



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimeu & another v Ougo (Environment & Land Case E371 of 2024)  
[2024] KEELC 7563 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7563 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E371 OF 2024**

**LN MBUGUA, J  
NOVEMBER 13, 2024**

**BETWEEN**

**REGINA MUKULU KIMEU ..... 1<sup>ST</sup> PLAINTIFF**

**JUDITH MUTHEU MUENI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOSEPH OUGO ..... DEFENDANT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion Application dated 9.9.2024 seeking orders of injunction restraining the defendants from occupying, encroaching, constructing, alienating, laying claim or interfering with plaintiffs parcels of land known as Plots 742 and 743 in Buruburu Riverside Estate and that the OCS, Buruburu police station be directed to enforce the said orders.
2. The application is premised on grounds on the face of the application and the supporting affidavit of Regina Mukulu Kimeu, the 1<sup>st</sup> plaintiff. She contends that she is the legal owner of plot 742 while the 2<sup>nd</sup> plaintiff owns plot 743. She contends that in the month of September, the defendant encroached onto the suit plots and commenced construction thereon without any justification. The plaintiffs contend that they stand to suffer irreparable harm if the orders sought are not granted.
3. The application was served but no response was filed. Should the court proceed to grant the orders sought in such circumstances? In Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR, the court had this to say in respect of an unopposed application;

“It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.



4. In the case at hand, I have considered the prayers sought in the application vis a vis the prayers sought in the plaint. One of the reliefs sought in the plaint at clause 4 is;

“An order against the Defendant, her employees, servant, agents and all other persons claiming under them to vacate the encroached portion of the Plaintiff’s parcel of land known as PLOT NO. 742 Buruburu Riverside Estate (City Carton) & Plot No. 743 Buruburu Riverside Estate (City Carton).”

5. It follows that granting the prayer sought in the application to restrain the defendant from encroaching unto the suit land would essentially amount to granting a major relief at the interlocutory stage. In the case of Daniel Atibu Jasimba v Ainea Sandanyi Magana [2013] eKLR, the court had this to say in respect of a prayer relating to a major relief;

“Since the plaintiff’s suit is for eviction of the defendant from the said residence, such an injunction will amount to granting a major relief in the suit without the benefit of a hearing”.

6. Likewise, this court cannot grant a major relief at the interlocutory stage before the suit is heard on its merits.

7. I find that the appropriate order to give in the circumstances is “maintenance of status quo” which entails that things remain as they are as at the date of delivery of this Ruling. See- Daniel Kinyanjui Gitau & 227 others v Mary Ruguru Njoroge [2020] eKLR.

8. In the end, the application dated 9.9.2024 is not allowed, instead, an order of maintenance of status quo is hereby issued. For avoidance of doubts, no further construction is to be undertaken on the suit property. The costs herein shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13<sup>th</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Yogo for Plaintiff

Court Assistant: Vena

