



Kariuki & another v Richard & another (Environment & Land Case E015 of 2023) [2024] KEELC 5793 (KLR) (19 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5793 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E015 OF 2023**

BM EBOSO, J

JULY 19, 2024

BETWEEN

PAUL GATHURU KARIUKI 1ST PLAINTIFF

MBAGE NJUGUNA NG'ANG'A 2ND PLAINTIFF

AND

OMBUI RICHARD (LEGAL REPRESENTATIVE OF THE ESTATE OF TERESIA GESARE KEBWARO - DECEASED) 1ST DEFENDANT

REGISTRAR OF LANDS, THIKA 2ND DEFENDANT

RULING

1. The two plaintiffs [the applicants] initiated this suit through a plaint dated 31/7/2023. They sought the following verbatim reliefs against the defendants [the respondents]:
 - a. A declaration that the purported sale, transfer and registration of the plaintiffs' suit property known as Ruiru/Kiu Block 6/260 to the deceased is illegal, unlawful and therefore null and void ab initio.
 - b. A permanent injunction against the 1st defendant and/or his authorized, servants and/or agents from trespassing on, selling, disposing, wasting away, alienating and/or interfering in any manner whatsoever with the plaintiffs' occupation and possession of the suit property known as Ruiru/Kiu Block 6/260.
 - c. An order compelling the 2nd defendant to cancel the transfer registered in favour of the deceased over the property known as Ruiru/Kiu Block 6/260 and to rectify the register by entering and reflecting the plaintiffs as the registered owners.
 - d. Costs of this suit.



- e. Any other and/or further orders as this honourable court might deem fit and just to grant.
2. Together with the plaint, the two plaintiffs brought a notice of motion dated 1/8/2023, seeking interlocutory injunctive orders against the defendants. The said application is what falls for determination in this ruling.
 3. The application was supported by an affidavit sworn on 31/7/2023 by Paul Gathuru Kariuki. It was canvassed through written submissions dated 25/1/2024, filed by M/s Waruhiu K'Owade & Ng'ang'a Advocates. The gist of the applicants' case is that they are the registered owners of land parcel number Ruiru/Kiu Block 6/260 [hereinafter referred to as "the suit property"], which they have been in possession of since 1991 when they acquired it and received the Certificate of Lease dated 13/3/1991. The applicants contend that they learnt that the suit property was illegally and unlawfully registered in the name of Teresia Gesare Kebwaro [hereinafter referred to as "the deceased"] on 8/10/2001. It is the applicants' case that they have never executed any sale agreement nor transfer documents transferring their interest in the suit property to the deceased nor to any other person at any time. The applicants are apprehensive that the legal representatives and/or beneficiaries of the estate of the deceased will dispose of the suit property or deal with it in a manner that may jeopardize their rights over the suit property. Lastly, the applicants contend that this suit is likely to be rendered nugatory if the interlocutory reliefs are not granted.
 4. The 1st respondent opposes the application through his replying affidavit sworn on 26/9/2023 and written submissions dated 14/2/2024. It is the 1st respondent's case that the deceased was his sister-in-law, married to his late brother. The 1st respondent contends that the suit property was identified for purchase with the full participation of his late brother who indicated that the sellers had been confirmed as the owners. The 1st respondent further contends that the deceased purchased the suit property in 2001 vide a sale agreement drafted by M/s Kiboi & Company Advocates who subsequently lodged the transfer documents for registration at Thika Lands Registry. The 1st respondent states that in 2003, about 2 years after his brother's death, officers from the Criminal Investigations Directorate [the CID] visited their rural home seeking to arrest the deceased over the suit property but they were not successful since she was away. He adds that the CID did their work and upon confirming that everything was above board, they closed the Police File and returned the original title to the deceased. He adds that the C.I.D Officers also confirmed that the original title surrendered to the Lands Registry by the previous vendors was not a forgery. The 1st respondent contends that the deceased is the legitimate owner of the suit property and that the applicants want to take advantage of the fact that his late brother and the deceased who were actively involved in the transaction are now dead.
 5. The court has considered the application, the response to the application, and the parties' respective submissions. The single question to be answered in this ruling is whether the application meets the criteria for grant of interlocutory injunctive reliefs.
 6. The relevant criteria was outlined in the case of *Giella v Cassman Brown Co Ltd* (1973)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 in the event that the interlocutory relief is not granted, he would stand to suffer injury for which indemnification through an award of damages may not be adequate. Thirdly, in the event that the court has doubts on both or either of the above, the application should be disposed based on the balance of convenience. Lastly, at the stage of disposing the plea for an interlocutory injunctive relief, the court does not make conclusive or definitive pronouncements on the key issues in the dispute. Conclusive and definitive findings are reserved for determination after trial.



