



**Mwangi (Suing as Guardian ad litem of Julius Mwangi Kariuki) & another v Abdirashid & another (Environment & Land Case 359 of 2024) [2025] KEELC 3593 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 3593 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 359 OF 2024**

**JG KEMEI, J  
FEBRUARY 20, 2025**

**BETWEEN**

**LUCY NJOKI MWANGI (SUING AS GUARDIAN AD LITEM OF JULIUS MWANGI KARIUKI) ..... 1<sup>ST</sup> PLAINTIFF**

**JULIUS MWANGI KARIUKI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**AHMED ABDIRASHID ..... 1<sup>ST</sup> DEFENDANT**

**TORAB (K) LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

[in respect to the applicants’ application dated 30/8/24 seeking temporary orders of injunction against the Respondents]

1. The subject of this Ruling is the Applicants’ Motion dated the 30/8/24 brought under Sections 1A, 1B 3 & 3A of the CPA and Order 40 Rule 1 and 51 of the CPR seeking the following orders;
  - a. Spent
  - b. Spent
  - c. Orders of temporary injunction do issue restraining the Defendants/ Respondents whether by themselves their employees officials proxies servants agents or any other persons acting under their authority from trespassing occupying entering upon, remaining thereon, constructing/ erecting or carrying on construction/erection of any structures buildings fence perimeter wall or from howsoever dealing with and or interfering with the Plaintiffs possession occupation and or proprietorship of all that



parcel of land known as L R No 36/1/74 situate along Muyuyu Road, Easleigh, Nairobi

- d. That the costs of this Application be borne by the Defendants/ Respondents.
2. The application is based on the grounds annexed thereto and the supporting affidavit of Lucy Njoki Mwangi sworn on 30/8/24.
3. She deposed that she is the daughter and guardian ad litem of the 2<sup>nd</sup> Plaintiff Julius Mwangi Kariuki [Kariuki], the registered owner of the suit land. That Kariuki inherited the suit land from his late father Kariuki Gatonga [Gatonga] [see the certificate of grant issued on 17/10/2007] who purchased it from Itlaf Syed through a sale agreement dated 1/12/98 at the consideration of Kshs 6 Million. That the Applicants have been in possession and use of the suit land since then until sometime in August 2023 when the Respondents unsuccessfully attempted to evict them from the suit land. That on 16/8/24 the Respondents in the company of goons and the police invaded the property, destroyed, looted and attempted to fence it forcing her to seek the intervention of various Police Stations in the area in vain. That unless the Respondents are restrained the Applicants will suffer irreparable harm not compensable by an award of damages and that livelihoods of their employees will be lost. The Court was urged to lean on the side of justice and grant the injunction.
4. Opposing the application, the 1<sup>st</sup> Respondent vide his Replying Affidavit dated 6/11/24 deposed that he has been wrongly sued as he does not know any of the parties to the suit nor has any claim to the suit property. He further posited that the suit land belongs to the 2<sup>nd</sup> Respondent and impugned the title of the Plaintiffs on the ground that they hold no valid title in the suit land.
5. The 2<sup>nd</sup> Respondent opposed the application through its Replying Affidavit sworn on 6/11/24 by one Abdirashid Ismail Daud, a Director of the 2<sup>nd</sup> Respondent. He stated that the suit land was previously owned by Sughra Begum and upon his demise the property devolved to his beneficiaries, Mohamed Iqbal Rehman [Rehman] being one of them vide grant issued on 24/7/23 in HCCC No E446 of 2023 who sold the property to the 2<sup>nd</sup> Respondent vide the transfer of 13/12/2023. That Gatonga was merely a caretaker of the suit land. That the applicants have been in possession of the suit land illegally and were evicted vide an eviction order of the BPRT Tribunal issued on the 8/8/24. Further that the Applicants have not established a prima facie case with chances of success and that if the orders are granted they stand to suffer irreparable harm which cannot be compensated with damages and urged the Court to dismiss the application.

#### **Directions & Interim orders.**

6. On application, the Court granted interim orders on 3/9/24 restraining the respondents from trespassing occupying and interalia interfering with the suit land.
7. On 7/11/24 the parties elected to canvass the application by way of written submissions. The applicants, 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their written submissions dated the 4/2/25, 27/1/25 and 14/1/25 respectively. I have read and considered the said submissions.



## Analysis and determination

8. There is one issue for determination which is whether the applicants have established the legal threshold for the grant of an injunction and who meets the costs of the application.
9. The law that governs applications for injunction is premised under Order 40 Rule 1 of the Civil Procedure Rules 2010 which provides as follows:

“-1. Where in any suit it is proved by affidavit or otherwise-

- a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

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”.

10. To succeed in an application for injunction, the applicants must bring themselves within the ambit of the principles set out in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. These are: -
  - a. A demonstration that the applicant has a prima facie case with a probability of success.
  - b. A demonstration that if an injunction is not granted, the applicant will suffer irreparable loss which cannot be compensated for in monetary terms.
  - c. Where the Court, is in doubt about ingredient [a] – [b] it will decide the matter on a balance of convenience to both parties.
11. Have the applicants established a prima facie case with a probability of success? To answer the question, the Court will be called upon to inquire whether 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. See the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR.
12. The applicant cited the case of *Naftali Kinyua v Patrick Thuita Gachure & Anor* [2015] EKLR the Court stated that;

“when comparing competing claims to property the Court must discern on a balance of probabilities which party has demonstrated a superior claim based on the documentation before it.”
13. The same Court further stated as follows;

“... the appellant must show that he owned the suit property or had a valid claim which is capable of defeating a third party claim in respect of the same property.”



