



Matathia & another (Suing as the administrator of the Estate of the Late Francis Ngige Matathia) v Kibathi & another (Environment & Land Case E200 of 2023) [2025] KEELC 391 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E200 OF 2023
AA OMOLLO, J
JANUARY 30, 2025**

BETWEEN

**ELIZABETH NGIGE MATATHIA 1ST PLAINTIFF
ROBERT MATATHIA NGIGE 2ND PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE FRANCIS
NGIGE MATATHIA**

AND

**MAUREEN NJOKI KIBATHI 1ST DEFENDANT
MUNYOKI MUSYIMI KYERU 2ND DEFENDANT**

RULING

1. The Applicants filed a Notice of Motion dated 2nd June 2023 and amended on 27th October 2023 supported by an affidavit and further affidavit both sworn by Robert Ngige Matathia on 2nd June 2023 and 18th October 2023 respectively seeking for the following orders;
 - a. Spent
 - b. The Defendants be restrained from constructing any fence, structures and bringing things onto the land to obscure their activities pending the hearing of this application or until further orders or the disposal of the suit.
 - c. A temporary injunction do issue restraining the Defendants by themselves or through their agents, servants, employees or hired goons from wasting, damaging or alienating or wrongfully selling or disposing off the properties known as LR NO 14702/31 and LR NO 14702/32 situated along Garden Drive in Garden Estate Nairobi pending the hearing and determination of this application or until further orders. or the disposal of the suit.



- d. The court does order the detention, preservation or inspection of the properties known as LR NO 14702/31 and LR NO 14702/32 to evaluate the extent of damage to which any question may arise.
 - e. A mandatory injunction do issue against the Defendants to surrender the properties known as LR NO 14702/31 and LR NO 14702/32 and hand over vacant possession to the Plaintiff.
 - f. The officer commanding Kasarani Police Station to supervise the process of eviction to maintain law and order.
 - g. There be liberty to apply for further orders.
 - h. Costs of the application be provided for.
2. The motion was on the grounds that the properties' in issue were originally owned by the late Hiram Bere Kinuthia and the Late Francis Ngige Matathia then entangled in a partnership dispute in HCCC No.2912 of 1997. That by a court order dated 17th June 2009, the properties were transferred and vested in the legal representatives of the estate of Francis Ngige Matathia now represented by the Applicants.
 3. That the late Richard Kibathi sued both parties in HCCC 864 OF 2000 which case was dismissed on 12th October 2020 for want of prosecution. He avers that no one has been appointed to represent the estate of the late Richard Muchai Kibathi with authority to either commence, prosecute or defend any action thus the Respondent has no locus standi in this matter. Further, that the other estate delinked by the Court order on 16th March 2011 are no longer part of the dispute and continued existence of this suit denies the Administrators and beneficiaries rights acquired by virtue of inheritance laws to the other estate.
 4. The 2nd Applicant deposes that he had authority of his Co-administratrix Elizabeth Wanjiru Ngigi to swear the supporting affidavit stating that both were appointed as the administrator and administratrix of the estate pursuant to the grant of letters of administration issued in succession cause no 132 of 2003. That the properties then known as LR no 14702/21 A and B (Plot No I) situated in Garden Estate Nairobi were by a court order made in ELC NO 2912 of 1997 granted to the late Francis Ngige Matathia or his representatives and this order was registered against the mother title as entry No IR 46123/23.
 5. He deposed that the late Francis Ngige Matathia was substituted by Elizabeth Wanjiru Ngige un-procedurally without his involvement as a co-administrator. Consequently, he was never a party in Civil suit no 1306 of 2013 filed by Richard Muchai Kibathi vs Francis Ngigi Matathia and Hiram Bere Kinuthia. That during the pendency of the said suit Civil Suit no 1306 of 2013, the late Richard Muchai Kibathi on 27th March 2015 at about mid-night in the company of several people confronted him at his house in Gathiga. They forcefully grabbed his car keys and threatened him with death unless he signed transfer documents in his favor, an incident that he reported at Kasarani Police station vide occurrence book (OB) 1/28/3/2015.
 6. He stated that he believes the deceased on 8th April 2015 broke into the two parcels and put up an iron sheet fence and temporary structures. He asserted that on 27th March 2015, the deceased had filed an application for orders to prevent him from disposing, interfering with possession or in any way alienating the parcels known as LR NO 14702/3 1 and LR NO 14702/32 and which application was dismissed on 20th November 2015. Subsequently, that suit was also dismissed on 12th October 2020 for want of prosecution.



