



M'Rutere v Kobia; Munjuri (Intended Interested Party) (Environment & Land Case E011 of 2023) [2024] KEELC 13890 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E011 OF 2023
CK YANO, J
DECEMBER 19, 2024**

BETWEEN

PETER MURIUKI M'RUTERE PLAINTIFF

AND

JOHN KINOTI KOBIA DEFENDANT

AND

GRACE KANYUA MUNJURI INTENDED INTERESTED PARTY

RULING

1. The application before me for determination is the Notice of Motion dated 20th February, 2024 by the defendant/applicant seeking the following orders-;
 1. That this application be certified as urgent and the same be heard as a matter of priority.
 2. That pending the hearing and determination of this application inter parties the Honourable court be Pleased to vary, set aside and/or vacate the interim orders of 2nd November, 2023 and issued on 3rd November, 2023 against the defendant.
 3. That this Honourable court be pleased to enjoin one Grace Kanyua Munjuri as an interested party in this suit.
 4. That orders of temporary injunction do issue against the plaintiff restraining him, his family members, workers employees, agents and any other person claiming at his behest from interfering with the applicant/defendant's peaceful occupation and utilization of Land Parcel No. Kiengu/Kanjoo/754 measuring 2.3 Ha pending the hearing and determination of this application.



5. That orders of temporary injunction do issue against the plaintiff restraining him, his family members, workers, employees, agents and any other person claiming at his behest from interfering with the applicant/defendant's peaceful occupation and utilization of land parcel No. Kiengu/Kanjoo/754 measuring 2.34 pending the hearing and determination of this suit.
 6. That costs for and incidental to this application be provided for.
2. The application is based on the grounds on the face of the motion and supported by the affidavit of John Kinoti Kobia sworn on 20th February, 2024. The applicant averred that he is the registered owner of the suit land and that upon the plaintiff/respondent misleading the court and obtaining interim orders without full disclosure of the facts, he has committed acts of waste on the said land by cutting and selling the applicant's mature trees, slashed his crops, brought down his fence and has even gone ahead to construct timber houses therein. It is the applicant's contention that the plaintiff in the suit is merely a front or proxy of the proposed intended third party who has in the recent past filed two unsuccessful law suits against the defendant over the suit land herein and is now seeking to gain an entry into the arena of litigation for a third time over the same subject matter and circumvent the court's decision in the two earlier unsuccessful suits.
 3. It is the applicant's contention that he has a legal right to the property under Article 40 of *the Constitution* as he is the registered proprietor of the property and has beneficial interest. That the respondent is intent on using the interim orders issued by the court to oppress him and to circumnavigate justice and to try demonstrating exclusive control of the suit property in an attempt to buttress his case against the applicant for adverse possession.
 4. The applicant avers that orders of injunction are mainly intended to preserve the subject matter with a view to have expeditious determination but not to oppress another party nor should it be used to economically oppress the other. That the respondent's actions are aimed at prejudicing the applicant and that if the respondent is not restrained, the applicant is set to suffer irreparable harm. The applicant avers that he has established a prima facie case with high chances of success and that the subject matter of this suit ought to be preserved until the suit is heard and determined.
 5. In the supporting affidavit, the applicant deposed that he was registered as proprietor of the suit land on 18th July, 2018 and was issued with a title deed on 7th April 2021. A copy of the title deed marked "HKMI" has been annexed. That he took possession of the land and put one Mbae Asumani who is a father of the respondent as a caretaker and later on was corrupted by Grace Kanyua M'Munjuri, the intended third party, and during adjudication process had the land registered to her. The applicant states that he appealed against the award that gave the land to Grace Kanyua M'Munjuri to the minister and a decision was made in his favour. A copy of the appeal to the minister and the minister's decision marked "JKK 2" has been annexed.
 6. The applicant states that the said Grace Kanyua M'Munjuri rushed to court and filed JR. No. 102 of 2010 which was dismissed with costs which she paid, and the applicant wrested back possession of the land in the year 2018 as the registered owner. A copy of the judgment and certificate of costs Marked "JKK 3" have been annexed. While reiterating that the respondent herein is a proxy of the said Grace Kanyua M'Munjuri, the applicant pointed out that the respondent's father is the sole witness for the plaintiff in this suit. The applicant has also annexed photographs for crops and trees allegedly cut by the respondent and for the structures he has started putting up. The applicant urged the court to vacate the ex-parte orders issued herein in favour of the respondent. That if the orders sought herein are declined, the respondent will continue with his malicious acts on the applicant's land to the detriment of the applicant's interests in the land. That the respondent will not suffer any prejudice if the orders sought



are allowed since he has never been in occupation of the suit land, but is exploiting the interim orders to gain entry into the land.

