



REPUBLIC OF KENYA



Karanja & 5 others v Ndung'u & another (Environment & Land Case E019 of 2023) [2024] KEELC 4585 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4585 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E019 OF 2023**

BM EBOSO, J

JUNE 6, 2024

BETWEEN

JOSEPH MUGO KARANJA 1ST PLAINTIFF
FRANCIS NJENGA MUKUA 2ND PLAINTIFF
WANDATI LAWRENCE 3RD PLAINTIFF
GODFREY NJENGA MUNGAI 4TH PLAINTIFF
EDWIN MURIITHI MWANGI 5TH PLAINTIFF
WANJIKU WANJENGA KARANJA 6TH PLAINTIFF

AND

FRANCIS MAINA NDUNG'U 1ST DEFENDANT
THE LAND REGISTRAR RUIRU 2ND DEFENDANT

RULING

1. The six plaintiffs initiated this suit through a plaint dated 1/8/2023. They seek the following reliefs against the defendants:
 - a. A declaration that the first allocation to Stephen Mwangi Maina was irregularly obtained, and therefore he or his estate had no valid legal interest which he could pass to the said Teresia Njeri Mwangi who would in turn pass it to the 1st Defendant herein.
 - b. A declaration that the 1st defendant irregularly acquired the title deed for land registration number Ruiru/ Kiu Block 2/ [Githunguri] /4546 which he subsequently sub-divided into eight (8) plots i.e Ruiru/ Kiu Block 2 [Githunguri]/26171-26178.



- c. A mandatory order to the 2nd defendant to revoke the eight (8) title deeds issued to the 1st defendant after subdividing Ruiru/ Kiu Block 2/ Githunguri/ 4546 i.e Ruiru/ Kiu Block 2/ Githunguri/26171-26178.
 - d. A declaration that the plaintiffs are the bonafide owners of their respective plots i.e T51, T42, T43, T54, T53 and T41 excised from land registration number Ruiru Kiu Block 2 Githunguri /4546 as subdivided and allocated to them by Githunguri Constituency Ranching Company Ltd the interested parties herein.
 - e. A permanent injunction restraining the 1st defendant, whether by himself or his servants or agents or otherwise howsoever, from occupying or remaining on or continuing in occupation of the eight (8) suit properties i.e Ruiru Kiu Block 2 Githunguri/26171-26178.
 - f. Vacant possession of the suit property.
 - g. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
 - h. Any such other or further relief as this Honourable Court may deem appropriate.
2. The plaintiffs contend that, at all material times, they purchased, and the interested party allotted to them, plot numbers T41, T42, T43, T53 and T54 respectively, comprised in land parcel number Ruiru Kiu Block 2 Githunguri/4546 [the suit land]. It is their case that they subsequently learnt that the suit land had been irregularly registered in the name of one Stephen Mwangi Maina on 27/7/2024, adding that on 24/2/2015, the land was registered in the name of one Teresia Njeri Mwangi through transmission. On 25/5/2016, the land was transferred to the 1st defendant. They challenge the allocation of the suit land to Stephen Mwangi Maina, contending that the allocation was irregular.
 3. Together with the plaint, the six plaintiffs brought a notice of motion dated 1/8/2023, seeking interlocutory injunctive orders against the two defendants. On 27/11/2023, at the request of Mr Oyunge - Advocate, the 1st and 4th plaintiffs' claims were marked withdrawn with no order as to costs. The remaining four plaintiffs elected to amend their application through an amended notice of motion dated 9/1/2024. The said amended notice of motion dated 9/1/2023 seeks interlocutory injunctive orders similar to those that were sought in the original notice of motion dated 1/8/2023. The amended notice of motion dated 9/1/2024 is one of the two applications that fall for determination in this ruling.
 4. The second application that falls for determination in this ruling is the 1st defendant's notice of motion dated 6/12/2023 through which the 1st defendant seeks orders striking out this suit on the ground that the suit is res judicata and offends Sections 6 and 7 of the Civil Procedure Rules 2010. Given that the amended notice of motion dated 6/12/2023 raises a jurisdictional question, the court will consider and dispose it before disposing the plaintiffs' amended application dated 9/1/2024 (See the principle in *Owners of the Motor Vessel Lilian 'S' v Caltex Oil (K) Ltd* [1989] 1 KLR as outlined by Nyarangi JA).

Amended motion dated 6/12/2023

5. The application dated 6/12/2023 was supported with an affidavit sworn on 6/12/2023 by Francis Maina Ndungu also known as Francis Maina Njonjo. It was canvassed through written submissions dated 9/2/2023 (sic). The gist of the applicant's case is that, parties to this suit litigated in a dispute of the same nature involving similar issues in Milimani ELC Case No 1391 of 2014 in which the applicant [the 1st defendant in this suit] was the plaintiff. The applicant contends that the said prior suit was fully heard and determined by Komingoi J through a Judgment rendered on 24/1/2021.



