



**Njiri v Kisaingu; Muindi & 2 others (Interested Parties) (Environment & Land Case E60 of 2023) [2024] KEELC 6405 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6405 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E60 OF 2023  
CA OCHIENG, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**GABRIEL MUIGAI NJIRI ..... PLAINTIFF**

**AND**

**MARY MUNYIVA KISAINGU ..... DEFENDANT**

**AND**

**EMA NZISA MUINDI ..... INTERESTED PARTY**

**FRANCIS MAWEU MUINDI ..... INTERESTED PARTY**

**ANGELINA NGONYO MUTISYA ..... INTERESTED PARTY**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 23<sup>rd</sup> November, 2023 brought pursuant to Sections 1A, 1B and 3A of the [Civil Procedure Act](#) including Order 40 and Order 51 Rule 1 of the [Civil Procedure Rules](#). The Plaintiff seeks the following Orders:-
  1. Spent.
  2. Spent.
  3. That this Honourable Court be pleased to issue a temporary injunction restraining the Respondent by herself or through her agents, servants, employees and/or persons claiming under her or on her behalf from entering upon, trespassing, excavating, and/or interfering in any way with the Applicant's quiet possession of the property known as Donyo Sabuk/ Komarock Block1/104506 pending the hearing and determination of the suit herein.
  4. That the Honourable Court be pleased to grant any other or further relief deemed apt in the circumstances of this case.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Gabriel Muigai Njiriwhere he deposes that he is the registered proprietor of land parcel number Donyo Sabuk/ Komarock Block1/104506, hereinafter referred to as the 'suit land'. He claims to have purchased the suit land vide a Sale Agreement dated the 11<sup>th</sup> March, 2022. Further, that upon completion of payment of the purchase price, the property was subdivided as agreed, a transfer was signed and registered, after which he immediately took possession. He explains that prior to his ownership, the property was owned by Ema Nzisa Muindi and Francis Maweu Muindi as administrators and trustees of the beneficiaries of the Estate of the late John Muindi Muvu. He avers that prior to entering into the aforementioned Sale Agreement, the beneficiaries and administrators of the said Estate, granted him consent to transfer the property to himself. He contends that upon being satisfied he was dealing with the right owners, a Mutation, Transfer form and Land Control Board consent were prepared by the sellers. He states that on or between 30<sup>th</sup> October, 2023 to 6<sup>th</sup> November, 2023, he noticed interference with his property wherein persons unknown to him, entered upon the suit land and commenced dumping building materials thereon. Further, he reported the matter to KBC Police Station in Tala. He reaffirms that upon enquiry by his caretaker, they discovered that it was the Defendant interfering with the suit land. Further, that since he knew the Defendant operates a resort on the property adjacent to the suit land, he obtained her cell number which is displayed thereon. He reiterates that despite sending the demand, the Defendant continues to send goons to the suit land, which is his only source of livelihood hence rendering him destitute, thereby occasioning him irreparable harm.
3. The Defendant opposed the instant Application by filing a Replying Affidavit sworn by Mary Munyiva Kisainguwhere she deposes that the said Application is fatally defective since there is no known cause of action against her. She claims the Plaintiff's title to the suit land is fraudulently obtained, apparently excised from Donyo Sabuk/Komarock1/18120. He explains that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are Administrators of the Estate of John Muindi Muvu (deceased), the registered owner of Plot No. Donyo Sabuk/ Komarock Block 1/8118 and Plot No. Donyo Sabuk/ Komarock Block 1/18120 respectively; whilst the 3<sup>rd</sup> Interested Party is an adult of sound mind. She contends that the Interested Party sold to her 1.5 acres which was a portion of Donyo Sabuk/ Komarock Block 1/8118 and one (1) acre of plot no. Donyo Sabuk/Komarock Block 1/18120 vide Sale Agreements dated the 1<sup>st</sup> March, 2023 and 15<sup>th</sup> March, 2023 respectively. She reiterates that she is the exclusive owner of 1.5 acres portion of plot number Donyo Sabuk/Komarock Block 1/8118, which were to be transferred to her by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties. Further, that the said 1.5 acres abuts a portion that she purchased from the 3<sup>rd</sup> Interested Party's plot number Donyo Sabuk/Komarock Block 1/18120 and was transferred to her by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties. She states that it was agreed that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties as Administrators of the Estate of the Deceased would effect transfer to her, which they have not done todate. Further, that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties' proceeded to sell the same land to the Plaintiff.
4. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion Application including the respective affidavits, annexures and rivalling submissions, the only issue for determination is whether the Plaintiff has established a prima facie to warrant the orders of interlocutory injunction, pending the outcome of this suit.
6. The Plaintiff in his submissions reiterated his averments as per the Supporting Affidavit, insisted that he was the registered proprietor of the suit land and had hence established a prima facie case as against



the Defendant. To buttress his averments, he relied on the following decisions; *Giella v Cassman Brown & Company Ltd* [1973] EA 358 and *Mrao Ltd v First American Bank Ltd* [2003] KLR 125.