7. The Applicant contends that Maureen Njoki Kibathi who has no locus standi to defend or maintain any action on behalf of the estate of the late Richard Muchai Kibathi introduces matters that were indeed the subject matter of the dismissed suit emphasizing the doctrine of finality of a judgement. In addition, the applicants stated that the 2nd Defendant was brought onto the land as the caretaker to prevent them from gaining access but he (the 2nd Applicant) placed on the iron sheet a notice to read that the property was not for sale.
8. He continued that upon dismissal of the previous suit, they embarked on the exercise of having these parcels amalgamated and subdivided for the benefit of the beneficiaries of the estate. Hence, they authorized Earth scope Company Limited to do the work rendering an invoice of Kshs 1,510,000/= and for the purpose of determining the market value they have assigned Prime valuers to do the assignment at a cost of Kshs 240,000.
9. He avers that the illegal construction greatly diminishes the value of the said properties hence the necessity for an order to gain entry and inspection to ascertain the extent of the damage or, pollution done. He concluded that he is apprehensive the Defendants will use violence to prevent them from regaining the properties which action is likely to cause the estate irreparable damage if the orders sought now are not granted.

1st Defendant's replying affidavit

10. In opposition to the application, the 1st Defendant filed a relying affidavit sworn on 28th September 2023 by Maureen Njoki Kibathi. She characterized the application as frivolous, malicious, and an abuse of court processes aimed at harassing and intimidating the Defendants' family.
11. The 1st Respondent emphasized that the disputed parcels of land (LR Nos. 14702/31 and 14702/32) were lawfully purchased by their late father decades ago and rejects the Plaintiffs' claims as baseless and unsupported by evidence. She accuses the Plaintiffs of attempting to exploit the court system for personal gain and to perpetuate fraudulent claims against the Defendants' family rights.
12. She refutes the assertions by the Plaintiffs stating that their claims to be estate administrators of the late Francis Ngige Matathia is unverifiable on the face of their pleadings. Further, that her late father was never party to the suit alleged by the Plaintiff nor to the Consent Orders alluded thereto. In any event land parcels LR. Nos, 14702/31 and L4102/32, the subject of this present suit is not listed at all among those in the purported Court Order of 17th June 2009.
13. She also stated that there is no evidence adduced of police OB report and/or the respective outcome of any investigations as alleged by the Applicants. That her latefather's Application for Injunctive relief and the respective suit against interference by the 2nd Applicant and/or his agents with the said land parcels was dismissed on technicalities and not on any merits that would vest the Plaintiffs with any color of right over the suit properties.
14. She contended that Applicants have annexed respective Sale Agreements dated 11th June 1996 duly executed and attested to, in respect to the two [2] land parcels the subject of this suit confirming that their late father and one Hiram Bere Kinuthia indeed sold the said parcels of land to her late father. Ms Njoki stated that the 2nd Defendant has since passed on and urged the court to halt proceedings against him. Further, that the Applicants have no basis or justification to have incurred any costs or expenses out of their own mistaken and greedy misadventures over properties that are not theirs by law and facts.
15. That the 2nd Applicant and his hired agents trespassed and destroyed her family property on the subject parcels of land, were arrested and charged and the matter is active before a competent Court it is



therefore sub-judice. The 1st Respondent contended that the Applicants have not proven rights to the land parcels the subject of the suit and that the principles in the *Giella vs Cassman Brown* do not favor them in getting the reliefs sought.

Submissions

16. The 1st and 2nd Plaintiffs/Applicants filed undated submissions in support of their motion. I have not seen the Respondent's submissions on record. They outlined the background of the matter that the property in issue LR. No. 14702/31 and 14702/32 form part of the Estate then subject to litigation between the Late Francis Ngige Matathia and Hiram Bere in HCCC No. 2912 of 1997 that resulted in the properties then known as 14702/4 (Plot no. 27) being granted by a Court order dated 17th June 2009 to the legal representatives of the deceased i.e. Francis Ngige Matathia.
17. That upon the demise of the late Richard Kibathi, the two Defendants have continued in their application of vigilante justice, occupied the properties and unlawfully put up temporary mabati structures without any lawful authority and in defiance of the planning laws.
18. In support of their argument to be granted an order of mandatory injunction against the Defendants they cited the case of *Ngaita Mbire vs Wanje Mashe & 6 others*, 2017 eKLR, *Sheriff Abdi Hassan vs Nadhif Juma Adan* (2006) eKLR and ELC No. E02 of 2023 *Igainya Co. Ltd vs Johnstone Mukuse* (2024) where a mandatory injunction was granted.

