



Mwaura & another v Kigotho & 7 others (Environment & Land Case E133 of 2024) [2024] KEELC 13991 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E133 OF 2024**

**MD MWANGI, J
DECEMBER 18, 2024**

BETWEEN

ANNE RUGURU MWAURA 1ST PLAINTIFF

FRANCIS NDEGWA MWAURA 2ND PLAINTIFF

AND

PAUL MWANGI KIGOTHO 1ST DEFENDANT

PETERSON GITHINJI MWANGI 2ND DEFENDANT

PAUL MUNGAI NJAU 3RD DEFENDANT

ROBERT NJORORO MICHUKI 4TH DEFENDANT

LOISE MURUGI NJORORO 5TH DEFENDANT

LEAH KARURUMA 6TH DEFENDANT

THOME FARMERS COMPANY LIMITED 7TH DEFENDANT

CHIEF LAND REGISTRAR 8TH DEFENDANT

RULING

(In respect of the Plaintiffs' application dated 4th April 2024 brought under the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 and 51 of the Civil Procedure Rules, Section 80 (1) of the *Land Registration Act* and Article 159 (1) (d) and (e) of *the Constitution* of Kenya & the 4th and 5th Defendants application dated 18th June 2024 seeking orders of temporary injunction against the Plaintiffs)



Background

1. The Plaintiffs who describe themselves as the administrator of the Estate of the Late Mwaura Kingeche instituted this suit vide the Plaint dated 2nd April 2024. They aver that the Late Mwaura Kingeche (hereinafter referred to as the deceased), died on 5th July 2024. It is their case that prior to his death, the deceased was a registered member of the 7th Defendant Company, Thome Farmers Company No. 1 Limited, and as such had been issued with two share certificates, being Share Certificates No. 339 and 728, both dated 28th July 1979.
2. The Plaintiffs aver that each share certificate entitled the deceased to two plots. By virtue of his shareholding, the deceased on or about the year 1979 balloted and was allocated four plots by the 7th Defendant being Plots No. 538, 667, 514 and 750. Share Certificate No. 339 entitled him to Plots Numbers 514 and 750 while Share Certificate No.728 entitled him to Plots Numbers 538 and 667.
3. The Plaintiffs further allege that the 7th Defendant upon allocating the deceased the plots as aforesaid proceeded to enter in its register of records, the name of the deceased as the legal owner of the suit plots. The deceased allegedly took vacant possession of the suit plots and acquired indefeasible rights over the plots only awaiting issuance of title documents. The Plaintiffs assert that the deceased partially developed the plots and erected a perimeter wall around the suit plots.
4. Upon his death, the Plaintiffs petitioned the High Court at Nairobi in Succession Cause No. 3071 of 2004 and were issued with a grant of letters of administration on 10th December 2004. The suit plots were, according to the Plaintiffs, included as forming part of the estate of the deceased and were distributed amongst the deceased's beneficiaries.
5. After the distribution, the plaintiffs visited the offices of the 7th Defendant's Company seeking Clearance Certificates to enable them enforce the distribution amongst the beneficiaries. That was when they allegedly learnt that the 1st – 6th Defendants herein had trespassed into the suit plots and were claiming ownership of the same. They reported the trespass at Kasarani Police Station.
6. The Plaintiffs allege that the 1st – 6th Defendants have since acquired titles over the suit plots, albeit fraudulently. The suit plots have since acquired new Land Reference Numbers as follows;
 - a. The 1st and 2nd Defendants have acquired title over Plot 667 which is now known as L.R No. Nairobi Block 110/206.
 - b. The 3rd Defendant has acquired title over Plot Number 514 which is now known as L.R No. Nairobi Block 110/516;
 - c. The 4th and 5th Defendants have acquired title over Plot No. 538 which is now known as Nairobi/Block 110/303; while,
 - d. The 6th Defendant has since acquired title over Plot Number 750 which is now known as L.R Nairobi Block 110/341.
7. The Plaintiffs' case is that the 1st -6th Defendants obtained the titles over the suit plots fraudulently and pray for their cancellation and a declaration that the suit plots are legally owned by the estate of the deceased. The Plaintiffs affirm that the 7th Defendant Company has since issued them with a Clearance Letter dated 23rd August 2023, addressed to the Ministry of Lands, Housing, Public Works and Urban Development stating that the title documents for the suit plots should be processed in their names as administrator of the estate of the deceased. They further allege that the 7th Defendant Company has confirmed that according to its register, the suit plots were originally allocated to the deceased. In spite



of the confirmation by the 7th Defendant Company, the 1st-6th Defendants have refused to give vacant possession of the suit plots thereby violating the Plaintiffs' rights to property.

