



**Mwangi (Suing Through Joseph Njoroge Murage) v Waiguchu (Environment & Land Case E159 of 2023) [2024] KEELC 3817 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3817 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E159 OF 2023**

**JA MOGENI, J  
MAY 13, 2024**

**BETWEEN**

**JULIUS WAIGUCHU MWANGI (SUING THROUGH JOSEPH NJOROGE MURAGE) ..... PLAINTIFF**

**AND**

**DOROTHY NJAMBI WAIGUCHU ..... DEFENDANT**

**RULING**

1. Before this Court for determination is a Notice of motion dated 6/11/2023 brought pursuant to Section 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Sections 152A of the *Land Act* and all other enabling provisions of the Law. The Plaintiff/Applicant seeks the following orders:
  1. Spent.
  2. That pending the hearing and determination of the application and suit herein that a temporary injunction be issued restraining the defendant, either by themselves, their servants, their agents, family members, relatives and/or any other person whomsoever acting under their instructions, from interfering with the plaintiff's access to, use of and quiet possession of the suit property known as land reference number 1160/346 currently referred to as land reference Nairobi/ block 148/ 382 with the developments made thereon.
  3. That pending the hearing and determination of the application and suit herein that a temporary injunction do issue restraining the defendant, either by themselves, their servants, their agents, family members, relatives and/or any other person whomsoever acting under their instructions, from entering upon, wasting, remaining on or continuing in occupation of and/or otherwise dealing with the suit property in any way whatsoever.



4. That the Defendant be ordered to give vacant possession to the Plaintiff of suit property known as land reference number 1160/346 currently referred to as land reference Nairobi/ block 148/382 and/or be evicted.
  5. That the Officer Commanding the nearest police station be ordered to supervise the enforcement and ensure compliance of the court order herein, until determination of this application and suit.
  6. That the costs of this application be provided for.
  7. That any other or further relief that this Honourable court may deem fit, just and expedient to grant.
2. The Application was supported on the grounds stated in paragraph (1) – (11) on the face of the Application, the annexed affidavit and supplementary affidavit sworn on 6/11/2023 and 21/02/2024 respectively by Joseph Njoroge Murage, the Plaintiff's attorney. I do not need to reproduce the same.
  3. The Application is opposed. The Defendant/Respondent filed a Replying Affidavit sworn by Dorothy Njambi Waiguchu on 19/11/2023 together with grounds of opposition dated 19/11/2023. The Defendant/Respondent disputes the application on the following grounds: -
    1. The application is an abuse of the Court process and should be dismissed with costs.
    2. The Plaintiff/Applicant is a trespasser who is keen to interfere with the Defendant's/ Respondent's quiet enjoyment of possession of the suit property.
    3. Other than the right of 1 acre of the suit property, the Plaintiff/Applicant has no other right capable of granting him the Orders sought. The 1 acre will be demarcated and transferred to him.
    4. The Plaintiff/Applicant has a selfish motive of evicting the widow from her matrimonial house on the suit property.
    5. The reference to the Defendant/Respondent as a stranger in her own property is criminal on the part of the Plaintiff/Applicant.
    6. The Plaintiff/Applicant is a land grabber and the honorable court should contain him.
    7. The Defendant/Respondent prays that the Plaintiff/Applicant's Application dated 6/11/2023 be dismissed with costs.
  4. The Court gave directions on filing of written submissions and a Ruling date was reserved. By the time of writing this ruling it is only the Plaintiff/Applicant who had duly submitted and I have considered them. The Plaintiff/Applicant filed written submissions dated 23/02/2024.
  5. I in turn have had time to analyze the emerging issues therein. The instant Application relates to the grant of temporary injunctive relief pending the hearing and determination of this application and suit.
  6. The substantive law on this matter is Order 40 Rule 1(a) of the *Civil Procedure Rules* 2010 which provides:

“Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting,



damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

7. The principles the Court applies when asked to consider an application for grant of interlocutory injunctions are as articulated in the often-quoted case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. From the information I have, I have to ask myself whether the plaintiff/applicant have established a prima facie case with a probability of success. In the Court of Appeal case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, a prima facie case was defined by the court as follows: -

