



REPUBLIC OF KENYA



Gatuma v Gatuma & 2 others (Environment and Land Miscellaneous Application 21 of 2022) [2023] KEELC 909 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELC 909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 21 OF 2022
MD MWANGI, J
FEBRUARY 21, 2023
FORMERLY HCC NO. 113 OF 2005**

BETWEEN

GEORGE GITAU GATUMA PLAINTIFF

AND

AUGUSTINO MBAI GATUMA DEFENDANT

AND

JOHN MUKIRI MBAI 1ST RESPONDENT

NANCY NJOKI NG'ONDA 2ND RESPONDENT

RULING

1. The application for determination is dated December 2, 2022 filed by the Plaintiff expressed to be brought under Order 24 and 50 of the *Civil Procedure Rules*. The Applicant seeks for substantive orders that:
 - a. That the time within which to seek substitution of the deceased Defendant herein be enlargement.
 - b. That time within which to seek substitute the deceased Defendant herein and the Plaintiff amended accordingly.
 - c. That the suit herein be revived.
 - d. That the Respondents herein by themselves in their personal capacities or as administrators of the estate of the late Defendant herein Augustino Mbai or anyone claiming in their name, their servants, agents or employees be restrained by way of injunction from collecting and/or withdrawing the sum of Kshs 27, 475, 439.80 which was deposited or transferred to account



number xxxx Cooperative Bank of Kenya the same being compensation for compulsory acquisition of 0.0702 hectares land known as Dagoretti/Uthiru/281 until further orders of this court.

- e. The National Land Commission of Kenya and the Cooperative Bank of Kenya is hereby ordered not to release any sums of money in their accounts regarding compensation for the compulsory acquisition of 0.0702 hectares of land from Dagoretti/Uthiru/281 currently registered in the name of the deceased defendant herein Augustino Mbai either to the respondents herein or to anyone else save with the express orders of this court and until his application is heard inter parte.
 - f. The National Land Commission of Kenya and the Cooperative Bank of Kenya is hereby ordered not to release any sums of money in their accounts regarding compensation for compulsory acquisition of 0.0702 hectares of land from Dagoretti/Uthiru/281 currently registered in the name of the deceased defendant herein or to anyone else save with the express orders of this court.
 - g. The Applicant be supplied with the compensation and land acquisition information and documents in respect of 0.0702 hectares of land from Dagoretti/ Uthiru/281 by the National Land Commission of Kenya.
 - h. Costs of this application be in the cause.
2. The application is premised on the grounds on the face of it and further supported by the Supporting Affidavit of George Gitau Gatuma sworn on the December 2, 2022. The Plaintiff/ Applicant states that the Defendant herein died on the October 29, 2008. That the deceased was the eldest brother in the family.
 3. He avers that the family took long before agreeing on who was going to be the legal administrator but eventually settled on the Respondents as the two administrators. He has annexed a grant of representation to that effect.
 4. He states that the delay in bringing this application was caused by the pending appeal in the Court of Appeal Civil Appeal Number 188 of 2005 lodged by the deceased against a ruling delivered in the High Court. Hence the need for the two respondents herein to substitute the Defendant in this case and interim orders that existed in this case revived and/or granted.
 5. The deponent further asserts that the case is about registration of various parcels of land in the name of the Defendant in trust for his siblings. He asserts that the Respondents have listed the suit property amongst the assets comprising the estate of the deceased hence the need for the matter to be heard urgently and pave way for the succession.
 6. The Plaintiff/ Applicant further avers that part of the land known as Dagoretti/Uthiru/281 has been acquired by the National Land Commission (NLC) compulsorily for the construction of the Nairobi Expressway and part of the compensation paid to the 1st Respondent herein. The High Court refused to grant him injunctive orders citing lack of jurisdiction.
 7. The Plaintiff discloses that a fresh suit has been filed at the Milimani Chief Magistrate Court being CMCC ELC E318 of 2022 seeking injunctive orders against him from interfering with the said land and claiming part of the compensation money made by the NLC.
 8. That NLC and Cooperative Bank should be compelled to release information to this court on the true account for the said compulsory acquisition and the Bank be directed to preserve the said money



until further orders from the Court. That the suit ought to be revived to avoid two suits running concurrently which is an abuse of the Court process.

Replying Affidavit

9. The 1st Respondent opposed the application through his Replying Affidavit deponed on the December 13, 2022. He avers that the suit property herein Dagoretti/Uthiru/281 had been shared to every household. He avers that he has only been compensated for the structures he had constructed on the suit property and not the land.
10. He denies receiving the alleged compensation of Kshs 27,475,439.80 and reiterates that he only received compensation for the development he personally did on the suit property. The other compensation is yet to be done awaiting resolution of family disputes.
11. He contends that this suit had abated and no action had been taken to prosecute it for over 15 years.
12. The deponent avers that parties herein are the same in Succession Case High Court P &A No 1698 of 2009, where the applicant herein is an Objector in the said Succession Proceedings.
13. He contends that the issues in this abated suit are the same issues pending hearing and determination in the succession proceedings. This court should therefore not substitute parties herein but have this suit consolidated with the succession matter because the parties herein are the same and the subject matter is the same as in the Succession cause.

Further Affidavit

14. The Plaintiff/Applicant filed a Further Affidavit deponed on the January 13, 2023.
15. The deponent states that the Judge in the Succession Court made a ruling advising him to seek justice in the Environment and Land Court since the Succession Court lacked the jurisdiction to investigate and determine disputes pertaining to title to land.

Court's direction

16. The Court directed that the application be canvassed by way of submissions. Both parties complied and filed their submissions.

Determination

17. Considering the nature of the claim in this matter and in view of the ruling by Lady Justice M Thande of October 8, 2021 in High Court Succession No 1698 of 2009 (In the Matter of the Estate of Mbai Gatuma - Deceased), this court allows the Plaintiff's application in the following terms;
 - a. The court allows prayers No 2, 3 & 4 of the application.
 - b. The Plaintiff is hereby granted leave to substitute the Defendant herein with the administrators of his estate, namely, John Mukuri Mbai, Michael Kariuki Mbai & Nancy Njoki Ng'onda.
 - c. The Plaintiff shall accordingly amend his Plaint in the next 14 days from the date of this ruling. The amended Plaint shall be served upon the substituted Defendants within the same timeline.
 - d. Since the prayers number 5, 6, 7 8 and 9 in the application involve the National Land Commission which is not a party in this suit; the court under the provisions of Order 1 rule 10(2) of the Civil Procedure Rules orders the Plaintiff to join the National Land Commission as an Interested Party in the suit and the application.



- e. The prayers No 5, 6, 7, 8 & 9 shall be heard after the amendment of the Plaint and the joinder of National Land Commission as an Interested Party in this suit.
- f. The matter shall be mentioned on March 15, 2023 to confirm compliance and directions on the hearing of prayers No 5, 6, 7, 8 & 9 of the application.
- g. The Court will give its reasons for the orders issued herein together with its ruling on prayers No 5, 6, 7, 8 & 9 of the application.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Parties not present.

Court Assistant: Yvette.

M.D. MWANGI

JUDGE

