



REPUBLIC OF KENYA



**K'angira v Ndiegu & another (Land Case E017 of 2024)
[2024] KEELC 13760 (KLR) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 13760 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
LAND CASE E017 OF 2024
GMA ONGONDO, J
OCTOBER 28, 2024**

BETWEEN

PAUL WERE K'ANGIRA PLAINTIFF

AND

BERIS MBONE NDIEGU 1ST DEFENDANT

MATHAYO OGUNDO NDIEGO 2ND DEFENDANT

RULING

1. The instant ruling is in respect of an application by way of a Notice of motion dated 10th September 2024 by the Plaintiff/Applicant, through Walubengo Waningilo and Company Advocates for the orders infra;
 - a. Moot
 - b. Moot
 - c. That this Honourable court do issue a temporary injunction restraining the defendant/Respondent, whether by themselves, their agents, servants, employees, or otherwise from excavating, constructing, or continuing to excavate a tunnel towards the plaintiff's land title Number Suna West/Wasweta II/2367 and Suna West/Wasweta II/2638, or blasting rocks or carrying out any activities adjacent to or on the Plaintiff's land that may cause potential harm, damage, or risk to the environment or the Plaintiff's property pending the hearing and determination of the suit filed herein.
 - d. That the honourable court gives such other relief as it deems fit and just in the circumstances.
 - e. Costs be provided for.



2. The application is based upon the supporting affidavit of sixteen paragraphs of even date sworn by the applicant together with copies of title deeds and photographs (PWK-1 (a) to PWK- 2 (e) alongside the grounds set out on its face which include;-
 - i. The plaintiff is the legal owner of the land title number Suna West/Wasweta II/2637 AND Suna West/Wasweta II/2638.
 - ii. The defendant is currently engaged in the excavation of a tunnel and blasting of rocks near and/or on the plaintiff's land
 - iii. The excavation and blasting activities pose a serious risk of environmental damage to the plaintiff's land including; -
 - A. Potential soil destabilization
 - B. Noise and water pollution
 - C. Risk of collapse or damage to natural formations
 - D. Harm to local ecosystems
3. The respondents were duly served as disclosed in the affidavits of service sworn on 14th September 2024 and 23rd October 2024 herein. However, they failed to respond to the application.
4. In that regard, Ms Kamula Buyango instructed by Walubengo learned counsel for the applicant has urged the court to grant the orders sought in the application.
5. So, is there merit in the application for the court to grant the orders sought therein?
6. I take into consideration that the application is brought under, inter alia, sections 1A, 1B, 3B of the Civil Procedure Act Chapter 21 Laws of Kenya and Order 40 Rules 1 and 2 of the Civil Procedure Rules 2010.
7. In *Hutchings Biemer Ltd -vs- Barclays Bank of Kenya Ltd and 2 others* (2006) eKLR, the Court of Appeal observed that injunctive orders are meant to preserve property in question and maintain the status quo thereon; see also *Nguruman Ltd -vs- Jan Bonde Nielsen and others* (2014) eKLR.
8. This court is mandated under section 13 (7) (a) of the Environment and Land Court 2015 (2011) to grant interim preservation orders inclusive of the injunctive relief sought in the application.
9. A fortiori, the application is steadfast and meritorious. The same is hereby allowed in terms of prayer number 3 therein.
10. Costs of the application to be in the cause.
11. It is so ordered.

DATED AND DELIVERED AT MIGORI THIS 28th DAY OF OCTOBER 2024

G. M. A. ONGONDO

JUDGE

In Present of;-

Ms Kamula Buyango instructed by Walubengo learned counsel for the Plaintiff/Applicant

Tom- Court Assistant