“In civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
8. Further, in the *Mrao case* above, the Court of Appeal further opined that:

“....a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right and the probability of the Applicant’s case upon trial...”
9. In this case, it is not in dispute that the Defendant is currently in occupation of the suit property. The Defendant deponed that her late husband incorporated a company known as African Variety (1995) Limited and because at that time there was a requirement of at least two (2) directors, he decided to give one share to his lawyer who assisted him with the incorporation of the company, one John Muriuki Kibuchi and this is what the plaintiff has exhibited as JNM4 in the supporting affidavit to the application. The said company African Variety (1995) Limited in which my late husband is a majority shareholder, owns 1.5 acres of the suit property and Julius Waiguchu Mwangi (the Plaintiff) owns 1-acre. The whole property comprises of 2.5 acres. She produced a copy of the title to the suit property and marked it as DNW4. It is her contention that the title to the suit property clearly shows at item 6, that African Variety (1995) Limited has 3/5 shares and Julius Waiguchu Mwangi has 2/5 shares which translate to 1.5 acres and 1 acre respectively.
10. The Defendant further contended that she is in the process of administering the estate of my late husband including his majority shares in the said company wherein, she will ensure that the one (1) acre is hived off and transferred to the plaintiff (Julius Waiguchu Mwangi on whose behalf this suit is commenced). That the incomplete structure on the property that was commenced by her late husband has nothing to do with the plaintiff and he should keep off.
11. On the other hand, the Plaintiff asserts that he is the legal and rightful owner of the suit property. He deponed that on 22/09/1995, the suit property was transferred to the names of the plaintiff and African Variety (1995) Limited. He averred that the Defendant is not a director/shareholder of African Variety (1995) Limited or owner of the suit property hence a stranger to the property. I note that the Plaintiff did not produce a copy of the title to the suit property to demonstrate ownership of the same. He only produced two copies of a certificate of search dated 12/09/2023 for title no. 1160/346 both marked as JNM3 together with a CR12 for African Variety (1995) Limited marked as JNM4, a registered Special Power of Attorney dated 12/09/2023 marked as JNM1, a contract agreement dated 28/07/2023 for mechanical fitting work and BQs for mechanical fitting in Karen on LR No. 1160/346 Nairobi as his supporting documents.
12. Based on the material on record, there is nothing to suggest that the suit property is under any kind of immediate threat as would waste it hence defeating the course of justice. It is therefore apparent to



the court that the plaintiff/applicant has not established a prima facie case as would warrant granting of the orders sought.

13. On the second condition whether the applicant is likely to suffer irreparable loss and damage if the orders sought are not granted, the Black's Law Dictionary (9<sup>th</sup> Ed) defines irreparable loss as an injury which cannot be remedied by an award of monetary damages.
14. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR; Civil Appeal No. 77 of 2012 (Nairobi), the Court of Appeal held as follows with regard to Irreparable loss and damage:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury.

The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

15. Having shown that the Defendant is in occupation of the suit property and that the suit property is not in any kind of immediate threat of being wasted, the Court holds the view that there is equally no evidence that the plaintiff/applicant is likely to suffer irreparable injury if the orders sought are not granted.
16. Finally, on considering the balance of convenience, I am of the view that the plaintiff having failed to satisfy the preceding requirements, the balance of convenience in this case will ultimately tilt in favor of not giving the orders sought by the plaintiff/applicant. In the above cited case of *Nguruman Limited* (supra), the Court of Appeal explained further that all the three conditions established in *Giella's* case are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.
17. Consequently, with the above in mind, this Honourable Court finds and holds that the Application dated 6/11/2023 is devoid of merit under the circumstances. The same is hereby dismissed with costs to the Defendant.
18. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY MAY 2024.**

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**MOGENI J**

**JUDGE**

In the Virtual presence of:

Dr. Kenyariri for Defendant

Mrs Nyokabi for Plaintiff

Ms. C. Sagina: Court Assistant

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**MOGENI J**

**JUDGE**

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