



Archdiocese of Nairobi Kenya Registered Trustees v Gatura (Sued as the legal representative of the Estate of Hannah Wambui Gatura) & 4 others (Land Case E027 of 2023) [2024] KEELC 4620 (KLR) (5 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4620 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E027 OF 2023
BM EBOSO, J
JUNE 5, 2024**

BETWEEN

ARCHDIOCESE OF NAIROBI KENYA REGISTERED TRUSTEES .. PLAINTIFF

AND

**JOHN MUTURI GATURA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF HANNAH WAMBUI GATURA) 1ST DEFENDANT
THE LAND REGISTRAR - GATUNDU 2ND DEFENDANT
THE CHIEF LAND REGISTRAR 3RD DEFENDANT
NATIONAL LAND COMMISSION 4TH DEFENDANT
THE HON ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. The plaintiffs are said to have previously been incorporated under the name The Registered Trustees, Catholic Mission, Holy Fathers. They acquired their present name pursuant to a duly registered change of name.
2. The dispute in this suit revolves around the question of ownership of land parcel number Ngenda/ Mutomo/T.330, measuring approximately 0.5 acres [referred to in this ruling as “the suit land”]. The plaintiffs held a certificate of lease relating to the land, issued in their previous name on 3/7/1985 pursuant to a registration effected in their favour on 6/8/1963. Their lease lapsed in 1996. They did not pursue a renewal at the time of expiry. They contend that they nonetheless continued to enjoy quiet possession of the suit land.
3. The plaintiffs commenced the process of renewal/extension of lease in March 2014. They eventually obtained a renewal vide a lease dated 3/6/2021. Upon presenting the lease for registration and issuance



- of a certificate of lease, they learnt that there existed a parallel land register relating to the suit land, expressed as having been opened on 1/3/1965 in the names of Kiambu County Council and Thika County Council. They further established that on 16/5/2012, an entry had been made in the parallel land register transferring the land to Hannah Wambui Gatura.
4. Through their plaint dated 18/8/2023, the plaintiffs contend that the parallel land register was opened fraudulently, adding that the allocation to and registration of the land in the name of Hannah Wambui Gatura were done irregularly and unprocedurally. Among other reliefs, they seek a declaration that they are the rightful, legal and legitimate owners of the suit land. They also seek orders annulling the parallel land register and the title held in the name of Hannah Wambui Gatura.
 5. Together with the plaint, the plaintiffs brought a notice of motion dated 18/8/2023, seeking an interlocutory injunctive order restraining the estate of the late Hannah Wambui Gatura against trespassing on, dealing with, disposing, transferring or alienating the suit land or interfering with the plaintiff's possession of the suit land, pending the hearing and determination of this suit. They also sought an order restraining the National Land Commission against paying out compulsory land acquisition compensation money relating to the suit land. The application is the subject of this ruling.
 6. The application is supported by an affidavit sworn on 20/8/2023 by Irene Ndunge Mbuvi, an advocate working for the plaintiff as a land officer. It was canvassed through written submissions dated 27/11/2023. The 1st defendant filed a defence dated 26/9/2023. He opposed the application through a replying affidavit dated 3/10/2023 and written submissions dated 16/2/2024. His case is that he is a son to the late Hannah Wambui Gatura [referred to in this ruling as "the deceased"] and the administrator of her estate. He contends that the deceased had uninterrupted possession of the suit land from 16/5/2012, adding that the green card conferring title to the deceased was opened on 1/5/2012. The 1st defendant further contends that the plaintiffs' interest in the suit land lapsed in 1996 when their lease expired. He urges the court to dismiss the application. The 2nd to the 5th defendants elected not to participate in the application.
 7. The court has considered the application, the response to the application, and the parties' respective submissions on the application. The single question to be answered in this ruling is whether the criteria for grant of interlocutory injunctive relief has been met.
 8. The relevant criteria was outlined in the case of *Giella v Cassman Brown Co Ltd* (1973)EA 358. First, a party seeking interlocutory injunctive relief is required to demonstrate a prima facie case with a probability of success. Second, he is required to demonstrate that in the event the interlocutory relief is not granted, he would stand to suffer injury for which he may not be adequately indemnified through an award of damages. Lastly, where the court has doubts on both or either of the above two limbs, the application should be disposed based on the balance of convenience.
 9. A surveyed and registered parcel of land is supposed to have only one land register. In the present suit, it does emerge that a land register relating to the suit land was opened on 6/8/1963 in the name of The Registered Trustees, Catholic Mission, Holy Ghost Fathers, of P. O Box 423 Nairobi. A certificate of lease was issued to the said proprietor on 3/7/1985. The 33 year lease expired in 1996. The lease was subsequently renewed or re-issued on 3/6/2021 through a formal lease. At the point of registration of the new lease, it emerged that there existed a parallel land register relating to the suit land, expressed as having been opened on 1/3/1965 during the subsistence of the other land register.
 10. The 1st defendant is waving a title which he alleges was first issued jointly to Kiambu County Council and Thika County Council on 1/3/1965. It is the case of the 1st defendant that the two local authorities conveyed the title to Hannah Wambui Gatura in 2012. Whether the two entities existed under the above names is a question to be answered during trial.



11. The 2nd and 3rd defendants elected not to participate in the application despite the grave allegation of duplicity of land registers and titles that have been levelled against them. The court has therefore not been told the circumstances under which the second land register was allegedly opened in 1965, if indeed it was opened.
12. Secondly, the suit land is currently the subject of compulsory land acquisition for the establishment of a university college. The interlocutory orders that are sought in the application that is under consideration seek the preservation of the suit land and the compensation of money.
13. Thirdly, neither the plaintiff nor the 1st defendant have joined the County Government of Kiambu as a party to this suit to demonstrate how their alleged predecessors acquired the title and whether they, indeed, jointly conveyed the title to the deceased in 2012.
14. Given the above circumstances, the Court forms the view that this is an application that should be disposed based on the balance of convenience in terms that are geared toward preserving the parallel land registers, leases, the title and any compulsory acquisition compensation money that relates to the land. Further, because the County Government of Kiambu and the Cabinet Secretary responsible for land administration are necessary parties for the complete and effectual adjudication and settlement of the key questions in this dispute, the Court will invoke its powers under Order 1 rule 10(2) of the *Civil Procedure Rules* to join them as parties to this suit.
15. In the end, the notice of motion dated 18/8/2023 is disposed based on the balance of convenience in the following terms:
 - a. Pending the hearing and determination of this suit, the estate of the late Hannah Wambui Gatura is restrained against disposing, charging or leasing the title that they hold in relation to land parcel number Ngenda/Mutomo/T.330.
 - b. Pending the hearing and determination of this suit, the National Land Commission is restrained against releasing any compensation money relating to compulsory acquisition of land parcel number Ngenda/Mutomo/T.330.
 - c. For avoidance of doubt, the above interlocutory injunction orders do not affect other aspects of the compulsory acquisition exercise.
 - d. The plaintiffs shall amend the plaint to join the County Government of Kiambu and the Cabinet Secretary responsible for land as parties to the suit.
 - e. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5TH DAY OF JUNE 2024

B M EBOSO

JUDGE

In the Presence of: -

Ms Wambui for the Plaintiff

Ms Nafula for the Defendants

Court Assistant: Hinga

