



**Uku v Munywoki & 2 others (Land Case E013 of 2024)
[2024] KEELC 5785 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5785 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
LAND CASE E013 OF 2024
CA OCHIENG, J
JULY 29, 2024**

BETWEEN

GIDEON KILONZO UKU PLAINTIFF

AND

KENNEDY MUNYWOKI 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 28th February, 2024 where he seeks the following Orders:-
 - a. Spent
 - b. Spent
 - c. 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 LR No. Machakos/Nguluni/5210.
 - d. That the Office Commanding Police Station Karen Police Station be and is hereby directed to ensure enforcement and compliance with Orders 2 and 3 herein.
 - e. That pending the hearing and determination of this suit and in furtherance to the preservation of the suit property, the Lands Registrar Machakos be and is hereby directed to register



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

2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of GIDEON KILONZO where he confirms to be the registered proprietor of LR No. Machakos/ Nguluni/5210 hereinafter referred to as the 'suit land'. He states that together with the 1st Defendant, they are grandsons of UKU MUKIMA who was the registered proprietor of land LR No. Machakos/ Nguluni/3971. Further, that the said parcel of land was shared between the 1st Defendant and himself, with the elders placing the physical boundaries thereon. He confirms that, it is the 1st Defendant who undertook subdivision of their grandfather's land after which, each of them sold five (5) acres of their land to Professor Ndaka Sila, who then became owner of LR No. Machakos/ Nguluni/4036. He claims that the 1st Defendant caused an erroneous map to be registered and this culminated in boundary disputes between proprietors of LR Nos. Machakos/ Nguluni/4877, 4879, 4035, 521, 5210, 3974, 3973, 4867 and 4036, which dispute was referred to the Land Registrar, Machakos.
3. He contends that a Surveyor's report dated the 2nd October, 2023 provided that parcel LR Nos. 4036, 5211 and 5210 are aligned wrongly. Further, that the report allowed the 1st Defendant including the persons who purchased land from him, to encroach on the suit land. He insists that the Surveyor's report dated the 2nd October, 2023 was based on an erroneous map and since the Registry Index Map (RIM) contains such an error, the same ought to be rectified to conform with the position on the ground. He explains that he engaged a Surveyor who prepared an independent Surveyor's report dated the 26th February, 2024, which confirms that the map relied on to prepare the Surveyor's report dated the 2nd October, 2023 was erroneous, consequently reaching a wrong conclusion. He is apprehensive that if the Surveyor's report dated the 2nd October, 2023 is implemented, he stands to lose seven (7) acres of land.
4. The 1st Defendant opposed the instant Application by filing a Replying Affidavit where he deposes that he is not a proprietor of any land that is adjacent or neighbouring the suit land and has no interest on the same. He avers that the Surveyor's Report dated the 2nd October, 2023 does not affect land, where he is a proprietor. He insists that the inclusion of his name in the instant Application is baseless. Further, that the Supporting Affidavit does not raise any triable issues against him. He contends that, from the Surveyor's report, the issue in dispute herein is a boundary dispute between adjacent parcels of land and the same should only involve affected land owners.
5. The Application was canvassed by way of written submissions.

Analysis and Determination

6. Upon consideration of the instant Notice of Motion Application including the Supporting Affidavit, annexures and submissions, the only issue for determination is whether the Plaintiff is entitled to orders of interlocutory injunction restraining the Defendants from interfering with the suit land pending the outcome of the suit.
7. As to whether the Plaintiff has established a prima facie case with a probability of success at the trial, I will rely on the principles established in the case of *Giella Vs Cassman Brown & Company* (1973) EA 358 as well as the definition of a prima facie case as espoused in the case of *Mrao Ltd Vs First American Bank of Kenya & 2 Others* (2003) KLR 125.
8. The Plaintiff claims he is the proprietor of the suit land and produced a Certificate of Title to that effect. He avers that the 1st Defendant caused an erroneous map to be registered and this culminated in boundary disputes between proprietors of LR Nos. Machakos/ Nguluni/4877, 4879, 4035, 521,



5210, 3974, 3973, 4867 and 4036, which dispute was referred to the Land Registrar, Machakos. He avers that there is a Surveyor's report dated the 2nd October, 2023 which provided that parcel Nos. 4036, 5211 and 5210 are aligned wrongly. Further, that the report allows the 1st Defendant including the persons who purchased land from him, to encroach on the suit land. He insists that the Surveyor's report dated the 2nd October, 2023 was based on an erroneous map and since the Registry Index Map (RIM) contains such an error, the same ought to be rectified to conform with the position on the ground. He confirms engaging a Surveyor who prepared an independent Surveyor's report dated the 26th February, 2024, which confirms that the map relied on, to prepare the Surveyor's report dated the 2nd October, 2023 was erroneous, consequently reaching a wrong conclusion.

9. I have had a chance to peruse the various annexures herein, I note the Plaintiff is indeed the registered proprietor of the suit land while the 1st Defendant also owns his parcels of land. I further note that both the Plaintiff's and 1st Defendant's parcels of land emanated from LR No. Machakos/Nguluni/3971. Since the Plaintiff has confirmed that there was a boundary dispute involving proprietors of parcels of land emanating from Machakos/Nguluni/3971, while the 1st Defendant has also confirmed that the Land Registrar including the Government Surveyor prepared a report dated the 2nd October, 2023 in accordance with Section 18 of the *Land Registration Act*, I find that the said government officials acted within their mandate to deal with the boundary dispute and the Plaintiff was at liberty to file an Appeal against the said decision. In the foregoing, I find that the Plaintiff has not established a prima facie case to warrant the orders of interlocutory injunction as sought.
10. Further, in relying on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, where the Court of Appeal held that in instances where the Plaintiff fails to establish a prima facie case, the Court need not proceed to deal with the other limbs on injunction, and will decline to do so.
11. In the circumstance, I find the instant Notice of Motion Application unmerited and will disallow it.
12. Costs will be in the cause.

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

CHRISTINE OCHIENG

JUDGE

In the presence of:

Ms. Minoo for Plaintiff

Ms. Momanyi for 2nd and 3rd Defendants

No appearance for 1st Defendant

Court Assistant – Simon/Ashley

