



**Sila v Munywoki & 2 others (Environment & Land Case
E045 of 2023) [2024] KEELC 5564 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E045 OF 2023
CA OCHIENG, J
JULY 29, 2024**

BETWEEN

DANIEL NDAKA SILA PLAINTIFF

AND

KENNEDY MUNYWOKI 1ST DEFENDANT

DOLLY NZISA KENNEDY 2ND DEFENDANT

ZENON ENTERPRISES LIMITED 3RD DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 18th October, 2023 where he seeks the following Orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit, the Honourable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents either by themselves, their agents, servants and/or personal representatives from selling, charging, alienating, trespassing onto, and/or in any other manner whatsoever interfering with or otherwise dealing with the property known as Machakos/Nguluni/4036.
 4. That the Officer Commanding Nguluni Police Post be and is hereby directed to ensure enforcement and compliance with Orders 2 and 3 herein.
 5. That pending the hearing and determination of this suit and in furtherance to the preservation of the suit property, the Chief Lands Registrar be and is hereby directed to register an



inhibition order against the suit property within the next thirty (30) days inhibiting any further other or further dealings with the property.

6. 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 Daniel Ndaka Sila where he confirms being the registered proprietor of LR No. Machakos/Nguluni/4036 hereinafter referred to as the 'suit land'. He deposes that from 16th February, 2021, he has enjoyed open and exclusive possession of the suit land. He claims in the month of October, the 1st and 2nd Defendants trespassed on his land and were in the process of selling it. Further, that the 3rd Defendant, under the instructions of the 1st and 2nd Defendants' have also trespassed on the suit land. He avers that the 1st and 2nd Defendants' are conniving to defraud him of the suit land irregularly and unprocedurally.
3. The 2nd Defendant opposed the instant Application by filing a Replying Affidavit sworn by Dolly Nzisa Kennedy where she confirms being the registered proprietor of land parcel number Machakos/Nguluni/4877. She contends that her property shares a boundary with properties belonging to the other parties in the suit including the Plaintiff's land. She denies trespassing on the suit land and contends that the Plaintiff is misleading the court that she was seen in the company of the 1st Defendant, yet they are divorced. She explains that in April, 2023 she visited the Land Registry in Machakos as her property's boundaries were unclear since the area did not match the acreage in the title deed. She is aware that the Land Registrar, Machakos wrote on various dates between April and June to all land owners sharing boundaries on his Notice of Intention to ascertain and fix boundaries for Parcel Nos. Machakos/Nguluni/4877, 4036, 4867, 4879, 4878, 3972 and 4035. She avers that on 1st September, 2023, the Land Registrar issued another notice to ascertain and fix boundaries to the parties, including to more land owners who had not been included in the earlier notice, informing all of them that the Land Registrar's office would visit the lands on 28th September, 2023 for the boundaries' exercise. Further, that all parties including the area Chief were served. She insists that on 28th September, 2023 all the parties including the Plaintiff's representative were present when the Surveyor came to the respective parcels of land. She reiterates that the Plaintiff has failed to divulge all the facts relating to the exercise that was conducted by the Land Registrar in Machakos to ascertain and fix the boundaries and which exercise has triggered the instant application. She claims that following the exercise by the Land Registrar and Surveyor on 26th October, 2023, she received information from her worker that the Plaintiff was attempting to uproot the beacons placed on her property by the Government Surveyor. She reiterates that the Plaintiff is attempting to mislead the court via these proceedings to change boundaries of his property, so as to encroach on her land.
4. The 3rd Defendant opposed the instant Application by filing a Replying Affidavit sworn by its director Joseph Mwangi Wahome who deposes that the 3rd Defendant is the proprietor of Machakos/Nguluni/4035 which was excised from LR No. Machakos/Nguluni/3971 and purchased by its sister company Pioneer Feeds Limited on 10th February, 2016. He avers that once the land had been purchased, they were informed by the vendor that the Plaintiff had fenced his adjacent property wrongly and encroached on their land. He confirms that the previous owner being Kennedy Munywoki had involved the Land Registrar and Director of Survey to advise and guide the disputing parties, as to the appropriate beacons for each parcel of land. Further, the Land Registrar in the presence of the Machakos County Surveyor and all the disputing parties were invited for a site visit to ascertain the actual boundaries. He states that there were several meetings held in 2022. He contends that the Plaintiff was represented by his brother and later a Survey's Report dated the 2nd October, 2022 was issued in which the County Surveyor confirmed that the Plaintiff had encroached on the 3rd Defendant's land and the beacons were moved pursuant to the aforementioned meeting, by the



County Surveyor, to reflect the actual true position. He reiterates that, despite all the legal formalities, the Plaintiff instructed unknown people to invade their land and uproot the beacons placed in the presence of the Registrar and Machakos County Surveyor.

5. The instant Application was canvassed by way of written submissions.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion Application including the respective affidavits, annexures and rivaling submissions, the only issue for determination is whether the Plaintiff is entitled to orders of temporary injunction restraining the Defendants from interfering with the suit land, pending the outcome of the suit.
7. In line with the principles established in the case of *Giella v Cassman Brown* (1973) EA 358 as well as the description of a *prima facie* case as stated in the case of *Mrao Ltd v First American Bank Limited* (2003) eKLR, I will proceed to decipher if the Plaintiff has established a *prima facie* case to warrant the orders of temporary injunction as sought.
8. The Plaintiff confirms he is the registered proprietor of the suit land. He claims that in the month of October, the 1st and 2nd Defendants trespassed on his land and were in the process of selling it to third parties. Further, that the 3rd Defendant, under the instructions of the 1st and 2nd Defendants have also trespassed on the suit land and are conniving to defraud him of the said land irregularly and unprocedurally.
9. The 2nd and 3rd Defendants opposed the instant Application and explained that they each own their respective parcels of land. They aver that there was a boundary dispute involving the suit land and other parcels of land. Further, that the Machakos County Surveyor and Land Registrar, resolved the dispute and placed beacons to correctly demarcate the ground. They contend that the Plaintiff is the one who has been attempting to invade their parcels of land and interfere with the boundary as demarcated.
10. Looking at the documents presented by all the parties, I note the 2nd and 3rd Defendants herein are registered proprietors of their respective parcels of land. I note that vide the report dated the 2nd October, 2023, the Land Registrar and County Surveyor indeed demarcated boundaries for the respective parcels of land. Further, the Plaintiff has not disputed that they proceeded to put beacons to demarcate the said boundaries.
11. It is trite that under Section 18 of the *Land Registration Act*, it is the Land Registrar mandated to deal with boundary disputes in the first instance, which he did. It is my considered view that the Plaintiff seemed to have been aggrieved by the determination of the boundary dispute hence this suit. Based on the facts before me, I find that the Plaintiff has indeed not established a *prima facie* to warrant the orders of injunction as sought.
12. Further, in relying on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, where the Court of Appeal held that when the Plaintiff fails to establish a *prima facie* case, the Court need not deal with the remaining two limbs on injunction, and I will not do so.
13. In the circumstance, I find the instant Notice of Motion application unmerited and will disallow it.
14. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 29TH DAY OF JULY, 2024

CHRISTINE OCHIENG



JUDGE

In the presence of:

Ms. Mino for Plaintiff

Wangui holding brief for Gitonga for 3rd Defendant

No appearance for 1st and 2nd Defendants

Court Assistant – Simon/Ashley

