



**Njeru v Njeru & 3 others (Environment & Land Case
E005 of 2022) [2024] KEELC 5080 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5080 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E005 OF 2022**

**A KANIARU, J
JUNE 19, 2024**

BETWEEN

CONSOLATA NJURA NJERU PLAINTIFF

AND

ALEXANDER NYAGA NJERU 1ST RESPONDENT

SPELENZA WAMBETI NJERU 2ND RESPONDENT

CECILIA GICUKU NJERU 3RD RESPONDENT

EUGENIA WANYAGA NJERU 4TH RESPONDENT

RULING

1. Before me for determination is a Notice of Motion application dated 07.03.2023 brought under a Certificate of Urgency. It is expressed to be brought under Section 3A of the Civil Procedure Rules (Sic – should be Act, not Rules) and all enabling laws. The applicant – Consolata Njura Njeru – is the Plaintiff in the suit while the 1st – 4th respondents - Alexander Nyaga Njeru, Spelenza Wambeti Njeru, Cecilia Gicuku Njeru & Eugenia Wanyaga Njeru - are the 1st - 4th defendants in the suit respectively.
2. The applicant is seeking to restrain the respondents from trespassing and interfering with her peaceful occupation of land parcel L.R No Ngandori/Ngovio/503 which she says was allocated to her by her deceased father pending hearing and determination of his succession proceedings. She also asks the court to order the OCS, Kibugu police station, to enforce the said orders. She also wants costs of the application.
3. The application was made on the grounds that the parties herein are siblings. That their father died on 14.8.2021 and prior to his death, he had allocated each one of them a place to settle on the suit land. That the respondents have occupied their respective parcels but keep trespassing into her land. They also threaten her and destroy her plants.



4. The 1st respondent responded to the application by way of a replying affidavit dated 03.04.2023. He deposed, inter alia that after the death of their father, the applicant and his sister filed citation proceedings, being Citation Cause E097 of 2021, in the Chief Magistrates Court at Embu seeking to compel the respondents to file succession proceedings for their father's estate. That the court directed the respondents to file the said succession proceedings within thirty days in default of which the Citor's were to file the same. That the respondents did not file the succession proceedings within the time given neither did the applicant and the sister. That the orders sought herein are not available as they are hinged on a yet to be filed succession cause.
5. That further, the applicant does not have capacity to institute and prosecute the instant application as she is not the legal representative of the estate of the father whose is still the registered owner of the suit land. He denies the applicants allegations of trespass and destruction of her parcel of land. He also says that the applicant has not explained why she has failed to file the succession proceedings for the estate of their father despite being allowed to do so. That also, the instant application is defective as there is no main suit seeking substantive orders to the conditional orders sought therein.
6. It was agreed that parties canvass the application via written submissions. Only the respondents filed the same on 27.11.2023. They sought to rely on the replying affidavit by the 1st respondent and in addition submitted that the application had been overtaken by events as the 1st respondent filed succession cause E056 of 2023 before the Chief Magistrates court at Embu. They urged that the application be dismissed with costs.
7. I have considered the application, the response made to it as well as the submissions by the respondent. The issue for determination is whether the applicant is entitled to restraining orders.
8. The guiding principles in handling an application for restraining orders were laid down in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358. They are that the Applicant must establish a prima facie case with a probability of success, that an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages, and that when the court is in doubt, it will decide the application on a balance of probabilities.
9. A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank Kenya Ltd & 2 Others* [2003] eKLR as follows:

“A prima facie case in a civil Application includes but is not confined to a genuine and arguable case. It is a case 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.”
10. The applicant has filed the application herein seeking to restrain the respondents from interfering with land parcel Ngandori/Ngovio/503. The land is said to belong to their deceased father who is still the registered owner on record. The applicant accuses the respondents of interfering with the suit land and wants the court to issue restraining orders against the respondents pending the filing and determination of succession proceedings over the estate of the deceased. The respondents deny that the applicant is entitled to the orders sought as they say she lacks the capacity to bring the suit as she is not the legal representative of the estate of their deceased father. They also say that the applicant's application has been overtaken by events as the 1st respondent has already filed succession proceedings.
11. In order to bring an application for restraining orders over a parcel of land, one has to demonstrate what rights or interest one has over the land sought to be protected. In this case, the applicant is not the registered proprietor of the suit land. She is also not the legal representative of the deceased registered



proprietor. Though she says she has an interest over the land, having been given a portion by the deceased, she seems to lack the Locus standi as she has no grant from any probate court. I agree with the respondents that she does not have the capacity to seek the orders that she is seeking. Her suit has also been presented in a similar manner broadly seeking the same orders. In my view and on the face of it, the applicant has not demonstrated a prima facie case with probability of success.

12. Whether the applicant is likely to suffer irreparable harm which cannot be adequately compensated by award of damages, as observed above, the applicant has not been able to demonstrate what rights or interest she has over the suit property. The applicant has also not demonstrated what kind of interference the respondents are making on the suit land. This court is therefore not persuaded that there is any harm likely to be occasioned to the applicant if the orders sought are not granted. For the same reasons, the court also finds that there is no irreparable damage to be visited on the applicant should the court fail to grant the orders sought.
13. The upshot of the above is that the court finds that the notice of motion application dated 07.03.2023 lacks merit and the same is hereby dismissed.
14. Costs to be in the cause.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 19TH DAY OF JUNE, 2024.

In the presence of

Ms Njage for Kathungu for Respondent.

Court Assistant - Leadys

A. KANIARU

JUDGE – ELC, EMBU

19.6.2024

