



**Wainaina & 2 others v Murigi & another (Environment and Land Appeal  
E015 of 2023) [2025] KEELC 1460 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E015 OF 2023**

**MN GICHERU, J**

**MARCH 24, 2025**

**BETWEEN**

**SAMMY NGUGI WAINAINA ..... 1<sup>ST</sup> APPELLANT**

**JAMES KAMANDE NJOROGE ..... 2<sup>ND</sup> APPELLANT**

**GEORGE DANSON MWAURA KAMANDE ..... 3<sup>RD</sup> APPELLANT**

**AND**

**GEOFFREY MUIRURI MURIGI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR MURANG'A ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellants filed a memorandum of appeal dated 21-9-2023 in which they seek to set aside the ruling of the learned Principal Magistrate at Kandara in case No. MCELC No.10 of 2023 dated 7-9-2023. In that ruling the learned magistrate granted an order of temporary injunction against the Appellants restraining them trespassing, cutting down trees, tilling, digging, attaching, advertising for sale, selling whether by auction or private treaty, leasing, letting, charging or otherwise howsoever interfering with the Respondent's ownership, quiet use, custody, control and/or possession and/or title to land parcel No. Loc.5/Ngurweini/411 pending the hearing and determination of the suit. Secondly, the OCS Kabati Police Station was directed to ensure compliance by the Appellants. Finally, costs were ordered to be in the cause.
2. In the memorandum of appeal the Appellants' five grounds are as follows.  
The learned magistrate erred in law and fact or misdirected herself by-
  - i. granting the order of injunction sought,



- ii. failing to consider that the 3<sup>rd</sup> Appellant is in possession of the suit land and has claim of adverse possession,
  - iii. failing to consider the weight of the evidence as set out in the replying affidavit,
  - iv. failing to consider that the 1<sup>st</sup> Appellant has equal rights as the Respondent under the law of succession and
  - v. that the said orders are conclusive.
3. The undisputed facts of the case are as follows. The 1<sup>st</sup> Appellant and the 1<sup>st</sup> Respondent are both sons of the late Wainaina Kibindia alias Wainaina Kibindio. Secondly, both are beneficiaries of the suit land which measures 2.8 acres, in equal shares. This translates to 1.4 acres for each of them. The dispute before the court is whether the 3<sup>rd</sup> Appellant should own the entire suit land or only the share of the 1<sup>st</sup> Appellant. The 1<sup>st</sup> Appellant is agreeable to the 3<sup>rd</sup> Appellant owning the entire land. The Respondent objects to the 3<sup>rd</sup> Appellant dealing with his share of 1.4 acres.
4. Counsel for the parties filed written submissions dated 27-2-2024 and 14-10-2024 respectively. The Appellant's counsel identified the following five(5) issues for determination.
- i. Whether the learned magistrate erred in allowing the order for injunction.
  - ii. Whether the learned magistrate misdirected herself by failing to consider that the 3<sup>rd</sup> Appellant is in possession of the suit land and has a claim of adverse possession.
  - iii. Whether the learned magistrate misdirected herself in failing to consider the weight of evidence as set out in the replying affidavit.
  - iv. Whether the learned magistrate misdirected herself by failing to consider that the 1<sup>st</sup> Appellant has equal rights under the law of succession.
  - v. Whether this court should set aside the orders issued by the lower court.

I have carefully considered the memorandum of appeal, the record of appeal including the replying affidavits by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents dated 26-4-2023. I find as follows on the five issues.

5. On the 1<sup>st</sup> issue, I find that the learned magistrate did not err at all in granting the order of injunction in the terms that she did. The ownership of the suit land being in dispute, the court could not allow any of the parties to deal with it to the detriment of the other. The order of injunction was proper as it preserved the substratum of the suit from being alienated by the Appellants.
6. Regarding the second issue, the learned magistrate did not err. The 1<sup>st</sup> and 3<sup>rd</sup> Appellants did not give any details of the 3<sup>rd</sup> Appellants claim for adverse possession of the suit land. They did not give details of the case number and where it was pending. By virtue of section 38 of the *Limitation of Actions Act* (Cap 22) such a case would have been pending before the Environment and Land Court. Even if such a case were pending, it would not deter the learned magistrate from issuing an order of injunction in a matter before her.
7. As for the third issue, the two replying affidavits did not raise any weighty circumstances. The 1<sup>st</sup> and 3<sup>rd</sup> Appellants did not adduce evidence to show how the 1<sup>st</sup> Respondent's land came to be owned by the 3<sup>rd</sup> Appellant. There was no evidence of a sale agreement, no payment of purchase price by the 3<sup>rd</sup> Appellant to the 1<sup>st</sup> Respondent or other evidence to show lawful occupation of his portion of the suit land by the 3<sup>rd</sup> Appellant. Without such evidence, the learned magistrate did the right thing which was to injunct the Appellants the way she did.



8. Coming to the fourth issue, I find that the learned magistrate has not made a final decision disregarding the 1<sup>st</sup> Appellant's share to a half of the suit land. The case is still at the interlocutory stage and what she did was to stop the alienation of the land by the Appellants until the conclusion of the suit. We are yet to see the conclusion.
9. Finally and the reasons given, I find no reason at all to interfere with the lawfully issued orders of the learned magistrate. I find no merit in the appeal which I dismiss with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 24<sup>TH</sup> DAY OF MARCH, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellants' Counsel – Miss Muemi

Respondents' Counsel –