8. The Plaintiffs reiterate that the purported transfer of the suit plots to the 1st – 6th Defendants was fraudulent and the Defendants jointly and severally are culpable of fraud and misrepresentation of facts. The Plaintiffs have particularized the irregularities at Paragraph 21 of the Plaintiff.
9. Without prejudice to the foregoing, the Plaintiffs aver that in the unlikely event that the 1st-6th Defendants were allocated the suit plots, the 7th Defendant Company is guilty of double allocation and is liable to compensate them with other plots of equal value or pay them the equivalent of the current market value of the suit plots.
10. The Plaintiffs pray for a declaration that they are the legal owners/proprietors of the suit plots, and an order of cancellation of the titles in the names of the 1st- 6th Defendants and rectification of the register to reflect the estate of the deceased as the proprietor of the suit plots. They too seek an order of eviction and a permanent injunction against the 1st- 6th Defendants as well as mesne profits. In the alternative, the Plaintiff seeks compensation against the 7th Defendant Company at the current market value or the alternative of similar plots of the same size and value as the suit plots.
11. Alongside the Plaintiff, the Plaintiffs filed the Notice of Motion dated 4th April, 2024 seeking for an order of temporary injunction restraining the Defendants/Respondents by themselves, their servants, agents and all those acting under their instructions from trespassing on, transferring, wasting, erecting, dumping, developing and or adversely interfering with the suit properties known as L.R. No. Nairobi Block 110/206, 516,303 and 341, pending the hearing and determination of the substantive suit. The grounds upon which the application is grounded are on the face of it and in the affidavit of Anne Ruguru Nwaura sworn at Nairobi on 4th April 2024. The said grounds are a reiteration of the averments in the Plaintiff. The Plaintiffs have attached the documents filed alongside the Plaintiff as annexures to the supporting affidavit in support of their application.
12. The 4th and 5th Defendants too filed an application dated 18th June 2024 seeking orders of temporary injunction against the Plaintiffs.

Determination

13. I have had occasion to look at and consider the various responses in form of replying affidavits filed by the Defendants in this matter.
14. In making this ruling, the court cautions itself that what it is handling at this point in time is an interim application. It will therefore be frugal with its words in order not to prejudice the hearing of the main suit and the counter-claim herein.
15. Both the Plaintiffs and the 1st-6th Defendants in this matter claim ownership of the suit properties. Of great concern to the court is the assertion by the Applicants that the suit properties despite them being registered in the names of the 1st and 2nd Defendants, 3rd, 4th and 5th and 6th Defendants respectively, have since been distributed to the deceased's beneficiaries in Nairobi High Court Succession No. 3071 of 2004- In the Matter of the Estate of Mwaura Kingeche.
16. In an interlocutory application, the court is not called upon to make any conclusive or definitive findings of facts and law. It is indeed certainly impossible, in a matter like the one before me to make any such definitive finding on the basis of the contradictory affidavits filed by the parties.
17. The 1st-6th Defendants hold titles to the suit properties and are in possession. The Plaintiffs allege that the titles of the 1st-6th Defendants were obtained fraudulently.



18. The concern of the court at this point in time is to preserve the substratum of the suit. And the best way to do so is to preserve the status quo.
19. I agree with Mogeni J in the case of Northwest Capital Apartments Ltd- versus-Ohuru (ELC E213 /2013), cited by the Plaintiffs to the effect that;

“Where both the Applicant and the Respondent claim ownership of the suit property, it is better to safeguard and maintain the status quo for greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the application find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.”

20. Considering the peculiar circumstances of this case, I direct that the status quo be maintained pending the hearing and determination of this case.
21. I make no orders as to costs.
It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF DECEMBER 2024

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mwangi D.K for the 4th and 5th Defendants

Mr. Gichahi for the 3rd Defendant

Mr. King'ori for the 6th Defendant

N/A for the Plaintiffs, 1st, 2nd, 7th & 8th Defendants

Court Assistant: Joan

M.D. MWANGI

JUDGE

