



**Orina v Jairo & 3 others (Environment and Land Appeal E014 of 2022)  
[2023] KEELC 15725 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15725 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND APPEAL E014 OF 2022**

**JM KAMAU, J**

**FEBRUARY 23, 2023**

**BETWEEN**

**JUSTUS ONGERA ORINA ..... APPELLANT**

**AND**

**EBISIBA NYABOKE JAIRO ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY LAND SURVEYOR, NYAMIRA ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, NYAMIRA ..... 3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

*(Interlocutory Appeal from the Ruling and Order of the Magistrate's  
Court at Nyamira by Hon. M.C. Nyigei – SPM delivered on the 26th  
day of October, 2022 in Nyamira CMC ELC Case No. E43 of 2021)*

**RULING**

1. The Appellant is dissatisfied with the order of the Honourable MC Nyigei – PM dated October 16, 2022 in Nyamira CMC ELC Case No E43 of 2021 where he was denied temporary injunction restraining the Respondents, their servants and/or agents from entering, alienating, constructing and/or otherwise howsoever manner from interfering with Land Parcel Number Mwongori Settlement Scheme/50 pending the hearing and determination of Nyamira CMC ELC No E43 of 2021. He was however allowed to amend the Complaint for purposes of joining the Honourable Attorney General as a Defendant in the case. The Honourable Trial Magistrate gave her reasons for disallowing the said prayers in the Application dated December 15, 2021 on the ground that no prima facie case with a probability of success was brought out since the Appellant did not prove that he is the registered owner of the aforesaid suit property. The Honourable Trial Magistrate further held that the Appellant did not show that any injury suffered cannot be adequately compensated in Damages and that irreparable injury could occur to him if the injunction is not granted and further that there would be no other



remedy available to him by which he would protect himself from the consequences of the apprehended injury.

2. The court concluded that parcel number Mwangori Settlement Scheme/1206 had already been curved out of the suit land and consequently the injury has already been suffered. In short, the court cannot make orders in vain since this would be akin to closing the stable doors after the horses have left.
3. The Appeal is buttressed on the grounds that the Trial Magistrate misdirected herself fundamentally in holding that the Appellant failed to establish a prima facie case with probability of success, misapprehended the material facts placed before her hence arrived at the wrong decision, rejected matters of fact which were not controverted and by failing to take into account relevant matters but instead took into account irrelevant matters which led into the court arriving at a wrong Decision.
4. Pending the hearing and determination of the Appeal, the Appellant has moved the court to issue an interim/temporary injunction restraining the Respondents, their servants and/or agents from construction, trespassing, entering and/or otherwise in whatsoever manner from interfering with land parcel number Mwangori Settlement Scheme/50. The same is grounded on firstly, apprehension that the Appeal shall be rendered nugatory if the orders sought at this stage are not granted and that the Appeal is arguable and has overwhelming chances of success and finally that the Respondents' acts are illegal, null and void as they are calculated to superimpose Title Number Mwangori Settlement Scheme/1206 on land parcel No Mwangori Settlement Scheme/50.
5. I must point out from the outset that I am faced with a scenario where the orders sought at this stage are the subject matter of the Appeal and also the ultimate substratum of Nyamira CMELC No 43 of 2021. Every decision made by the court must contain the reason arriving at the said Decision and/or otherwise. But the dilemma here is that such reasons would prejudice both the Appeal and the Trial Court's final Decision which consequence would be most undesirable to say the least. This court must therefore be very cautious and wary of such draconian results. The best that this court can do at this stage in order to balance the opposing interests is to order that pending the hearing of this Appeal Title Number Mwangori Settlement/50 and Mwangori Settlement Scheme/ 1206 be deposited in the lower court forthwith and in any case within the next 48 Hours. I so order. This is in order to avoid the worst-case scenario to forestall a situation where the Title to the respective parcel(s) would change hands and maybe in multiplicity hence complicating the case before the Honourable Principal Magistrate. This order should also be registered with the Land Registrar, Nyamira.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 23RD DAY OF FEBRUARY 2023.**

**MUGO KAMAU**

**JUDGE**

**the Presence of:-**

Court Assistant: Sibota

Appellant: Ms. Nyaenya

Respondent: Mr. Nyamwange holding brief for Mr. Ogari for the 1<sup>st</sup> Respondent

