



REPUBLIC OF KENYA



KENYA LAW
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**Ndegwa v Wamutte & 2 others (Land Case E041 of 2021)
[2023] KEELC 90 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 90 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE E041 OF 2021
FM NJOROGE, J
JANUARY 19, 2023**

BETWEEN

ROSE WANJIRU NDEGWA PLAINTIFF

AND

RACHEL MUTHONI WAMUTTE 1ST DEFENDANT

PATRICK WAMUTI WARUI 2ND DEFENDANT

TERESIA WANGARI MUNDIA 3RD DEFENDANT

RULING

1. This is a ruling on an application 17/6/2022 seeking *inter alia* orders of review of orders made on October 28, 2021 upon an application for injunction. It has been brought by the plaintiff under the provisions of sections 1A 1B 3A and order 45 rules 1 (2) and (3), order 1 rule 3 and 10 and order 50 of the [Civil Procedure Rules](#).
2. The application seeks that the ruling issued on October 28, 2021 be reviewed and varied and to the extent that the following orders be made:
 - a. An injunction restraining the 1st and 2nd defendants from collecting rent from all that parcel of land known as LR No 1317/240 Gilgil Township;
 - b. An order of inhibition to be registered against LR NoGaturi /Githimu/1915 (Embu);
 - c. An injunction restraining the 1st and 2nd defendants from disposing of LR No Gaturi / Githimu/1915 (Embu);
 - d. That Bonanza holdings Limited be joined as the 4th defendant;
 - e. That costs be provided for.



3. The application is supported by the sworn affidavit attached thereto and the supplementary affidavit filed on 18/11/2022 of Rose Wanjiru Ndegwa, the plaintiff.
4. The application is opposed. The 1st and the 2nd defendants filed their sworn replying affidavits dated 22/7/2022 on the same date. The proposed 4th defendant filed its replying affidavit through Julius Mathenge Waweru Reithe on October 25, 2022 also opposing the application.
5. The application was canvassed by way of written submissions filed by the 1st and 2nd defendants on November 17, 2022 and by the plaintiff on November 18, 2022.

Determination

6. The issues that arise for determination are whether the injunction orders sought should issue, whether the proposed 4th defendant ought to be joined as a party and whether the inhibition order sought ought to issue.
7. I will deal with the first and the second issue together as they are closely interlinked. The first issue is whether the court ought to review its orders made on October 28, 2022 and issue an order that the 1st and 2nd defendant be restrained from collecting rent from plot no LR No 1317/240 Gilgil Township. It is averred that the court had observed in its impugned ruling that the plaintiff had not demonstrated that the deceased Oscar Wamutti Warui used to receive rent from the suit plot and hence the order seeking the restraining of rent collection was unmerited. It is stated that the plaintiff has by use of due diligence now obtained evidence that Oscar indeed used to receive rent from the said plot which had erroneously been indicated as LR No 1317/225 Gilgil Township in the lease agreement. The further narrative given is that the grant had indicated that Oscar was a beneficiary of plot no LR No 1317/225 Gilgil Township which formed the basis of the lease agreements, whereas the intent of the parties was that he would be a beneficiary of the plot known as LR No 1317/240 Gilgil Township, and that the error had been rectified by the rectification certificate of confirmation of a grant dated 8/5/2019. I have also seen the rectification certificate of confirmation of grant dated 8/5/2019 and I am satisfied that the proper plots that Oscar benefited from were LR No 1317/240 Gilgil Township, LR No Gaturi / Githimu/1915 (Embu) and Gilgil/Karunga Block 10/270. I have also seen the exhibited copies of receipts and cheques and I am satisfied that Oscar used to receive income and also that the income must have been earned from LR No 1317/240 Gilgil.
8. The applicant states that LR No 1317/240 Gilgil Township and LR No 1317/225 Gilgil Township are adjacent to each other, hence the confusion and so the court's ruling ought to be reviewed on that basis. This court also observes that there would be good ground to suppose that the estate of Oscar would be entitled to receive rent from a property to which he was named beneficiary and an issue would therefore arise in the main suit as to the propriety of receipt of rent from any other person other than his estate. However, no connection that can be drawn between rent amounts said to have been paid to the deceased and any lease agreement exhibited. Even if there had been confusion and rather than LR No 1317/240 Gilgil Township LR No 1317/225 Gilgil Township was indicated on the lease dated 23/4/2014 I still see no connection yet between that lease and the receipts attached which name the payers alternately as "serenity institutions" or the "Serenity College" because the lease exhibited as RWN5 in the application is between the late Oscar and one Samuel Mwangi Gitigi. Consequently, a prima facie case has not been made out for an injunction relating to rent collection in the present application.
9. I had in the earlier application for injunction in this matter found that the estate of the deceased does not stand to suffer irreparable loss incapable of recompense and the court had arrived at the view that the balance of convenience tilted in favour of taking the necessary measures to preserve the suit land.



