



**Mwangi v Kali (Environment & Land Case E252 of 2024)
[2024] KEELC 6669 (KLR) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 6669 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E252 OF 2024
MD MWANGI, J
AUGUST 6, 2024**

BETWEEN

LUCY NYOKABI MWANGI PLAINTIFF

AND

LEONARD KALI DEFENDANT

*(In respect to the notice of motion dated 20th June,
2024 and the Notice of Motion dated 22.07.2024)*

RULING

Background

1. The Plaintiff in this case filed her suit vide the plaint dated 20th June, 2024. The Plaintiff accuses the Defendant who is her neighbor, of encroaching into her property and parking motor vehicles in a manner that completely blocks the entry way to her property thereby denying her free access and enjoyment of her property.
2. The Plaintiff avers that the Defendant's actions are not only malicious but inhuman and have caused her and her children immense distress and inconvenience. She asserts that the Defendant has his own designated parking area.
3. The Plaintiff further states that she was granted approval to carry out works on her driveway to avoid inconveniences by the Defendant. However, when she commenced the works and was almost done, the Defendant uprooted and damaged the metallic posts she had erected to prevent blockage of the entrance to her property.
4. The Plaintiff in her plaint prays for a permanent injunction restraining the Defendant from interfering with her use and enjoyment of her property amongst other orders.



5. Alongside the plaint, the Plaintiff filed a Notice of Motion dated 20th June, 2024 under certificate of urgency seeking an order of temporary injunction to restrain the Defendant/Respondent from encroaching, blocking the driveway, entryway or interfering in any way whatsoever with her peaceful and quiet possession of the suit property pending hearing and determination of the suit. The Plaintiff further sought an order that she be allowed to continue with the works at her driveway as authorized by the Director Planning Compliance and Enforcement of the Nairobi City County Government.
6. The Defendant responded to the Plaintiff's application vide a Replying Affidavit sworn on 9th July, 2024 and likewise filed an application of his own dated 9th July, 2024 seeking to restrain the Plaintiff from erecting any further or other structures, heaping construction materials on the common road frontage/reserve or in any manner whatsoever interfering with the common road/footage. The Defendant further prayed for an order that the Plaintiff removes the metallic posts and curb stones erected on the common road frontage/reserve and the heaps of construction materials placed on the common road frontage/reserve in front of the Defendant's property.

Court's Directions

7. The Court directed that both applications be heard contemporaneously and by way of oral submissions. The proceedings of the day of oral submissions form part of the record of this Court.

Issues for Determination

8. The sole issue for determination is whether it is appropriate to issue any interim orders in this case at this stage of the proceedings.

Determination

9. From the contradictory affidavit evidence presented by the parties, the Court is unable to establish the true and actual position on the ground. Each party has in addition to the affidavit evidence also presented a surveyor's report; but the reports are not in agreement.
10. The Court does not find it appropriate with the scanty information at its disposal presently to issue any interim orders to either party at this point in time.
11. Consequently, and in order to guide the Court appropriately, the Court directs the Nairobi County Surveyor to visit the Plaintiff's and the Defendant's properties in the company of the parties or their representatives and establish the true position in regard to the dispute between them and to file a comprehensive report before this Court in the next 45 days from the date of this ruling.
12. The Deputy Registrar of this Court shall facilitate the service of this order together with the pleadings filed by the parties upon the Nairobi County Surveyor forthwith for purposes of the site visit and preparation of the comprehensive report.
13. The matter shall be mentioned before the Deputy Registrar in the next 45 days to confirm progress.

It so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF AUGUST 2024

M.D. MWANGI

JUDGE

In the virtual presence of:-



Mr.Baragu for the Plaintiff

Ms. Maina holding brief for Mr. Njuru for the Defendant

Court Assistant: Yvette

M.D. MWANGI

JUDGE