7. The Defendant in her submissions relied on the averments made in her Replying Affidavit, insisted that it is the Interested Parties who sold the suit land twice and argued that the veracity of the Plaintiff's title cannot be dealt with at this interlocutory stage. To support her arguments, she relied on the following decisions: *Giella v Cassman Brown & Company Ltd* [1973] EA 358 and *Mrao Ltd v First American Bank Ltd* [2003] KLR 125.
8. In line with the principles on injunctions as set out in the case of *Giella v Cassman Brown & Company Ltd* [1973] EA 358 including the definition of a prima facie case as espoused in the decision of *Mrao Ltd v First American Bank Ltd* [2003] KLR 125, I will proceed to decipher whether the Plaintiff has established a prima facie case as against the Defendant to warrant the orders of temporary injunction as sought.
9. The Plaintiff claims to be the owner of the suit land which he purchased vide a Sale Agreement dated the 11<sup>th</sup> March, 2022, after which he was issued with a Certificate of Title dated the 3<sup>rd</sup> July, 2023. He argues that his Sale Agreement preceded the Defendant's Sale Agreement with the Interested Parties. The Plaintiff insists that it is the Defendant that has encroached on his land. The Defendant on the other hand contends that she purchased the suit land from the Interested Parties' and has annexed her Sale Agreement to that effect. Further, that it is the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties who were supposed to transfer the suit land to her, but have not done so to date.
10. Looking at the documents presented by the respective parties herein, I note both the Plaintiff and Defendant each entered into Sale Agreements with the Interested Parties to purchase the suit land. It is worth noting that the Plaintiff proceeded to process his Certificate of Title after the Defendant had also entered into a Sale Agreement over the suit land, with the Interested Parties. The Plaintiff claimed that prior to entering into the Sale Agreement with the vendors, the beneficiaries and administrators of the said Estate, granted him consent to transfer the property to himself. Further, that the Mutation, Transfer Form and Land Control Board consent were prepared by the sellers. The Plaintiff has further claimed that upon completion of payment of the purchase price, the property was subdivided as agreed, a transfer was signed and registered, after which he immediately took possession. However, from the acknowledgement of payment dated the 22<sup>nd</sup> July, 2023 which he produced as an annexure, there is no indication of the parcel of land being purchased and it is signed after the Certificate of Title to the suit land had already been issued to him, on 3<sup>rd</sup> July, 2023.
11. Which brings me to the question on why the Vendors would prepare documents in the Plaintiff's favour yet they had entered into a fresh Sale Agreement dated the 15<sup>th</sup> March, 2023 with the Defendant, allowed her to take possession as per Clause 8 of the said Agreement, before the Plaintiff's title was processed on 3<sup>rd</sup> July, 2023. To my mind, these are questions that cannot be dealt with at this interlocutory stage but can only be determined once the Interested Parties' file their respective defences and the suit is set down for hearing.
12. It is my considered view that the Interested Parties were the authors of the dispute herein and they need to file a response to the Plaintiff's claim to explain why they sold the suit land twice.
13. Be that as it may, insofar as the Plaintiff is the registered proprietor of the suit land and obtained his title before the Defendant, who had also entered into an agreement with the vendors that allowed her to take possession. Further, even if he has established a prima facie case, at this juncture, I opine that granting injunctive orders would not suffice but it would be pertinent if parties maintained the obtaining status quo before the Court makes a determination on the rightful owner of the suit land.



14. In the circumstance, I find the Notice of Motion Application dated the 23<sup>rd</sup> November, 2023 merited but will not grant the Orders as sought and will proceed to make the following Orders:-

1. Obtaining status quo be maintained where the party on the suit land should remain therein but not develop nor transfer it, pending the hearing and determination of this suit.
2. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Oloo Isaac for Defendant

No appearance for Plaintiff

Court Assistant – Simon/Ashley

