



REPUBLIC OF KENYA



**Njenga & 2 others v Kiarie & 3 others (Land Case E402 of 2024)  
[2024] KEELC 7574 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7574 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E402 OF 2024  
LN MBUGUA, J  
NOVEMBER 12, 2024**

**BETWEEN**

**DAMARIS MUTHONI NJENGA ..... 1<sup>ST</sup> PLAINTIFF**

**GRACE NYOKABI KIARIE ..... 2<sup>ND</sup> PLAINTIFF**

**LYDIA NG'ENDO WAWERU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MARY NJERI KIARIE ..... 1<sup>ST</sup> DEFENDANT**

**DAVID NG'ANG'A KIARIE ..... 2<sup>ND</sup> DEFENDANT**

**SIMON NJENGA KIARIE ..... 3<sup>RD</sup> DEFENDANT**

**NICHOLAS NJOROGE NJENGA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me is the Plaintiff's Notice of Motion dated 27.9.2024 seeking orders of injunction restraining the defendants from dealing with the suit property L.R.NO. 6845/154 (now Nairobi /Block 206/6116) and that an order of inhibition be given in respect of the said land. The application is premised on grounds on the face of the application and on the supporting and supplementary affidavits of the 1<sup>st</sup> plaintiff. The plaintiffs contend that they are children of the 1<sup>st</sup> defendant and they have filed this case on behalf of the rest of their siblings.
2. They contend that the 1<sup>st</sup> defendant is the registered owner of the suit property, but she holds the said land in trust for them. They argue that the 1<sup>st</sup> defendant asserted the family rights to the suit property against trespassers in the cases ELC 626 OF 2009, Mary Njeri Kiarie & Githunguri Njiru Farm (1966) Ltd v. Tafuta Development Company Limited, as well as case no ELC 523 OF 2018 Rev Buselengete Kakumba Enos & 33 Others v. Mary Njeri Kiarie & Tafuta Development Company, where



- the judgments delivered therein indicated that the 1<sup>st</sup> defendant was holding the land in trust for her family.
3. They argue that their two siblings, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are in cahoots with the 4<sup>th</sup> defendant to carry out fraudulent activities on the suit land and have been impressing upon the 1<sup>st</sup> defendant to prepare a will detailing how her properties will be inherited. They also claim that there is a high risk that the suit property will be sold.
  4. The defendants have opposed the application vide the Replying Affidavit of the 2<sup>nd</sup> defendant. They deny that the 1<sup>st</sup> defendant is holding the suit land in trust for the plaintiffs. They contend that the 1<sup>st</sup> defendant has been fighting trespassers in court for the last 16 years, but the plaintiffs did not offer any support to her. Adding that being the registered owner of the suit property, the 1<sup>st</sup> defendant cannot be directed on how to share out her land with her children. They claim that the 1<sup>st</sup> defendant was 95 years old as at the time of her testimony in the ELC case 523 of 2018.
  5. I have considered all the rival arguments and submissions. To grant or not to grant the injunctive and inhibition orders sought by the plaintiffs is the question for determination. It is not disputed that the plaintiffs are siblings to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and all are children of the 1<sup>st</sup> defendant. The plaintiffs contend that they have filed this suit on behalf of all their siblings. If that be the case, where then is the authority granting them that power?. It is quite evident that there are family squabbles for the land which is in the name of the 1<sup>st</sup> defendant, hence it was pertinent for the plaintiffs to indicate in very clear language as to who has given them authority to file the suit. For purposes of the application, I will assume that they are litigating on their own behalf only.
  6. Are the injunctive and inhibition orders sought merited? The issue on grant of temporary injunctions was settled in the case of *Giella v Cassman Brown* (1973) EA and reiterated in several cases including *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR; whereby courts held that the applicants must satisfy that they have a prima facie case with a probability of success. Secondly, an interlocutory order will not be granted unless it is demonstrated that the applicant might suffer irreparable injury which would not be adequately compensated by an award of damages. Lastly, if the court is in doubt on the above two requirements, it will decide the application based on the balance of convenience.
  7. The title availed by the plaintiffs indicate that the 1<sup>st</sup> defendant is the registered owner of the suit land. Further, nowhere in the two judgments delivered in the cases 626 of 2009 and 523 of 2018 was a pronouncement made to the effect that the 1<sup>st</sup> defendant was holding the land in trust for the family members. There is no evidence to indicate that the plaintiffs have been utilizing the suit property or are in possession thereof. If anything, the land has been occupied by trespassers with whom the 1<sup>st</sup> defendant has been litigating with for many years in the other two mentioned cases.
  8. The provisions of Section 24 of the [Land Registration Act](#) provides that:

“The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.
  9. In the case at hand, the 1<sup>st</sup> defendant is the registered owner of the suit property. This court cannot be used to force the old lady (1<sup>st</sup> defendant) to share out her property when she is alive, See- [Muriuki Marigi V Richard Marigi Muriuki, Lydiab Njoki Muriuki & Samuel Muriuki \(A Minor Through his Next Friend-Richard Marigi Muriuki \(Civil Appeal 189 of 1996\)](#) [1997] KECA 81 (KLR) (16 May 1997), *Moffat Gichuru v M’imanyara M’murithi & 2 others* [2018] eKLR.



10. In the case of Paul Kirinya v Delfina Kathiri [2019] eKLR (Judge Mbugua), where a son wanted land from his aging mother, the court stated thus;

“The national values enshrined in our constitution include; human dignity, equity, social justice. The orders sought by the plaintiff certainly do not embrace these values. Defendant deserves peace and tranquility in her sun set years and she has the right to use her small piece of land in the manner she pleases. Borrowing the words of Judge D. Musinga (as he then was) in the case cited by defence – *John Ndungu Muriithi versus Gideon Karegwa Ndungu and 5 Others H.C.C.NO. 94 of 2004*, I find that plaintiff has displayed unmitigated greed and utter selfishness by haranguing his septuagenarian mother over a one acre piece of land, yet he (plaintiff) has 8 other siblings!”

11. The 1<sup>st</sup> defendant in the matter at hand is apparently 96 years old. She has been in court for ages trying to ward off trespassers from her property with the judgment in the latest case (523 of 2018 being delivered on 11.7.2024 where orders were given by this court for the eviction of the trespassers. How can the 1<sup>st</sup> defendant embark on enjoying the fruits of her judgments in her sunset years if she is now saddled with orders barring her from effectuating those judgments, noting that the orders sought will certainly hinder the implementation of the aforementioned judgments?.

12. In Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others [2016] eKLR, the court held that;

“An injunction is an equitable remedy, meaning that the court hearing the application has discretion in making a decision on whether or not to grant the application. The court will consider if it is fair and equitable to grant the injunction, taking all the relevant facts into consideration.”.

13. And taking all the relevant factors into consideration, in the instant matter I find that it would be unfair and unjust to restrain the nonagenarian from using her land in the best way she knows simply because some of her children are asserting a claim of entitlement to the said land. In the end, I find that the application dated 27.9.2024 is found to be unmerited, the same is hereby dismissed with costs to the defendants. The said costs to be paid by the three plaintiffs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>th</sup> DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Kerubo holding brief for Mwiti for the Plaintiff

Mrs. Kerio for 1<sup>st</sup> – 4<sup>th</sup> Defendants

Court Assistant: Eddel

