



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bigima Housing Company Limited & another v Migwi & another (Environment & Land Case E027 of 2022) [2024] KEELC 4694 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4694 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT & LAND CASE E027 OF 2022**  
**CA OCHIENG, J**  
**JUNE 13, 2024**

**BETWEEN**

**BIGIMA HOUSING COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**BIGMAH ESTATES LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LENAH MUKAMI MIGWI ..... 1<sup>ST</sup> RESPONDENT**

**BRIAN MWANGI MIGWI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is before Court for determination is the Plaintiffs' Notice of Motion Application dated the June 23, 2023 where they seek the following Orders:-
  - a. The Respondents' be restrained by an order of temporary injunction by this Honourable Court from dealing with the properties of both Bigima Housing Company Limited and Bigmah Estates Ltd until the hearing of this application/or hearing of this suit or further orders of this Court.
  - b. That the Respondents be compelled to comply with the injunctive orders issued by this Honourable Court on the September 26, 2022.
  - c. That this Honourable Court do allow the Applicant to appoint a Surveyor to take an inventory of the book of records and maps at the Respondents' office.
  - d. That the costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of George Gitau Gathimba where he deposes that he is the remaining director of the Plaintiffs' Companies. He claims that after passing away of the 1<sup>st</sup> Defendant, the Respondents who are his widow and son are



dealing with the properties of the Plaintiffs' in contravention of the orders of the court earlier issued. He avers that there are clients who came to him and informed him, that they had collected titles from the Respondents' and paid monies in their personal accounts. He contends that the Respondents' are issuing receipts in the name of Bigima Housing Company Ltd for purposes of processing the titles. Further, that he has made a Police report for obtaining. He reiterates that the Respondents' are aware that their actions are unlawful as the matter is pending in court. Further, there is no legal basis on which they base their actions. He explains that on the June 7, 2023, he received a comprehensive report from the investigator whom he had engaged. He reaffirms that their actions are continuing to frustrate him and put him in a very difficult position.

3. The Respondents' opposed the Application by filing a Replying Affidavit sworn by Lenah Mukami Migwi. She deposes that the procedure of joining them in this suit is erroneous and contrary to the law as they are not the personal representatives of John Migwi Mwangi. She contends that they are not directors of the company and she does not deal with the affairs of the Plaintiffs.
4. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion Application including the respective Affidavits, the only issue for determination is whether the Respondents' should be restrained from dealing with the suit lands' pending the outcome of this suit.
6. The Plaintiffs' claim the Respondents who are widow and son to the 1<sup>st</sup> Defendant (deceased), are dealing with the suit lands contrary to the orders of the court. The Respondents' filed a Replying Affidavit denying the averments and relying on various legal procedures. From the submissions, it has emerged that the Respondents' filed Kiambu High Court Succession Cause No. E049 of 2023 in respect to the 1<sup>st</sup> Defendant's Estate.
7. I note on June 21, 2022, this Court issued orders of *status quo* in respect to suit lands herein, before the demise of the 1<sup>st</sup> Defendant. Further, I note the court had granted the Defendants time to file their Replying Affidavits with respect to Application for injunction dated the 11<sup>th</sup> April, 2022 but the 1<sup>st</sup> Defendant died before responding to the said Application. The fulcrum of the dispute herein revolves around ownership of various parcels of land as enumerated in the Plaint dated April 11, 2022. From the court record it emerges that Bigmah Estates Limited's directors were John Migwi Mwangi and George Gitau Gathimba, who each own one share respectively. From a perusal of the annexures herein, it has emerged that the 1<sup>st</sup> Defendant's widow and son are dealing with the suit lands by receiving purchase price and issuing receipts in the name of the Plaintiffs. Further, that some titles belonging to the Plaintiffs' are in the custody of the widow to the 1<sup>st</sup> Defendant. It is trite that once a Director of a company dies, his shares should not be dealt with until the administrators of his Estate are appointed.
8. In the interest of justice and in line with the principles established in the case of *Giella vs Cassman Brown* (1973) E.A. 358, noting that there was a *status quo* order issued on June 21, 2022 and this matter is still pending in court, I direct that any agents of the 1<sup>st</sup> Defendant's estate including the Respondents' herein are hereby restrained from dealing with the suit lands, in any way whatsoever until this suit is determined.
9. In the circumstances, I find the instant Notice of Motion Application merited and will allow it.
10. Costs will be in the cause.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 13TH DAY OF JUNE,  
2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms. Muturi holding brief for Kanyi for Respondent

Mbaka for Plaintiff/Applicant

Kuria for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court Assistant – Simon/Ashley

