



REPUBLIC OF KENYA



KENYA LAW
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**Mungai v Mwathu (Land Case E063 of 2024)
[2024] KEELC 7498 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7498 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E063 OF 2024
BM EBOSO, J
NOVEMBER 12, 2024**

BETWEEN

JULIA WANJIRU MUNGAI PLAINTIFF

AND

SERAH WAIRIMU MWATHU DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated 29/4/2024. She sought orders decreeing the partitioning of land parcel number Muguga/ Kahuho/364 [referred to in this ruling as “the suit land”] into two equal portions to be registered in the names of the two parties to this suit, respectively. Her case is that the suit land originally belonged to the late Mwathu Muiru who was husband to the defendant and to one Rebecca Igayu Mwathu [referred to in this ruling as “Rebecca”]. She contends that upon the death of Mwathu Muiru [referred to in this ruling as “the late Mwathu”], his two widows inherited the land in equal shares.
2. The plaintiff further contends that Rebecca, one of the widows, sold to her late husband [the late Patrick Mungai Njoroge] her half portion of the suit land, a transaction that was subsequently recognized by the Succession Court that distributed the estate of Mwathu to the defendant and to her late husband [the plaintiff’s late husband] in equal shares.
3. It is the case of the plaintiff that upon the death of her late husband, she obtained a Certificate of Confirmation of Grant vesting the suit land in her and in the defendant in equal shares. She adds that despite the foregoing, the defendant is unwilling to allow the partitioning of the land and the severance of the common registration.
4. Together with the plaint, the plaintiff brought a notice of motion dated 29/4/2024 seeking interlocutory injunctive orders restraining the defendant against transferring, alienating, leasing and/



or charging the suit land. The said application is the subject of this ruling. The application was supported with the plaintiff's affidavit dated 29/4/2024 and written submissions dated 15/7/2024.

5. Besides relying on the matters summarized above, the plaintiff contends that the defendant has purported to sell a portion of the suit land to one Simon Kamau Njane without first partitioning the suit land. She is apprehensive that the defendant may sell her [the plaintiff's] share of the suit land.
6. The defendant opposed the application through her replying affidavit sworn on 14/6/2024 and written submissions dated 10/9/2024. The case of the defendant is that the suit land originally belonged to her late husband, Mwathu Muriu [the late Muriu]. Upon the death of Muriu, Kiambu SRMC Succession Cause No 235 of 1988 was instituted and a Confirmed Grant was issued to her in 1993. She adds that she subsequently learnt that one Patrick Mungai Njoroge [the plaintiff's deceased husband] had been sneaked into the succession proceedings. She successfully made an application for rectification of the Confirmed Grant and the late Njoroge's name was removed. The rectified Grant indicated that the suit land was to be shared equally between her and her co-wife, Rebecca.
7. It is the case of the defendant that the subsequent registration of Patrick Mungai Njoroge [the applicant's deceased husband] as co-owner was procured fraudulently because she did not sign any transfer instrument relating to the registration. She adds that the plaintiff is pursuing similar reliefs both in the Succession Court and in this Court. Her position is that the Succession Court is the court vested with jurisdiction to deal with this dispute.
8. The Court has considered the application, the response to the application, and the parties' rival submissions. The single question to be determined in this ruling is whether the application satisfies the criteria for grant of an ordinary injunction.
9. The relevant criteria was outlined by the Court of Appeal of East Africa in *Giella v Cassman Brown* [1973] EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the injunction is not granted, she would stand to suffer injury that may not be adequately indemnifiable through an award of damages. Third, should the court have doubt on either of the above two requirements, the application is to be decided based on the balance of convenience.
10. At the stage of disposing a plea for interlocutory injunction, the court does not make conclusive or definitive findings or pronouncements on the key issues in the suit. Definitive and conclusive findings and pronouncements are reserved for judgment after trial.
11. In the present application, the applicant has come to court waving a Certificate of Confirmation of Grant dated 30/7/1993 showing that Patrick Mungai Njoroge was registered as owner of 2.5 acres out of the suit land. In response, the defendant has indicated that the said Grant was rectified in 1997 and the half share of the land was vested in Rebecca Igayu Mwathu. Neither the plaintiff nor the defendant has bothered to make Rebecca or her estate a party to this suit. The Court does not know Rebecca's take on the contested ownership of the 2.5 acres that both parties agree belonged to her.
12. Secondly, the plaintiff has exhibited an agreement for purchase of the 2.5 acre portion that belonged to Rebecca. The agreement indicates that Rebecca sold her contested 2.5 acre portion to the late Njoroge. The 2.5 acre portion is what is in contest in this suit.
13. Thirdly, it is not clear how the plaintiff procured her registration as owner of the half portion of the suit land without the participation of the defendant. Clear answers to the above unclear areas will emerge after trial.



14. Taking the foregoing into account, the view the court takes is that the present application is one that qualifies to be disposed based on the balance of convenience. The balance of convenience favours preservation of the contested 2.5 acre portion. Secondly, Rebecca is a necessary party to this suit because the 2.5 acre portion that belonged to her is what is in contest in this suit.
15. For the above reasons, the notice of motion dated 29/4/2024 is disposed based on the balance of convenience in the following terms:
 - a. Pending the disposal of this suit and the determination of the question of ownership of the 2.5 acre portion that was vested in Rebecca Igayu Mwathu, the said 2.5 acre portion shall neither be sold nor disposed.
 - b. Rebecca Igayu Mwathu is hereby made a defendant in this suit. In the event she is no more, her estate shall be joined as a defendant.
 - c. Unless extended by the court, the above interlocutory injunctive order shall lapse after 12 months.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF NOVEMBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Ms Kamotho for the Defendant

Court Assistant: Melita

