



Gakuu & another (Both Suing as the Registered Trustees of Mbari ya Kungu) v Macharia & 5 others (Environment and Land Appeal E027 of 2022) [2024] KEELC 14077 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14077 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E027 OF 2022**

**JG KEMEL, J
DECEMBER 19, 2024**

BETWEEN

**PATRICK KARANJA GAKUU 1ST APPELLANT
SAMSON MWANGI NJOROGE 2ND APPELLANT
BOTH SUING AS THE REGISTERED TRUSTEES OF MBARI YA KUNGU**

AND

**JOYCE WANJIRU MACHARIA 1ST RESPONDENT
PETER MATHU 2ND RESPONDENT
THIKA LAND REGISTRAR 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT
ANNEFA LIMITED 5TH RESPONDENT
JOSTEPA INVESTMENT COMPANY LIMITED 6TH RESPONDENT**

RULING

1. The Appellants/Applicants through their Notice of Motion dated 14/8/2024 expressed under Order 50 rule 1, Order 40 rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) seek Orders that;
 - a. Spent.
 - b. Spent.
 - c. This Honorable Court be pleased to Order the Respondents to forthwith remove the illegal and unlawful structures erected on L.R Ruiru/Kiu Block 2 (Githunguri) 1206 and to



forthwith remove the people, stationed therein, failing which the structures be demolished at their cost, and the people therein be forcefully evicted under the supervision of the OCS Gatong'ora Police station.

- d. This Honorable Court be pleased to issue an Order of Injunction restraining the Respondents either by themselves, their agents, servants and or representatives from interfering with the Appellant/Applicant's farming activities on the parcel of land known as L.R Ruiru/Kiu Block 2 (Githunguri) 1206 pending the hearing and determination of the intended appeal.
 - e. This Honorable Court be pleased to issue any other Order it may consider appropriate to facilitate the implementation of the Judgment of the Court made on the 15th day of November 2023.
 - f. Costs of this Application be provided for.
2. The Application is premised on the grounds on the face of it and Supporting Affidavit of even date of Samson Mwangi Njoroge, the 2nd Appellant/Applicant. He deponed that this Hon Court delivered Judgment herein on 15/11/2023 and allowed the Applicants' appeal with costs. That in effect the Court cancelled the Respondent's title over L.R Ruiru/Kiu Block 2 (Githunguri) (hereinafter the suit land) and reinstated the Applicants' title. That consequently the Applicants prepared the suit land in readiness for farming activities and planted maize in earnest. That with a view to defeat the Applicants' farming activities, the Respondent illegally and unlawfully erected a mabati house and stationed people thereon as shown by photographs marked 'SMN2'. That the Respondent's actions amount to contempt of the Judgment and subsequent orders of this Court hence the Application.
 3. The Application is opposed by the 1st Respondent only.
 4. Joyce Wanjiru Macharia swore her Replying Affidavit on 15/10/2024. She avowed that there is an Application in the Court of Appeal namely Nairobi Misc. Application No. E462 of 2024 seeking leave to appeal out of time annexed as 'JWM1'. That this Court granted interim stay of execution pending appeal on 24/6/24 as evidenced by 'JWM2' and as such she has done nothing prejudicial to the suit land now subdivided into Ruiru Kiu Block 2 (Githunguri) 22416-22429. That having been in possession of the suit land since 2011, it was imperative to have a guard house on the suit land to take care of the crops thereon hence the need to construct the impugned mabati structure alluded to by the Applicant. See photographs annexed as 'JWM3'. That in a nutshell there is no substantial change in terms of interference of the status quo order on the suit land.
 5. On 14/10/2024 directions were taken and parties agreed to dispose of the Application by way of written submissions. At the time of writing this Ruling none of the parties had complied with the directions.
 6. The germane issue for determination is whether the Application is merited.
 7. Before analyzing the merits of the Application, it is imperative to place the Application in context by way of brief background of facts.
 8. The appeal herein arose from the Judgment of the trial Court delivered on 3/3/2022 dismissing the appellants' (the Plaintiffs in the trial Court) suit. In allowing the appeal on 15/11/2023, this Court entered Judgment in favor of the appellants as prayed in their amended plaint dated 19/7/2021 inter alia declaring the appellants as the bona fide owners of the suit land to the exclusion of anybody else and permanent injunction issued against the 1st and 2nd Respondents from interfering in any manner with the suit land.



9. Two months after delivery of the Judgment, the 1st Respondent moved this Court by way of Application dated 1/2/2024 seeking in the main stay of execution of the Judgment of this Hon Court delivered on 15/11/2023 pending appeal. The Application was opposed by the 2nd appellant's RA sworn on 20/2/2024. The Court allowed the Application in terms of granting status quo on the suit land pending the hearing of the intended appeal. Absent any orders varying or setting aside the said Order as contained in the Ruling dated 24/6/2024, it is apparent that there are status quo orders in place regarding the suit land.
10. The 1st Respondent has averred that there is already an Application in Nairobi Misc. App No E462 of 2024 before the Court of Appeal praying for leave to appeal out of time. This averment has not been controverted by the Applicant. I have also sighted annexure 'JWM1' dated 6/9/2024 to that end.
11. The Applicant's case as I understand it is that the 1st Respondent has erected a mabati structure on the suit land despite the status quo orders issued herein. In rebuttal the 1st Respondent admits construction of the mabati house stating that it houses the caretaker of the suit land. If that be the case then the proper way to move the Court is explicitly provided for in law. The instant application is seeking a new cause of action yet the record before me shows that the Court of Appeal is already seized of the matter. Entertaining the Application as drawn would in my view, amount to parallel proceedings before this Court and the Appellate Court amounting to abuse of court process.
12. The upshot of the forgoing leads to an irresistible conclusion that the Application is bereft of merit and it is for striking out.
13. I order that each party bears their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19TH DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Mwangi for 1st and 2nd Appellants

Wachira for 1st and 2nd Respondents

3rd and 4th Respondents – Absent

Wachira for 5th and 6th Respondents

Court Assistant – Phyllis

