



**Nyakoe ((Suing as the Administrator and Personal Representative of the Estate of Samwel Nyakoe Mogwambo) v Mochogwa (Environment & Land Case E005 of 2022) [2023] KEELC 15826 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15826 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E005 OF 2022**

**JM KAMAU, J**

**FEBRUARY 28, 2023**

**BETWEEN**

**JERIAH NYAKOE ..... PLAINTIFF**

**(SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SAMWEL NYAKOE MOGWAMBO**

**AND**

**MARY NYANCHAMA MOCHOGWA ..... DEFENDANT**

**RULING**

1. By an application dated November 11, 2022 the applicant, who is the plaintiff in this case sought for the substantive order that pending the hearing and determination of the originating summons herein, an order of temporary injunction be issued restraining the respondent or anybody else, her agents, servants, children or anyone acting under instructions from her from entering upon, grazing, tilling, cultivating, destroying crops or trees, alienating, disposing of, leasing or in any other way trespassing or interfering with the plaintiff's peaceful occupation of a portion measuring 0.351 hectares hived off from land parcel Number West Mugirango/Bosamaro West/544.
2. The alternative prayer is a conservatory order maintaining the prevailing status quo obtaining at the time of filing this suit in order to preserve and protect the plaintiff's interests on the parcel of land. She also sought the court's order that the OCS Nyamirando provide security for the enforcement of the orders if the same are granted. In the grounds supporting the said application, the plaintiff states that on April 14, 1974, the plaintiff's deceased husband one Samwel Nyakoe Mogwambo whose estate she is an administratrix of made payment to the late Siango Nyaata and also in respect to another portion from the latter's wife, Kwamboka Nyaata who is also deceased. On November 7, 1978 a consideration of Kshs 2,000/= and 15 cows were made. The land had been registered in the name of the said late Siango Nyaata. The late Samwel Nyakoe took possession of the said 0.351 hectares and lived thereon



till his death on October 8, 1988 after which his family (wife and children) continued living on the suit land to date which continued occupation has been notorious, continuous, exclusive, uninterrupted and peaceful, for a period of more than 12 years and which has been within the knowledge of the defendant.

3. Unfortunately, the defendant has of late threatened to forcefully evict the plaintiff from the suit land and has also embarked on the sub division of the said land which would disturb the substratum of the originating summons. A notice to this effect was issued on August 29, 2022. These facts have been buttressed by the plaintiff's affidavit in support sworn on November 11, 2022. The plaintiff also depones in her affidavit that she and her late husband have made significant developments including permanent buildings and have been growing maize, nappier grass and tea on the land, besides having planted trees thereon. Charles Ondieki Siango (now deceased), son to the late Kwamboka Siango And Siango Nyaata caused the entire LR West Mugirango/Bosamaro West/544 to be registered in his name in 1997. The defendant consequently commenced and finalized the succession cause of the entire estate of the late Charles Ondieki Siango which was confirmed without disclosing the plaintiff's interests. Hence the current application.
4. We are not told the relationship between Mary Nyanchama Mochogwa, the defendant herein and the late Charles Ondieki Siango, son to the alleged vendors of the 0.351 hectares. We do not intend to speculate. What is clear from the Succession Cause No E112 of 2021 at Nyamira Chief Magistrate's Court is that the former is the administratrix of the latter's estate and that West Mugirango/ Bosamaro West/544 has already been confirmed as distributed to the defendant herein to hold in trust for Jared Nyabunga Ondari, Vincent Nyakango Ondari, Evans Ondieki Ondari, Alex Maseno Ondari, Bonface Nyakoe Abere, Caleb Tengeya Auka & Vincent Modi Auka and the certificate of title in respect of the suit land issued on September 21, 2022 is so registered. The application dated November 11, 2022 has come to court a number of times, first on November 15, 2022 *ex parte*, then on November 21, 2022 when the defendant never turned up. Then on December 5, 2022 when the defendant appeared in person and successfully pleaded with the court to grant her time to engage an advocate. She was given 21 days. She was also granted time to file her response.
5. The matter was scheduled for inter partes Hearing on February 16, 2023 when the defendant did not turn up but sent her son Bonface Nyakoe Aberi who told the court that his mother fell sick 3 days to the hearing of the application. The nature of the illness was not elaborated and no documents or any other evidence were brought to the attention of the court to support this assertion. In any case, the defendant had all the time from December 5, 2022 to February 12, 2023, a day before she allegedly fell sick, to engage an Advocate and/or file response. No explanation for the failure to do so was given. The court therefore allowed the plaintiff to proceed with his application which I have considered. If it is indeed true that the plaintiff has resided on the suit land, 0.351 hectares out of West Mugirango / Bosamaro West/544 since 1974, it would only be fair for her and her family to remain in occupation until the final disposal of this suit since should the defendant succeed in evicting her and disposing of the suit land, it would cause more complications because other parties, the new buyer(s) would have to be involved in this case. It would not prejudice the defendant in any way should she succeed in this case because the land would still be there. The plaintiff doesn't have a title deed over the 0.351 hectares and can therefore not dispose of the same and this court warns her not to dare. This court has a moral obligation to protect unsuspecting prosperous and potential buyers from entering into a contract to buy property which is embroiled in a court scrimmage. Secondly, if it is indeed true that the plaintiff has been on the suit property since 1974, evicting her now after a suit for adverse possession has been commenced would tilt the status quo, to the plaintiff's disadvantage. As to whether a *prima facie* case with a probability of success has been brought out, the answer is in the affirmative. The plaintiff's case is supported by a sale agreement, photographs taken on the development of the suit



land (of cause with a caution that the same would have been taken elsewhere), a copy of eviction notice demonstrating quite clearly in black and white that the defendant's son's occupation on the parcel of land West Mugirango/ Bosamaro West/544 among others is not in doubt. As to whether there would be adequate compensation *in lieu* of the orders sought, land is very emotive and Kenyans hold land with sentimental attachment and evicting the plaintiff from the suit land may cause untold suffering to the family. Finally, the balance of probabilities tilts in favour of granting the prayers sought and I so order. Having granted the main prayer, the alternative prayer becomes superfluous.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF FEBRUARY 2023.**

**MUGO KAMAU**

JUDGE

In the Presence of: -

Court Assistant: Sibota

applicant: Ms. Ochoki

Defendant: In person

