



**Ngotho v Njenga & another (Environment & Land Case E056 of 2024)
[2024] KEELC 13776 (KLR) (10 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13776 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E056 OF 2024
MAO ODENY, J
DECEMBER 10, 2024**

BETWEEN

THOMAS NJENGA NGOTHO APPLICANT

AND

MARY WANJIKU NJENGA 1ST DEFENDANT

PAUL GITAHU MWAURA 2ND DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 21st August, 2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing, determination and final disposal of the suit, an interim order be and is hereby issued by way of injunction restraining the Defendants/Respondents, whether acting by themselves, their agents, servants, employees, security personnel, contractors and/or by any other persons whatsoever, from entering upon, trespassing upon, taking over, excavating, damaging, developing, marketing, offering for sale, selling, transferring, charging or in any other manner howsoever from interfering with the Plaintiff's quiet enjoyment, possession, beneficial and proprietorship rights of the properties known as Land Reference Numbers Miti Mingi/mbaruk Block 8/1992 (kianjoya 'd') And Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') both situate in the County of Nakuru.
 - d. Spent
 - e. That pending the hearing, determination and final disposal of the suit, an interim order be and is hereby issued by way of injunction restraining the Defendants/Respondents jointly or severally, whether acting by themselves, their agents, servants, employees, security personnel,



and/or by any other persons whatsoever, from interfering with, intimidating, insulting, harassing and threatening the plaintiff/Applicant.

- f. That owing to the security threat arising from the Defendants/Respondents and the armed gangs who carried out the illegal acts complained of, the orders of the Court ensuing from this Application be served and enforced with the assistance of the Officer in charge of Mwariki Police Station (OCS), being the officers vested with the mandate to deal with the security incidents arising from the area where the Suit Property is situate.
 - g. That this Honourable Court be pleased to issue such further orders as it shall deem fit and necessary in the unique circumstances of this case.
 - h. That costs of this Application be provided for.
2. The application was supported by the affidavit of Thomas Ngotho Njenga, the Plaintiff/Applicant sworn on 21st August, 2024 where he deponed that he is the sole, legal and indefeasible proprietor as lessee in possession of that property known as Miti Mingi/mbaruk Block 8/1992 (kianjoya 'D') situate in Nakuru County. He also said that he is the beneficial owner of the family property of the adjoining parcel, Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D').
 3. The Plaintiff/Applicant deponed that the 1st Defendant is the mother of his children while the 2nd Defendant is the brother of the 1st Defendant. He purchased several family properties and registered in the 1st Defendant's name on behalf of his family.
 4. It was the Applicant's case that in 2006, he bought the larger parcel of land Miti Mingi/ Mbaruk Block 8/1216 (kianjoya 'D') and authorized the registration of the mother title in the 1st Defendant's name on behalf of the Ngotho family. That the title was subsequently subdivided into four portions Miti Mingi /mbaruk Block 8/1991 (kianjoya 'D'), Miti Mingi /mbaruk Block 8/1990 (kianjoya 'D'), Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') And Miti Mingi/mbaruk Block 8/1992 (kianjoya 'D').
 5. It was the Applicant's case that he registered Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') and Miti Mingi/mbaruk Block 8/1992 in the names of his daughters Carol Wangui Njenga and Ruth Wangui Njenga respectively to hold on behalf and for the benefit of the Ngotho family.
 6. The Applicant deponed that in August 2008, the 1st Defendant secretly prevailed upon their daughter Carol Wangui to transfer the said parcel Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') to the 2nd Defendant who subsequently transferred the said parcel to his name in June 2019. Further that on 23rd July 2024 the suit property was invaded by the Defendants accompanied by armed goons.
 7. It was further the deponent's case that he never gave spousal consent and that he was not involved in the transfers. He deponed that the 2nd Defendant being a firearm holder has recently been threatening him in an effort to force him to vacate the property.
 8. The 1st Defendant filed a Replying Affidavit sworn on 25th September, 2024 where she deponed that the Plaintiff was and still is her spouse. She further deponed that the Applicant pressed her to sell her parcel of land, Bahati/Wendo Block 3/346 (Lemuko) so that she could use the proceeds of sale to buy a more valuable property known as Miti/Mingi/Mbaruk Block 8/1216 (Kianjoya 'D') which she did and gave the proceeds of sale to the Applicant to purchase Miti/Mingi/Mbaruk Block 8/1216.
 9. The 1st Defendant deponed that the Applicant showed her the four title deeds of the resultant subdivision of Miti Mingi/Mbaruk Block 8/1216 (Kianjoya 'D') being Miti Mingi Mbaruk Block 8/1990, 1991,1992 and 1993 (Kianjoya 'D') all of which were in her name. She further deponed that



she got into financial problems but the Applicant did not come to her aid. She stated that the Applicant told her to sell the suit parcel of land namely Miti Mingi/Mbaruk Block 8/1993.

10. The 1st Defendant further deponed that together with the Applicant and the 2nd Defendant, they agreed that she exchanges Miti Mingi/Mbaruk Block 8/1993 (Kianjoya 'D') with her brother's parcel No. Gilgil/Gilgil Block 1/16111 (Kikopey) whereby she executed a deed of exchange dated 24th November, 2021.
11. The Respondent also stated that she subsequently transferred parcel No. Miti Mingi/Mbaruk Block 8/1993 (Kianjoya 'D') to John Njattah Mwaura to hold in trust for the 2nd Defendant. It was the Respondent's deposition that she entered into settlement agreements with her creditors on the subdivision of Gilgil/Gilgil Block 1/16111 (Kikopey) as Miti Mingi/Mbaruk Block 8/1993 belongs to her hence the orders sought by the Applicant should not be granted.

