



Njuguna (Suing as the Personal Representative of the Estate of Godfrey Gichuhi Kibera) v County Government of Kiambu & another (Environment & Land Case E086 of 2024) [2024] KEELC 13737 (KLR) (9 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E086 OF 2024
BM EBOSO, J
DECEMBER 9, 2024**

BETWEEN

**IRENE NDATA NJUGUNA PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF
GODFREY GICHUHI KIBERA**

AND

**COUNTY GOVERNMENT OF KIAMBU 1ST DEFENDANT
LAND REGISTRAR, KIAMBU 2ND DEFENDANT**

RULING

1. Irene Ndata Njuguna initiated this suit on behalf of the estate of the late Godfrey Gichuhi Kibera through a plaint dated 12/2/2024. Together with the plaint, she brought a notice of motion of even date, seeking an interlocutory injunctive order restraining the defendants against dealing with, alienating, charging, leasing, advertising for sale, occupying, cultivating, fencing, wasting or interfering with land parcel number Karai/Lusingetti/T.634 pending the hearing and determination of this suit. The said application is the subject of this ruling.
2. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit sworn on 12/2/2024. It was canvassed through written submissions dated 3/11/2024, filed by M/s Njiginia Macharia Advocates. In summary, the case of the plaintiff/applicant is that the suit land was acquired from the County Council of Kiambu by the late Njoroge Muugi Waweru [hereinafter referred to as "the late Waweru"] in 1977 vide receipt number 31855. She adds that the late Waweru sold the land to his son, the late Peter Karanja Munai who is now deceased [referred to in this suit as "the late Munai"]. It is the case of the plaintiff that the late Munai in turn sold the land to the late Godfrey Gichuhi Kibera [referred to in this ruling as "the late Kibera] whose estate she represents. She adds that the above successive ownerships/transfers were sanctioned by the County Council of Kiambu.



3. The plaintiff contends that although the suit land is registered in the name of the County Government of Kiambu, the beneficial owner of the land is the estate of the late Kibera. It is her case that vide a public notice, the 1st defendant indicated that it would issue a title deed relating to the suit land to “third parties from 2nd -15th March 2022.” Consequently, she wants the defendants restrained.
4. The 1st defendant opposed the application through a replying affidavit sworn on 18/6/2024 by Patrick Mbari and written submissions dated 10/10/2024, filed by Ms Dianarose Wambui, a legal counsel working with the 1st defendant. The case of the 1st defendant is that the plaintiff has not satisfied the criteria for grant of an interlocutory injunction. The 1st defendant faults the plaintiff for failing to exhibit the relevant letter of allotment to demonstrate that indeed the suit land was allotted to the late Waweru or to any of the alleged subsequent owners.
5. The 1st defendant contests the allegation that they published a notice targeting the suit land, adding that the public notice which they published related to various parcels and was an invitation to the persons who claimed to be in possession of ownership documents to attend their offices and present their documents for verification. They fault the plaintiff for snubbing the verification process and for rushing to court without visiting the 1st defendant’s offices to have their documents verified. The 1st defendant urges the court to decline the plea for interlocutory injunctive order.
6. The court has considered the application, the response to the application, and the parties’ respective submissions. The single question to be determined in this ruling is whether the application under consideration meets the criteria for grant of an ordinary interlocutory injunctive relief.
7. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella v Cassman Brown* [1973] EA 358. First, the applicant is expected to demonstrate a prima facie case with a probability of success. Second, the applicant is expected to demonstrate that if the injunction is not granted, she would stand to suffer damage that may not be adequately indemnifiable through an award of damages. Third, should the court have doubt on both or either of the above two requirements, the application should be disposed based on the balance of convenience.
8. Our superior courts have, in a line of decisions, emphasized that at the stage of disposing an application for interlocutory injunction, the court should not make definitive or conclusive pronouncements on substantive issues in the suit. The courts have emphasized that definitive or conclusive pronouncements on substantive issues or questions should be reserved until after trial.
9. Has the plaintiff satisfied the above criteria? The plaintiff has exhibited an official search which shows that the suit land was registered in the name of the 1st defendant on 25/3/2015. She has also exhibited a receipt dated 14/1/77 for Kshs 165, expressed as issued by the County Council of Kiambu to the late Waweru on account of Plot No T634 Lusingetti. She has further exhibited a County Council Minute expressed as authorizing transfer of the suit land from the late Waweru to the late Kibera. It is, however, not clear if there was any transfer to the late Waweru’s son, the late Munai. However, as correctly pointed out by the 1st defendant, the plaintiff has not exhibited any formal letter of allotment. It is also not lost on the court that the 1st defendant has not expressly contested or challenged the alleged allotment and the exhibited receipts. Further, it is not clear why the successive owners elected to do nothing in terms of processing titles in their respective names. Clearly, for the above reasons, there are doubts on the first limb of the principle in *Giella v Cassman Brown* [1973] EA 358.
10. Given the above circumstances, and taking into account the fact that the suit land is currently registered in the name of the 1st defendant, the court takes the view that this is an application that should be disposed based on the balance of convenience. The balance of convenience favours maintaining the



status quo in terms of registration of the land and in terms of suspending any intended development of the land for a period of 12 months.

11. On the second limb, land remains an emotive resource in the socio-economic lives of the Kenyan population. An award of damages is hardly accepted as an adequate alternative to the preservation of the title to land whose ownership is in dispute.
12. On costs, this is an interlocutory application. The application is being disposed based on the balance of convenience. In the circumstances, costs will be in the cause.
13. In the end, the application dated 12/2/2024 is disposed based on the balance of convenience in the following terms:
 - a. Pending the hearing and determination of this suit, no dealings shall be registered in the land register relating to Karai/ Lusingetti/T.634 and no permanent development shall be erected on the said land within the next 12 months.
 - b. Unless extended by the court, the above order shall lapse after expiry of 12 months from today.
 - c. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9TH DAY OF DECEMBER 2024

B M EBOSO

JUDGE

Court Assistant: Hinga