Analysis

19. This is an application seeking both temporary and mandatory injunction orders against the Defendants with regard to properties known as LR NO 14702/31 and LR NO 14702/32. I will first discuss the threshold of temporary injunction vis a vis the raised facts and evidence in support thereof.
20. Order 40 Rule 1, of the Civil Procedure Rules 2010 provides;

“Cases in which temporary injunction may be granted [Order 40, rule 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.”
21. The case of *Giella Vs Cassman Brown & Co Ltd* (1973) E A 358 set the following conditions for the grant of a temporary injunction:

“First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of



damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

22. The Plaintiffs/Applicants have laid out their case on ownership of the properties in subject on account of a court order made in ELC No.2912 of 1997 which they state has been registered against the mother title as entry No. IR 46123/23. A question arises why the Applicants have not moved since 1997 the court that granted the said orders in executing their rights over the suit property. The Applicants also referred to a suit filed in 2015 which was dismissed in the year 2020 but they did not take any steps immediately to take possession thus showing inordinate delay in now seeking the injunctive reliefs against the actions that already in place.
23. In assessment of the material presented by the Plaintiffs/Applicants before this court, it is my view that there exists a long-standing dispute on proprietary rights of the suit parcels. From the facts pleaded, the Defendant is claiming ownership through her father who had claims purchaser’s interest. The Applicants refer to a suit which declared his father as the owner but also mentions another suit commenced against his father challenging that claim. Secondly, by virtue of the Applicants prayers in this application, it is the Defendants in possession. Since the ownership is disputed, it becomes one of the triable issues in this matter and thus demonstrates a prima facie case shown.
24. However, the nature of the activities that the Applicants want the Defendants to be restrained from temporarily undertaken required to come out in the affidavits for the orders to issue. The narrations given in the affidavit in support of the application do not demonstrate how the Defendants are causing damage to the property they are occupying. There was no mention of any ongoing construction works other than the applicant talking of a temporary structure already built neither is there any evidence of intention to sell stated. If the Defendants have been in possession since 2015 and they have not disposed of the suit parcels, I find no basis to grant (b), (c) and (d) of the application.
25. In Joseph Kaloki t/a Royal Family Assembly Vs Nancy Atieno Ouma [2020] eKLR the court of appeal reaffirmed its decision in Kenya Breweries Limited & another Vs Washington O. Okeyo [2002] eKLR and stated that,

“a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.”
26. The Court also reaffirmed its decision in Shariff Abdi Hassan Vs Nadhif Jama Adan [2006] eKLR where it stated that:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”
27. Premised on the foundation of the two cases cited on when a mandatory injunction can be granted, the Applicants have pleaded issues which makes their case not clear at all. For instance, the 2nd Applicant accuses the 1st Applicant in participating in Civil suit no 1306 of 2013 filed by the 1st Respondent father without his consent. The 2nd Applicant refers to signing transfer documents under duress and there is need to adduce evidence to confirm this. The Applicants also claim that the Defendants have no locus in this suit and yet they want orders to issue. Given the history narrated by the Applicants



regarding the previous cases involving the estate of the Applicants father over the suit properties, they are not entitled to orders of mandatory injunction.

28. A further analysis of the averment of the Applicants do not demonstrate that there are special circumstances that exist in this matter to warrant the grant of a mandatory injunction. I am not convinced that this case is so clear that it ought to be decided at once without undergoing a full hearing. The Plaintiffs and the 1st Defendant have put forth competing claims on the suit properties that require further interrogation. Thus, a mandatory injunction should not be issued to allow this interrogation.
29. In summary, I find the application has not put forth sufficient grounds to persuade me to grant any of the prayers sought. The same is without merit and is dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY, 2025.

A. OMOLLO

JUDGE

