



Mbugua & 3 others v Ministry of Lands and Physical Planning & another (Environment & Land Case E079 of 2024) [2025] KEELC 608 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEELC 608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E079 OF 2024
A OMBWAYO, J
FEBRUARY 14, 2025**

BETWEEN

FRESHIA WANJIKU MBUGUA 1ST APPLICANT

RUTH WAITHERA THUO & 2 OTHERS & 2 OTHERS & 2

OTHERS 2ND APPLICANT

AND

MINISTRY OF LANDS AND PHYSICAL PLANNING 1ST RESPONDENT

ISAAC GITHUA MBUGUA 2ND RESPONDENT

RULING

Brief Facts

1. The Applicants filed the instant application dated 20th November, 2024 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the main suit a temporary injunction do issue to restrain the 2nd Respondent, his assigns and/or agents from trespassing onto, advertising for sale, selling, transferring or disposing off the suit property.
 4. Spent.
 5. Spent.
 6. That pending the hearing and determination of this suit the status quo of the suit property be maintained.
 7. That cost of this application be provided for.



2. The Application was based on grounds set out and supported by the Affidavit of Ruth Waithera Thuo the 2nd Applicant herein sworn on 20th November, 2024. She stated that their deceased mother had gifted them the suit property Bahati/Kabatini Block 1/10025 and that she had instructed the firm of Wachira & Mbuthia Advocates to effect transfer of the same. That the process was finalized and they were issued with the title deed on 1st April, 2010 with all the Applicants listed as joint proprietors. She stated that the 2nd Respondent requested for the original title deed after which we discovered that the suit property had been transferred back to their deceased mother without their knowledge. That they made a request to the 1st Respondent to place an inhibition on the suit land in vain. She further stated that they have reason to believe the 2nd Respondent connived with the 1st Respondent to have the suit property transferred to their late mother and be subject to succession wherein the 2nd Respondent will be a beneficiary. She stated that if the orders sought are not granted, they stand to suffer loss and damage that cannot be compensated by way of damages. Response
3. The 2nd Respondent filed a replying affidavit sworn on 16th December, 2024 where he averred that the Applicants are his sisters and that he was the original owner of Bahati/Kabatini Block 1/2233. That he caused subdivision of the said property into 6 plots including the suit land herein and had the same transferred to his late mother on 26th March, 2007. He averred that the suit land was subject to succession proceedings since it was still in their mother's name. He averred that the alleged transfer of the suit land from their mother's name to that of the Applicants was false and the said title in their names were not genuine. That it was agreed upon himself and the Applicants how the land shall be subdivided and that the Applicants are attempting to take their mother's land by way of deceit. He added that there were no records of the alleged transfer of the suit land by their late mother. He urged the court to dismiss the application.
4. The 2nd Applicant filed a further affidavit sworn on 17th January, 2024 where she stated that the 2nd Respondent was holding Bahati/Kabatini Block 1/2233 as a trustee for their late father Mbugua Githua. That upon discovery by their father that the 2nd Respondent had fraudulently registered the said property in his name as opposed to him, he directed the 2nd Respondent to subdivide the same into 6 subdivisions. That the said subdivisions were gifted to his dependants with the suit land Bahati/Kabatini Block 1/10025 given to his late wife Hannah Wambui Mbugua. She stated that their mother then gifted the Applicants the suit property and that the same should not be subject of succession as alleged by the 2nd Respondent. She denied the 2nd Respondent's allegation of the forged title and urged the court to place an inhibition so as to ascertain the true proprietors of the land.

Submissions

5. Counsel for the Plaintiffs/Applicants filed his submissions 17th January, 2025 where he identified three issues for determination. The first issue was whether 2nd Respondent was the owner of Bahati/Kabatini/Block 2233 from which the suit property was hived from. While submitting in the negative, he argued that the 2nd Respondent illegally acquired the said property since the same belonged to his father Mbugua Githua. He relied on the case of *Gaciku Kangari & 2 Others V Attorney General & Another; Fredrick Lawrence Munyua Otieno & Another (interested party)* [2019] eKLR.
6. The second issue was whether the Applicants fraudulently acquire the suit property from their mother Hannah Wambui Mbugua. Counsel submits in the negative and argues that on 1st April, 2010, the District Land Registrar issued them with the title deed. She relied on Section 26 of the [Land Registration Act](#).
7. The third issue for determination was whether the application lacks merit for a restriction to be placed over the suit property. He relied on the case of *Hashi Energy Ltd previously t/a Hashi Empex Ltd*



