



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Meuldijk v Muriithi (Land Case E270 of 2024)  
[2024] KEELC 6695 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6695 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E270 OF 2024  
MD MWANGI, J  
SEPTEMBER 24, 2024**

**BETWEEN**

**DR RYETS CONNIE MEULDIJK ..... PLAINTIFF**

**AND**

**WILFRED KINYUA MURIITHI ..... DEFENDANT**

**RULING**

**Background**

1. The Plaintiff vide her Notice of Motion application dated 3<sup>rd</sup> July, 2024 prays for a temporary injunction pending hearing and determination of the main suit, to restrain the Defendant by himself, employees and or agents from entering into, trespassing or in any other way interfering with the property known as L.R No. 1160/265 (originally known as L.R No. 1160/138/2), (hereinafter referred to as ‘the suit property’). She also prays that the OCS Karen Police Station be ordered to ensure compliance with the order.
2. The Plaintiff is a joint owner of the suit property with her deceased ex-husband one Bernhard Martens. They acquired the suit property in 1977 and the same was duly registered in their respective names as joint tenants. Upon the demise of Bernhard Martens, the suit property was registered in the name of the Plaintiff. She has exhibited the title to the suit property as one of the annexures to her supporting affidavit.
3. The Plaintiff alleges that sometimes in June 2024, the Defendant attempted to forcibly enter into the suit property purporting to be the owner of it on the basis of a supposed title transferred to him by the estate of Cristiana Merina Vandana on 23<sup>rd</sup> May, 2022.
4. The Plaintiff avers that the Defendant’s supposed title is irregular, fraudulent and unlawful. She asserts that she is and has always been the lawful and legitimate owner of the suit property.



5. The Plaintiff's application is further supported by the annexed affidavit sworn on 2<sup>nd</sup> July, 2024.
6. The Defendant was duly served with the application and in spite of entering appearance and filing a notice of appointment of Advocate did not respond to the application. The assertions by the Plaintiff in her application are therefore uncontroverted.

### **Determination**

7. The Plaintiff's application is brought under the provisions of Order 40 rule 1, 2 and 3 of the Civil Procedure Rules. The order sought is an interlocutory order, which according to the definition by Cotton, L.J in the case of *Gilbert v Edean* (1878) 9 Ch. 259, does not decide the rights of the parties. It is only meant to keep things in status quo until the rights can be decided after a full hearing of the matter.
8. In determining an interlocutory application, the court is therefore not called upon to resolve the issues in dispute with finality. As expressed in the case of *Giella v Cassman Brown & Company Ltd* (1973) E.A 358, all that is expected of the court is to establish whether the applicant has demonstrated a prima facie case with a probability of success and that if the injunction is not granted, the applicant is likely to suffer irreparable loss that cannot be compensated by an award of damages; in other words, the court needs to be satisfied that the applicant's case is neither frivolous nor vexatious.
9. Having considered the Plaintiff's application in its entirety, I am persuaded that it meets the threshold for the grant of orders of a temporary injunction. The Plaintiff has demonstrated a prima facie case with a probability of success and that she is likely to suffer irreparable loss unless the order of temporary injunction is granted.
10. I therefore allow the Plaintiff's application with costs against the Defendant and issue an order of temporary injunction restraining the Defendant by himself, his agents and or employees or any other person claiming under him from entering upon, trespassing or in any other way interfering with the property known as L.R No. 1160/265 (originally L.R No. 1160/38/2) pending hearing and determination of this suit.
11. The OCS, Karen Police station is directed to ensure compliance with this order.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Ms. Wangila h/b for Mr. Kuyo for the Plaintiff/Applicant

N/A for the Defendant/Respondent

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