Plaintiff/applicant's Submissions

12. Counsel for the Plaintiff filed submissions dated 7th October, 2024 and identified the following issues for determination:
 - a. Whether the Applicant bears ownership and proprietary rights over the suit parcel?
 - b. Whether the Applicant has met the threshold for grant of the Interim orders sought?
 - c. Who shall bear the costs of the Application?
13. On the first issue, counsel submitted that the Plaintiff/Applicant has attached a certificate of title to land parcel Miti Mingi/mbaruk Block 8/1992 (kianjoya 'D') in his name as well as evidence of family purchase with respect to parcel Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') as proof of family proprietorship and relied on Section 26 of the Land Registration Act, No 3 of 2012.
14. On the second issue, counsel relied on Order 40 Rule 1 of the Civil Procedure Rules. the case of *Giella v Cassman Brown & Co Ltd* [1973] E.A 358 and submitted that the plaintiff has established a prima facie case warrant the grant of the orders sought.
15. Counsel submitted that the entire suit revolves around the Defendants' unprocedural illegal and fraudulent, trespass, entering upon the suit land, attempted forceful eviction of the Plaintiff and further fraudulent transfer of family parcel Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') to the detriment of the Applicant's family. Counsel relied on the cases of *Mayungu Ltd C/O Kiarie Kariuki vs Municipal Council of Malindi, Civil Case No 13 of 2005* and *Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & another, Pius Kipchirchir Kogo vs Francis Kimeli Tenai* (2018) eKLR.
16. Counsel submitted that the balance of convenience tilts in favour of maintaining the status quo and relied on the cases of *Amir Suleiman vs Amboseli Resort Ltd* (2004) eKLR, *Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Limited & 2 others* (2016) eKLR and *Agnes Adhiambo Ojwang vs Wycliffe Odhiambo Ojjo, Kisumu HCCC No 205 of 2000*.

Defendants/respondents Submissions

17. Counsel for the Defendant/Respondents filed submissions dated 24th October, 2024 and identified the issue for determination as to whether the orders sought should be granted. Counsel submitted that the Plaintiff has not established a prima facie case with a probability of success and urged the court not to make any order in respect of Miti Mingi/mbaruk Block 8/1992 (kianjoya 'D').



18. Counsel submitted that the 2nd Defendant is the sole registered proprietor of Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') and is entitled to enjoy his bundle of rights and relied on the cases of Nyanza Fish Processors Limited vs Barclays Bank of Kenya Limited & 3 others [2016] eKLR, National Bank of Kenya vs Duncan Owour Shakali & another, *CA No 9 of 1997*, Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] eKLR, Republic vs Chief of General Staff & another [2017] eKLR and Legal Brains Trust (LBT) Limited vs Attorney General of the Republic of Uganda [2012] eKLR. On whether the Plaintiff/Applicant might suffer irreparable injury, counsel submitted that the Applicant has not demonstrated any irreparable injury.
19. On the issue of balance of convenience, counsel submitted that the 2nd Defendant is the current registered proprietor of the land and is in occupation while the Plaintiff is attempting to take possession of the same. Counsel submitted that an order of status quo would be appropriate.

Analysis And Determination

20. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for grant of a temporary injunction pending the hearing of the suit which was enunciated in the case *Giella vs. Cassman Brown & Co. Ltd (1973) EA 358*.
21. One must show that he/she has a prima facie case with a probability of success, will suffer irreparable loss which would not adequately be compensated by an award of damages, and if the court is in doubt it will decide on a balance of convenience. If an applicant meets this threshold, then the court will grant the order to preserve the substratum of the case pending the hearing and determination of the suit.
22. The Applicant contends that he is the owner of Miti Mingi/mbaruk Block 8/1993 (kianjoya 'D') and MITI MINGI/MBARUK BLOCK 8/1992 registered in the names of Carol Wangui Njenga and Ruth Wangui Njenga who are his daughters to hold on behalf of the Ngotho family.
23. The 1st Defendant stated that Applicant showed her the four title deeds of the resultant subdivision of Miti Mingi/Mbaruk Block 8/1216 (Kianjoya 'D') being Miti Mingi Mbaruk Block 8/1990, 1991, 1992 and 1993 (Kianjoya 'D') registered in her name and that he was party to the subdivisions and the transfers.
24. The Applicant's case is that he is the owner of the suit parcels of land, which are registered in the names of his daughters and not his name. He also talks of being a beneficiary of family land. This creates a problem, as the registered owners are not parties to this suit. I find that the Applicant has not established a prima facie case against the defendants.
25. On the issue of whether the Applicant will suffer irreparable harm not capable of being compensated by way of damages, the Applicant has deponed in the supporting affidavit that he paid Ksh 350,000/= to acquire Miti Mingi/Mbaruk Block 8/1216 (Kianjoya 'D') hence the value of the property is quantifiable.
26. In the case of *Paul Gitonga Wanjau –vs- Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR*, the court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn



out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

27. I have considered the application, submissions by counsel and find that the Applicant has not met the threshold for grant of a temporary injunction but in the interest of justice I will order that status quo be maintained pending the hearing and determination of the case. Costs in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 10TH DAY OF DECEMBER 2024.

M. A. ODENY

JUDGE