V County Government of Kisumu (Environment & Land Case E15 of 2020) [2021] KEELC 4418 (KLR) on the requirements for grant of temporary injunction as found held in the case of Giella V Cassman Brown [1973] EA 358. He submits that the fact that the 2nd Respondent subdivided Bahati/Kabatini Block 1/2233 then transferred to his siblings and mother without value consideration was a prima facie case with a possibility of success. He submits that they stood to suffer irreparable harm as the suit property was at risk of being intermeddled with under succession. Counsel cited the case of Pius Kipchirchir Kogo V Frank Kimeli Tenai [2018] eKLR. He also submits that there was no harm that will be occasioned against the 2nd Respondent if a restriction was placed on the suit land since he does not own the property.

8. Counsel for the 2nd Respondent filed his submissions dated 28th January, 2025 where he relied on the case of Giella V Cassman Brown [1973] EA 358 and submits that on the first limb, the Applicants failed to demonstrate that they have a prima facie case with a probability of success. He submits that the parties herein are siblings and that the receipt produced did not stipulate what the transfer fees were for nor did it indicate the parcel of land. He submits that the green card as of 21st November, 2024 confirmed that the suit land belonged to the late Hannah Wambui Mbugua. He further submits that there was no evidence from either party that there was transfer of the suit property by Hannah to the Plaintiffs.
9. On the second limb, he relied on the case of Nguruman Ltd V Jan Bonde Nielsen [*CA No. 77 of 2012*](#) and submits that there is no evidence that the 2nd Defendant intends to sell the property. He added that the Applicants allegations are speculative and thus there is no injury that will be suffered if the orders prayed for are not granted.
10. On the issue of balance of convenience, counsel submits that the same favours the Respondents since the documents produced confirm that the suit land was still in the name of Hannah Wambui. He urged the court to dismiss the application with costs.

Analysis and Determination

11. This court has considered the application and supporting affidavit and is of the view that the main issue for determination is whether the Applicants are entitled to an order of temporary injunction. The principles upon which the court should grant an injunction were set out in the case of Giella V Cassman Brown & Company Ltd 1973 EA 358 as follows:

“First, the applicant must show that he has 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 damages.

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

12. In the case of Mrao V First American Bank of Kenya Limited (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

13. The Applicants contend that the 2nd Respondent intends to proceed with succession of the suit property yet the same had been gifted to the Applicants by their deceased mother Hannah Wambui. The 2nd Respondent on the other hand contends that the Applicants illegally acquired the suit



property. This court has perused the court record and it is a fact that there is a copy of title of the suit land registered in the joint names of the Applicants. There is also a copy of the green card showing that the suit land is registered in the name of Hannah Wambui Mbugua.

14. It is this court's view that this being an issue of contested ownership of the suit property, the same can only be determined after the case has been heard on merit. In view of the same, the Applicants have therefore not demonstrated that they have a prima facie case with a probability of success. The Applicants contend that the 2nd Respondent intends to commence succession proceedings against the suit property yet the same was transferred to them by their late mother as a gift. They further contend that the 2nd Respondent held the original land Bahati/Kabatini Block 1/2233 as a trustee for their father Mbugua Githua which its subdivisions were gifted to them by their father. The Applicants also contend that the 2nd Respondent was not the initial owner of Bahati/Kabatini Block 1/2233 as provided in the green card. It is this court's view that the contentions by both parties go to the root of ownership which is yet to be determined. In addition, there is no evidence that succession has commenced. I therefore find that the Applicants have failed to demonstrate that they will suffer irreparable injury that cannot be compensated by damages if an injunction is not granted.
15. Having considered the Applicants application it is clear that the same goes into challenging the ownership of the suit property with each party giving their version of how they came to acquire the suit property.
16. In view of the above, I find and hold that the balance of convenience tilts in favour of maintaining the status quo pending the hearing and determination of the main suit. The upshot of the foregoing is that the Applicants have failed to meet the threshold for grant of a temporary injunction. Each party shall bear the costs of the application. Status Quo to be maintained. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-02-14 13:22:03

