



REPUBLIC OF KENYA



KENYA LAW
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**Lekuam v Gichohi & another (Environment & Land Case
E020 of 2021) [2023] KEELC 302 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 302 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E020 OF 2021
YM ANGIMA, J
JANUARY 19, 2023**

BETWEEN

CECILIA LEKUAM APPELLANT

AND

VIRGINIA MUTHONI GICHOHI 1ST RESPONDENT

ANDREW AKOLI 2ND RESPONDENT

RULING

1. By a notice of motion dated October 17, 2022 grounded upon Article 159(1)(d) of the *Constitution* of Kenya 2010, Order 12 rule 7, Order 51 rule 1 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* (Cap 21) and all other enabling provisions of the law, the Respondents sought an order for review, variation or setting aside of the interim injunction granted in favour of the Appellant on October 13, 2022 and substitution thereof with an order for maintenance of the status quo pending the hearing and determination of the appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1st Respondent on October 18, 2022 together with the exhibits thereto. It was contended that the interim injunction made on October 13, 2022 amounted to an eviction order since the 1st Respondent was in possession of the suit property and had been in possession thereof for a long period of time. The 1st Respondent further contended that she had even buried her late son on the suit property hence the interim order of October 13, 2022 was inappropriate in the circumstances. The court was consequently urged to allow the application.
3. The Appellant filed a replying affidavit sworn on November 8, 2022 in opposition to the application. It was disputed that the 1st Respondent had been in possession of the suit property for a long time and contended that the 1st Respondent only took advantage of the striking out of her suit before the



- trial court by planting wheat around June, 2022. It was also denied that there was a grave of the 1st Respondent's son on the suit property.
4. The Appellant contended that she was the rightful allottee of the suit property and that the 1st Respondent had fraudulently obtained its registration. The Appellant further contended that the instant application was lacking in merit since the Respondents had failed to satisfy the legal requirements for obtaining the orders sought. Consequently, the court was urged to dismiss the application with costs.
 5. When the application was listed for inter partes hearing, it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. The record shows that the Appellant's submissions were filed on December 16, 2022 but the Respondents' submissions were not on record by the time of preparation of the ruling.
 6. The court has considered the Respondent's application, the Appellant's replying affidavit in opposition thereto as well as the material on record. The court is of the opinion that the sole issue for determination is whether or not the Respondents have made out a case for variation/review or setting aside of the interim order made on October 13, 2022.
 7. The court has considered the material and submissions on record. It is evident that the 1st Respondent is currently in possession of the suit property on which she has cultivated some wheat. It is also evident from the material on record that she was the one in possession at the time the Appellant's application for interim orders was determined.
 8. The court is thus of the opinion that a party who is already in possession of disputed property cannot effectively be restrained from entering, using or occupying the land. However, such person can be restrained from developing, transferring, leasing, charging, letting, assigning or dealing with the land in an adverse manner pending the hearing and determination of the ownership dispute. It is apparent from the application that the 1st Respondent's fear is that she might be evicted from the suit property before the hearing and determination of the pending appeal.
 9. The court is thus satisfied that the Respondents have made out a case for review or variation of the interim injunction made on October 13, 2022 to allow her continued possession pending the hearing and determination of the appeal. The court is, however, not inclined to replace the interim injunction entirely with a status quo order as suggested by the Respondents. The court shall simply vary the interim injunction in order to preserve the suit property and allow the 2nd Respondent to maintain possession. She shall, however, not be at liberty to construct any structures or undertake permanent developments thereon.
 10. The upshot of the foregoing is that the court finds merit in the Respondents' application. Accordingly, the court makes the following orders for disposal thereof:
 - a. The interim injunction made on October 13, 2022 is hereby varied by removing reference to the part of the order restraining the Respondents from entering, using or occupying the suit property.
 - b. Consequently, the interim injunction granted on October 13, 2022 shall restrain the Respondents either by themselves, their servants, or agents from developing, transferring, leasing, charging, letting, assigning and dealing in any adverse manner whatsoever with Title No Laikipia/Uaso Narok B/1378 pending the hearing and determination of the appeal.



- c. The costs of the application shall be borne by the 1st Respondent in any event for failing to file an affidavit earlier to disclose that she was in possession of the suit property.
- d. The appeal shall be mentioned on February 27, 2023 to confirm filing of the record of appeal.

It is so ordered.

RULING DATED AND SIGNED AT NYAHURURU THIS 19TH DAY OF JANUARY, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Nderitu Komu for the Appellant

Ms. Wangechi Wangare for the 1st & 2nd Respondents

Y. M. ANGIMA

JUDGE