10. The affidavit evidence of the applicant is that an official search on the plot no LR Gatari / Githimu/1915 (Embu) has revealed that the proposed 4th defendant is now the registered proprietor of that property. The rectified certificate of grant dated 8/5/2019 names Oscar as the beneficiary of that plot. An issue therefore arises as to the propriety of the registration of the 4th defendant as proprietor of that property. Under order 1 rule 10 (2) of the Civil Procedure Rules this court has power to order the joinder of any person who appears to be a necessary party for the proper and final determination of all issues arising from a suit and I find that in this suit, the proposed 4th defendant is a necessary party and ought to be so joined.
11. The next issue I must decide is whether an order of inhibition ought to issue to be registered against LR Gatari /Githimu/1915 (Embu). The plaintiff is the administrator of the estate of the late Oscar who is named as beneficiary of that plot as described earlier herein, and the plaintiff prays that the 1st, 2nd, 3rd and the proposed 4th defendant be restrained from disposing of the said plot. It is stated that the earlier orders issued by this court are prejudicial to the plaintiff and ought to be reviewed and varied on account of an error on the face of the record.
12. If the plaintiff did not attach the rectified certificate of confirmation of grant dated 8/5/2019 which grants the property in dispute to her late husband or adduce evidence that he used to earn rents therefrom, then she can not blame the court for failing to secure injunction and inhibition orders in the application dated 21/5/2021 and for that reason, I do not think that there was any error on the face of the record. The plaintiff simply failed to satisfy this court that the late Oscar used to receive any rental income from LR No 1317/240 Gilgil Township and therefore an injunction could not issue.
13. Now the plaintiff has attached the rectified certificate of confirmation of grant dated 8/5/2019 and the question arising is whether the orders sought can issue in the present application. This court lacks jurisdiction to sit on appeal on its own orders declining an injunction against the 1st and 2nd defendants restraining them from collecting rent as sought in the application of 21/5/2021. The plaintiff simply failed to avail the necessary evidence and so failed to persuade the court that she was entitled to the said orders. The rectified certificate of confirmation of grant she exhibited to her supporting affidavit then did not reflect her deceased husband as beneficiary to LR No 1317/240 Gilgil Township; it named one Wilson Kagiri Wamutte as the beneficiary. In those circumstances an order of review of the ruling and orders issued on October 28, 2021 can not issue regarding the collection of rent by the 1st and 2nd defendant; however this is a court of justice. It is evident that the court having opted for the issuance of orders preserving the suit property as it was described in the application dated 21/1/2021, the same approach ought to be adopted in the present application. I state this because the present application uses the words "...review or vary..." In the circumstances of this case I elect to apply the word "vary" for if I do not do so, the suit land may remain exposed to further dispositions that may render further complexity to the dispute. Therefore, the orders of October 28, 2021 ought to be varied to reflect the correct title number in the rectified grant of 21/5/2019.
14. The upshot of the foregoing is that the motion dated 17/6/2022 partially succeeds and I grant the following orders:
 - a. Bonanza holdings Limited is joined to the present suit as the 4th defendant;
 - b. The plaintiff shall amend her plaint and serve it together with summons upon the 4th defendant within 21 days hereof;
 - c. The orders of this court issued on October 28, 2021 are hereby varied to the extent that order No (b) as issued therein is vacated and substituted with an order as follows:



- i. An order of temporary injunction is hereby issued restraining the 1st, 2nd, 3rd and 4th defendants from disposing of all those parcels of land known as LR No 1317/240-Gilgil Township, LR No Gaturi /Githimu/1915 (Embu) and Gilgil/Karunga Block 10/270 pending the hearing and determination of the instant suit;
- ii. An order of prohibition is hereby issued inhibiting the registration of any dealings on the register of all those parcels of land known as LR No 1317/240-Gilgil Township, LR No Gaturi /Githimu/1915 (Embu) and Gilgil/Karunga Block 10/270 pending the hearing and determination of the instant suit;
- d. The suit shall be mentioned on 31/1/2023 by way of teleconference for further directions;
- e. The costs of the instant application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 19TH DAY OF JANUARY, 2023

MWANGI NJOROGE

JUDGE, ELC, NAKURU

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