7. The applicants have come to court waving what they term as the original title relating to the suit property. They are also waving a certified copy of the land register relating to the suit property. The title and the land register indicate that the applicants were registered as proprietors of the suit property on 13/3/1991. On the same day, they were issued with a title relating to the suit property. The land register shows that on 8/10/2001, the applicants transferred the suit property to Teresia Gesare Kebwaro, who is now said to be deceased. Her estate is the 1st defendant in this suit.
8. The applicants have challenged the registration of the suit property in the name of the deceased. They contend that the registration was procured fraudulently, adding that they neither sold nor transferred the suit property to the deceased.
9. The estate of the deceased admits that the applicants were the registered proprietors of the suit property. It is, however, the case of the estate that the applicants sold and transferred the suit property to the deceased, adding that the sale and transfer was handled by M/s Kiboi & Co Advocates. The estate further contends that the impugned transfer has been the subject of investigations by the Directorate of Criminal Investigations [the CID], adding that the CID established that the registration of the suit property in the name of the deceased was without any element of fraud.
10. The two respondents have, however, not placed before the Court the instrument of transfer which conveyed the suit property into the name of the deceased. They have, similarly, not exhibited the sale agreement that culminated in the transfer. Similarly, no evidence of payment of purchase price has been placed before the Court at this interlocutory stage. Put differently, the replying affidavit of Mr Richard Ombui, sworn on 26/9/2023, is bare. None of the relevant conveyance documents has been exhibited before the Court. Clearly, whereas at this interlocutory stage, the applicants have demonstrated that as at 8/10/2001, they had an interest in the suit property, the 1st defendant has not demonstrated the circumstances under which the said interest was transferred to the deceased.
11. There is, however, one unclear aspect of this case. The unclear aspect relates to the exact date when the cause of action accrued and speaks to the question of limitation. Given that the court has not been moved and parties have not addressed the court on the issue, I will not make any further pronouncement on the issue.
12. What is clear at this point is that until 8/10/2001, the suit property belonged to the plaintiff. Whether or not they sold and transferred the land to the deceased is a question that will be determined after trial.
13. The dispute in the suit relates to land. Land remains an emotive and sentimental object. Secondly, where serious allegations of fraud in the registration of a transfer have been made and have not been satisfactorily answered at the interlocutory stage, the safer thing to do is to preserve the suit property and the land register as opposed to the option of solely focusing on the adequacy of damages. Thirdly, Teresia Gesare Kibwaro is said to have died. It is not clear whether her estate will have other assets to enable it pay damages in the event that the suit property is disposed during the pendency of this suit.
14. For the above reasons, the Court takes the view that this application is one to be determined based on the balance of convenience. The balance of convenience favours preservation of the land register as it currently exists. The balance of convenience also favours preserving the existing status quo in terms of the physical land.
15. In the end, the application dated 1/8/2023 is disposed in the following terms:
 - a. Pending the hearing and determination of this suit, no dealings shall be registered in the land register relating to Ruiru/Kiu Block 6/260.



- b. Pending the hearing and determination of this suit, no further developments shall be undertaken on Ruiru/Kiu Block 6/260.

Unless extended by the court, the above interlocutory orders shall lapse at the expiry of 12 months from today.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 19TH DAY OF JULY 2024

B M EBOSO

JUDGE

Court Assistant: Elvis Hinga

