraudulent and have no supporting records from the Ministry of Lands, Public Works, Housing and Urban Development. The Deputy Chief Land Registrar has further elaborated that the purported day book No. 1659 relied on by the Plaintiff as the basis of his presentation relates to registration of leases in respect of grant I.R. 202528 and not the suit property. Even the purported searches by the Plaintiff supposedly issued on 19<sup>th</sup> September, 2023 are forgeries that never emanated from the Ministry of Lands, Public Works, Housing and Urban Development.
16. Finally, the Deputy Chief Land Registrar at paragraph 13 of the Replying affidavit makes reference to annexure 'CKN-1' of the Plaintiff's supporting affidavit which is the Certificate of Title I.R. 89480 for L.R. No. 12672/186 and which on the face of it indicates that Land survey plan No. 233350 is annexed to the said transfer. The Deponent asserts that the alleged title is but a forgery.
17. The Court issued its orders of 19<sup>th</sup> December, 2023 oblivious of these facts.
18. The confirmation of the grant and the distribution of the suit property, is the equivalent of a decree of the High Court. The confirmed grant vests the suit property on the 5<sup>th</sup> Defendant wholly. In fact, under section 61(2) of the *Land Registration Act*, upon confirmation of a grant and on production of the grant, the Registrar may, without requiring the personal representative to be registered, register by transmission any transfer by personal representative and any surrender of a lease or discharge of a charge by personal representative because the confirmation of grant and the order of distribution of the estate vests the property on the person(s) identified by the court.
19. In regard to the validity of the title relied on by the Plaintiff; the Plaintiff in his own Replying Affidavit of 6<sup>th</sup> February, 2024 deposed that only the 1<sup>st</sup> Defendant (the Chief Land Registrar) is legally mandated to confirm the validity or otherwise of the title Deeds filed before this Court. He urged the Court to compel the 1<sup>st</sup> Defendant to urgently file a report confirming the status of the ownership of the suit property.
20. The 1<sup>st</sup> Defendant obliged and with the consent of the parties was allowed to file the replying affidavit which I have already made reference to earlier on in this ruling. The 1<sup>st</sup> Defendant confirms the position advanced by the 5<sup>th</sup> Defendant/Applicant. The documents relied on by the Plaintiff are forgeries according to the evidence presented by the 1<sup>st</sup> Defendant.
21. That being the position, this Court being a court of law has unfettered discretion under the provisions of section 3 and 3A of *Civil Procedure Act*, Order 40 rule 7 of the Civil Procedure Rules and Article 159 of *the Constitution*, to discharge, vary or even set aside an injunction order where the ends of justice so demands.
22. In the case of *St. Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR, and in the case of *Benl Development Ltd v First Community Bank Ltd* [2021] eKLR, it was rightly held that the Court has unfettered discretion to discharge, vary or set aside an injunction order if the ends of justice so demands.
23. The Plaintiff had moved the Court under the Provisions of Order 40 Rules 1, 2, 3, 4 and 9 of the Civil Procedure Rules. The orders so granted can therefore be discharged under rule 7 thereof.



24. Considering the uncontroverted affidavit evidence presented before this Court, the Court considers it untenable and against the ends of justice to maintain the Order number 3 granted on 19<sup>th</sup> December, 2023 allowing the Plaintiff or his authorized agents unfettered and unrestricted access into the suit property. The said Order is hereby discharged.
25. Turning to the application by the 5<sup>th</sup> Defendant dated 23<sup>rd</sup> January, 2024, the Law on the grant of interlocutory orders of injunction is well settled since the celebrated case of *Giella v Cassman Brown & Company Ltd* [1974] EA.
26. Having considered all the materials before the Court, the 5<sup>th</sup> Defendant/Applicant has undoubtedly established a prima facie case based on the provisions of Section 26 of the *Land Registration Act*. Secondly, the Plaintiff is in and has been in actual occupation and possession of the suit property. In her affidavit, she depones that she has had possession for the last 22 years. Interfering with her possession and occupation in view of the foregoing and further based on the fact that the suit property has been lawfully vested in her, I agree with her submissions that it would cause her irreparable loss if the Plaintiff is not restrained from interfering with her possession and occupation of the suit property. Finally, the balance of convenience tilts in favour of the 5<sup>th</sup> Defendant.
27. Accordingly, I allow the 5<sup>th</sup> Defendant's application dated 23<sup>rd</sup> January 2023 with costs against the Plaintiff and grant her the Order of interlocutory injunction pending the hearing and determination of this suit restraining the Plaintiff whether by himself, his agents, servants and or anyone acting at his behest or otherwise howsoever from taking possession, trespassing and or in any manner occupying or undertaking any construction on the suit property and or dealing with the suit property in any manner likely to adversely affect the 5<sup>th</sup> Defendant's interest thereto pending hearing and determination of this suit. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OF MAY, 2024.**

**M.D. MWANGI**

**JUDGE.**

**In the virtual presence of:**

**Ms. Mabango holding brief for Mr. Kimathi for the Plaintiff**

**Mr. Kabaiku for the 5<sup>th</sup> Defendant/Applicant**

**Mr. Allan Kamau for the 1st – 4<sup>th</sup> Defendants/Respondents**

**Yvette: Court Assistant**

**M.D. MWANGI**

**JUDGE.**

