



REPUBLIC OF KENYA



**Maina v Chege & 5 others (Environment & Land Case E004 of 2024)
[2024] KEELC 7268 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7268 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E004 OF 2024
MN GICHERU, J
OCTOBER 29, 2024**

BETWEEN

FIDES WANJIKU MAINA PLAINTIFF

AND

ALICE WANJIRU CHEGE 1ST DEFENDANT

CHIEF LANDS REGISTRAR 2ND DEFENDANT

COUNTY GOVERNMENT OF KAJIADO 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

DIRECTOR OF SURVEYS 6TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 30/1/2024. The motion which is brought under Order 40 rule 1, Order 51 rule 1 of the [Civil Procedure Rules](#), Sections 1A, 1B, 3A and 63 (e) of the [Civil Procedure Act](#) and other provisions of law seeks the following orders pending the hearing and determination of this suit.
 - a. Restraining the 1st and 4th defendants from issuing any letter of allotment, lease or change of ownership in respect of LR no 14545 (IR no 470) , suit land, to any other person except the plaintiff herein.
 - b. The 1st defendant to provide the names of the tenants and deliver full and proper accounts in respect of the suit land.
 - c. Restraining the 1st defendant and anybody claiming under her from advertising, offering for sale, leasing, selling by public auction, private treaty, entering into, accessing, alienating,



transferring, undertaking any further development, construction and making improvements on the buildings or in any other manner dealing with the suit land.

- d. Restraining the 1st defendant or anybody claiming through her from collecting rent from the houses on the suit land.
 - e. Restraining the 1st defendant any anybody claiming through her from interfering with the plaintiff's right to free and unhindered use of the suit land.
2. The motion is based on 22 grounds and it supported by an affidavit sworn by the applicant dated 30/1/2024 which has 11 annexures. In a nutshell, the plaintiff is saying that the 1st defendant has built on the suit land which belongs to the plaintiff. The land which belongs to the 1st defendant has been developed by someone else.
 3. Though the 1st defendant was expected to file a replying affidavit, I have not seen any on record. It is in the written submissions dated 20/5/2024 and filed by her counsel that I have seen that she insists that the land that she has developed belongs to her and not the applicant. I have not seen any written submissions by the plaintiff's counsel.
 4. I have carefully considered the motion including the grounds, the affidavit, the annexures and the written submissions by learned counsel for the 1st defendant.
 5. Since the applicant is seeking for injunctive orders, she must meet the threshold in the case of *Giella v Cassman Brown* (1973) EA 358. Simply put, she must establish a prima facie case with a probability of success. Secondly, she must prove that she stands to suffer irreparable loss which cannot be adequately compensated by an award of damages. If the court is not sure of the above two, it should look at the balance of convenience. Applying the above test to the facts of this case, I find that it is too early to establish if the plaintiff has established a prima facie case with a probability of success because as of now, it is disputed whether the land developed by the 1st defendant belongs to the plaintiff. It is only after hearing the case that we shall know who owns the disputed ground.
 6. Secondly, the plaintiff is not saying that she put up the structures that we have on the land. Yet she wants the 1st defendant restrained from collecting rent for houses that she built. Even if she may have built on the wrong parcel of land, before we establish ownership of the ground, it is only fair that the one who built collects rent for the time being. If it is eventually proved that the 1st defendant developed the wrong parcel, an order for damages will be made. The plaintiff's loss can be quantified. This means that the second prerequisite has not been met either.
 7. Finally, I find that the balance of convenience tilts in favour of the 1st defendant who is already in occupation. She should remain on the land until the dispute is finally resolved.

For the above stated reasons, I find no merit in the motion dated 30/1/2024 and I dismiss it. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