14. According to the documents presented by the applicants, Syed Mohamed Arshad Shah purchased the suit land from one Govind Lal Khemraj Umaji in 1943. Syed Mohamed Arshad Shah died on 4/2/91 in Nairobi. Vide succession Cause No 518 of 1997 the suit land devolved to Itlaf Seyd of 154 Bath Slough Bucks, England. Arshad's Will dated 1967 and the confirmation of grant dated 3/7/98 were presented in support. That the property was vested to Itlaf Seyd on 3/8/2000. Kariuki is alleged to have purchased the land from Itlaf Seyd, the son and heir vide an agreement of sale agreement of 1998 in the sum of Kshs 6 Million. Evidence of payment of the said purchase price has been documented leading to the indenture dated the 3/4/2000 and registered at the land's office in 2001. The applicants have led unchallenged evidence that they have been in possession since then. In addition, a number of utility bills are in the name of Gatonga. Upon the death of Gatonga, it is averred the land devolved to the 2<sup>nd</sup> Plaintiff as the heir to his estate as per the grant issue thereon.
15. The 2<sup>nd</sup> Respondent's documents on the other hand show that Itlaf Syed sold the land to one Sughra Begum who appointed Gatonga as his caretaker of the suit land. That upon the demise of Begum, his family petitioned for succession and the land devolved to his heirs namely Mohamed Iqbal Rehman as the legal administrator of the deceased estate. The 2<sup>nd</sup> Respondent purchased the suit land from Rehman in 2023 and obtained a Court order for eviction of the Applicants whom he described as illegal dwellers on the suit land.
16. From the above preceding paragraphs, there is no dispute that the applicants and the 2<sup>nd</sup> Defendant are claiming title to the same parcel of land.
17. What is not in contest is that both parties derive their root of the title to Itlaf Seyd, the son and heir to the estate of Mohamed Arshad, the previous owner of the suit land. It is also clear that there are serious matters that will require the trial Court to inquire as to who between the Plaintiffs and the 2<sup>nd</sup> Respondent is the lawful owner of the suit land. What is apparent is that Itlaf Seyd sold the land to Gatonga in 1998 and come the year 2000 he again sold it to Begum. This is a controversy best left to the trial Court to determine upon taking evidence. To that extent, I concur with the proposition by the Court in the case of *Mbuthia v Jimba credit Corporation Ltd* [1988] eKLR where the Court held that:-

“In an application for interlocutory injunctions, the Court is not required to make final findings of contested facts and law and the Court should only weigh the relative strength of the party's cases.”
18. There is evidence led by the applicants that the 2<sup>nd</sup> Respondent had attempted to remove the Applicants since 2023 succeeding on 16/8/24. The 2<sup>nd</sup> Respondent has not established before the Court whether there was a tenant – landlord relationship with the Applicants. Neither has it been shown that the Applicants were its tenants.
19. Weighing the two sets of documents, on a prima facie basis, the applicant's documents show that they have been in possession of the land for over 20 years going by their evidence including the payment of utilities for the suit land. In contrast the 2<sup>nd</sup> respondent accessed the land on 16/8/24 after unsuccessfully attempting to take it over before the suit is determined. On a balance of probability, I find that based on the documents before the Court the applicants have established a prima facie case with a probability of success.
20. With respect to irreparable harm, the Court notes that the Applicants have occupied the land since 1998 while the 2<sup>nd</sup> Respondent only accessed the property on 16/8/24. The Applicants have pleaded



loss of family land as well as third party livelihoods if the orders are not granted. I agree with the decision of the Court in the case of Muiruri v Bank of Baroda [Kenya] Ltd 2001 e K L R 183 when it stated;

“besides, disputes over land in Kenya evoke a lot of emotions and except in very clear cases, it cannot be said that damages will adequately compensate a party for its loss”.

21. For the reasons given above, I take the view that Applicants have a strong case given the 2<sup>nd</sup> Respondent actions are intended to remove the applicants from the suit land before the issue of title is determined. This Court being a Court of law as well as equity cannot countenance a situation where a party is allowed to flout the law on account of ability to pay the damages. See Athman v Muchoki [1984] KLR 353.
22. I am persuaded that the balance of convenience tilts in granting the orders sought.

### **Disposal orders**

23. Reasons wherefore I allow the orders as follows;
  - a. Orders of temporary injunction do issue restraining the Defendants/Respondents whether by themselves their employees officials proxies servants agents or any other persons acting under their authority from trespassing occupying entering upon, remaining thereon, constructing/erecting or carrying on construction/erection of any structures buildings fence perimeter wall or from howsoever dealing with and or interfering with the Plaintiffs possession occupation and or proprietorship of all that parcel of land known as L R No 36/1/74 situate along Muyuyu Road, Eastleigh, Nairobi.
  - b. For avoidance of doubt the Applicants be and are hereby restored forthwith to the suit land ante 16/8/24.
  - c. Costs shall be in favour of the applicants.
24. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Coram

Ken Murgor for the Applicants

Ms Nyaga HB Mr Jama for the 1<sup>st</sup> Respondent

Ms Amonde for the 2<sup>nd</sup> Respondent

CA – Ms Yvette