6. The four plaintiffs oppose the application. Their case is that, whereas the plaintiffs in this suit, together with other persons who are not parties to this suit, were sued by the applicant as defendants in Milimani ELC Case No 1391 of 2014, the subject matter in respect of which the applicant sued them was land parcel number Ruiru/ Kiu Block 2/4547 and not Ruiru Kiu Block 2/4546. It is their case that, in error, they admitted in their defence that they were in occupation of parcel number Ruiru Kiu Block 2/4547 but when the Chairman of Githunguri Constituency Ranching Company testified at the tail end of the trial, he clarified that they [the plaintiffs] were in occupation of parcel number Ruiru Kiu Block 2/4546, adding that their advocate forgot to amend their defence to bring out this fact as part of their pleadings.
7. The court has considered the application, the response to the application, and the parties' respective submissions. The key issue to be determined in the application is whether the plaintiffs' suit is res judicata.
8. The common law doctrine of res judicata has been codified under Section 7 of the *Civil Procedure Act* which provides as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
9. Parliament legislated the following guiding notes with a view to ensuring seamless application of the doctrine:

Explanation (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation (2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation (4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation (6)—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.
10. In the present application, it does emerge that whereas the 1st defendant sued the plaintiffs in Milimani ELC Case No 1391 of 2014, his claim related to parcel number Ruiru Kiu Block 2/4547. Put differently, the subject matter in Milimani ELC case No 1391 of 2014 was Ruiru Kiu Block 2/4547. Indeed, it is clear from both the Judgment rendered by Komingoi J and the exhibited decree that the award and decree which the 1st defendant got relates to Ruiru Kiu Block 2/4547.



11. A perusal of the pleadings in the present suit reveals that the subject matter in the suit is parcel number Ruiru Kiu Block 2/4546 and not Ruiru Kiu Block 2/4547. Put differently, the subsisting Judgment and decree relate to Ruiru Kiu Block 2/4547 which would appear to be a property neighbouring the suit property. Given that it is the 1st defendant who filed Milimani ELC No 1391 of 2014, the plaintiffs cannot be barred against ventilating their claim in relation to Ruiru/Kiu Block 2/4546. What is clear is that in Milimani ELC Case No 1391 of 2014, the applicant [1st defendant] made a claim and obtained Judgment in relation to Ruiru Kiu Block 2/4547. The above suit did not relate to Ruiru Kiu Block 2/4546. The applicant cannot, in the circumstances, successfully invoke the doctrine of res judicata.
12. For the above reasons, it is the finding of this court that the plaintiffs' suit is not res judicata. Consequently, the amended notice of motion dated 6/12/2023 is dismissed for lack of merit. The applicant shall bear costs of the application.

Amended Application dated 9/1/2024

13. The parties' respective cases have been summarized in the preceding paragraphs. The gist of the two applications that are the subjects of this ruling have also been outlined. The question that falls for determination in the amended notice of motion dated 9/1/2024 is whether the plaintiffs have satisfied the criteria upon which a trial court exercises jurisdiction to grant interlocutory injunctive reliefs.
14. The relevant criteria was spelt out in *Giella v Cassman Brown & Co. Ltd* (1975) EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the interlocutory injunctive relief is not granted, he would stand to suffer injury for which he may not be adequately indemnified through an award of damages. Thirdly, should the court have any doubt in relation to either of the above two requirements, the application should be determined on the basis of the balance of convenience. Lastly, at the stage of disposing the application for interlocutory relief, the court does not make conclusive or definitive findings on the key issues in the suit.
15. The court has considered the parties' respective cases, their interlocutory evidence and their submissions. It does emerge from the plaintiffs' pleadings that they are challenging the registration of the suit land in the name of Stephen Mwangi Maina. They are similarly challenging the subsequent registration of the land in the name of Teresia Njeri Mwangi. Lastly, they are challenging the subsequent registration of the land in the name of the 1st defendant, Francis Maina Ndungu.
16. The plaintiffs have, for reasons that have not been disclosed, excluded Stephen Mwangi Maina and Teresia Njeri Mwangi from the suit. Clearly, the question relating to the validity of the title held by the 1st defendant cannot be effectually adjudicated on and settled in the absence of Stephen Mwangi and Teresia Njeri Mwangi.
17. For the above reasons, it is the finding of this court that the amended application dated 9/1/2024 is incompetent for failure to join the two as defendants in the suit. The same stands to be struck out on that ground. It is so ordered. The applicants will bear costs of the application.

Disposal Orders

18. In the end, the plaintiffs' amended notice of motion dated 9/1/2024 and the 1st defendant's amended notice of motion dated 6/12/2023 are disposed as follows:
 - a. The 1st defendant's amended notice of motion dated 6/12/2023 is dismissed for lack of merit.



- b. The plaintiffs' notice of motion dated 9/1/2024 is struck out for non-joinder of Stephen Mwangi Maina and Teresia Njeri Mwangi as defendants in this suit and in the application.
- c. The plaintiffs are hereby directed to amend their pleadings within 14 days and join:
 - (i) the administrator of the estate of the late Stephen Mwangi Maina:
 - (ii) Teresia Njeri Mwangi: and
 - (iii) Githunguri Constituency Ranching Company Limited as 3rd, 4th and 5th defendants respectively. In default, the plaintiffs' suit shall stand struck out with costs for being incompetent.
- d. Respective applicants in the parallel applications shall bear costs of the applications.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6TH DAY OF JUNE 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Kungu for the Plaintiffs

Mr Francis Maina Ndungu also known as Francis Maina Njonjo- present in person

Court Assistant: Hinga