7. The application is opposed by the plaintiff/respondent through a replying affidavit dated 11th April 2024 wherein he admitted that the applicant is the registered owner of the suit land. The respondent, however avers that he has been in exclusive possession, user and occupation of a portion thereof measuring 4 acres since the year 2003. That the applicant has never stepped on, occupied or utilized the portion the respondent is in occupation. That it is on that basis that he filed this suit seeking to be declared as the owner of that portion by adverse possession. That simultaneously with the filing of the suit, he filed an application dated 31st October, 2022 seeking injunctive orders against the applicant after he learnt of the applicant's intention to evict him from the land. That the said application dated 31st October, 2022 was allowed by the court on 22nd November 2023 effectively preserving the status quo on the ground and at the land's office. That the instant application is an attempt by the applicant to upset the status quo and to defeat the respondent's claim through the backdoor. That if the orders sought herein are granted, the applicant will proceed to evict the respondent and his family from the suit land before the suit is heard and determined. The respondent denied being a proxy to Grace Kanyua Munjuri whom he described as a neighbour who occupies a portion measuring 1.5 acres of the suit land. The respondent denied cutting down trees or crops and stated that the crops and trees are his on the portion of 4 acres that he is in occupation of.
8. The court directed that the application be canvassed by way of written submissions which were duly filed by the advocates for the parties and which I have read and considered and I need not reproduce the same in this ruling.
9. I have considered the application, the affidavits filed and the rival submissions. The issues for determination are whether the interim orders made on 2nd November, 2023 and issued on 3rd November, 2023 should be set aside, varied and/or vacated, whether the court should join Grace Kanyua Munjuri as an interested party and whether orders of temporary injunction should be granted.
10. On the first issue, the record shows that on 1st November, 2023, the plaintiff/respondent filed this suit vide the originating summons dated 31st October, 2023 claiming to have acquired 2.34 Ha out of L.R No. Kiengu/Kanjoo/754 registered in the name of the defendant/applicant herein. At the time of filing the suit the plaintiff simultaneously filed notice of motion application also dated 31st October, 2023 seeking orders of temporary injunction and inhibition pending the hearing and determination of the application inter parties and thereafter pending the hearing and determination of the suit. When the application came before this court ex-parte under certificate of urgency on 2nd November, 2023, the court granted an interim orders of injunction pending hearing inter-parties on 13th November, 2023. The plaintiff was directed to serve the said application on the defendant within 7 days and the matter was fixed for hearing inter-parties on 13th November, 2023. The record indicates that the matter did not come up on 13th November, 2023. However, on 15th November, 2023 the plaintiff's counsel appeared in the registry and fixed the application dated 31st October, 2023 for inter parties hearing on 22nd November, 2023. The plaintiff was to effect service. On 16th November, 2023, the firm of M/s Gichunge Muthuri & Co. advocates filed a memorandum of appearance and a notice of appointment of advocate on behalf of the defendant. When the matter came up on 22nd November, 2023, only the plaintiff's advocate was present. Although they had been served, the defendant's advocates did not appear in court and had not filed a response to the said application. Since the application was not opposed, the same was allowed by the court in terms of prayers 3 and 5 thereof. That means the interim orders issued on 2nd November, 2023 were confirmed. The court further directed the parties to comply with Order 11 of the Civil Procedure Rules and fixed the matter for pre-trial directions on



5th December, 2023. On 5th December, 2023, the advocates for both the plaintiff and the defendant were present in court and the defendant's counsel prayed for 5 days to file and serve their response to the originating summons. Their request was granted and the matter was fixed for directions on 17th January, 2024. On 17th January, 2024, the matter was fixed for the main hearing on 19th March 2024. However, before the hearing date, the defendant filed the present application which in my view, and going by the Chronological events outlined hereinabove had been overtaken by events. This is because there are no longer interim orders in place that can be varied, set aside or vacated since the same were long confirmed and the matter even set down for hearing of the main suit. It is therefore my opinion that prayer 2 of the application herein is misplaced and must fail.

11. The next issue to consider is whether the court should join Grace Kanyua Munjuri as an interested party. Under Order 1 of the Civil Procedure Rules, a party may seek joinder either as a plaintiff or defendant. Order 1 Rule 10 (2) provides as follows-;

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- (2) the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as a plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, be added.”

12. In his application, the defendant seeks to join the said Grace Kanyua Munjuri as an interested party. According to the applicant, the plaintiff/respondent in this suit is merely a front or proxy of the said Grace Kanyua Munjuri who he stated had filed two previous suits against the defendant over the suit land but was unsuccessful. In my view, the applicant has shown that the presence of the intended interested party before the court is necessary in order for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. I will therefore grant prayer 3 of the application.
13. The last issue is whether the orders of temporary injunction sought by the defendant can be granted. As already stated, there are already in place orders of temporary injunction in favour of the plaintiff. The purpose of granting those orders was to preserve the subject matter of the suit pending the hearing and determination of the suit. In my view, it would have been prudent for the defendant to oppose the application for temporary injunction that was filed by the plaintiff or apply to set aside or vacate the orders already in place. Instead, the defendant sought to vacate interim orders of 2nd November, 2023 which are already spent since the same were confirmed at the inter-parties hearing stage. Granting the orders sought in the current application no doubt may result in conflicting orders issued by the court and bring an embarrassment to the court since the orders of 22nd November, 2023 have not yet been set aside or vacated either on appeal or by way of review.
14. In the result, I allow the notice of motion dated 20th February, 2024 only in terms of prayer 3 thereof and decline to grant the other prayers. Considering that the application is partly successful, I order that each party bears their own costs.
15. It is so ordered.



DATED SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF DECEMBER, 2024

In the Presence of

Court Assistant – Tupet

Kariuki for plaintiff/respondent

Ms Mugo for Gichunge Muthuri for defendant/applicant

C.K YANO

JUDGE

