



**Mbae (Suing as the legal representative of M’Nkanata M’Njiima)
v Tharaka Nithi County Government (Environment & Land Case
E001 of 2022) [2025] KEELC 2995 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2995 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE E001 OF 2022**

**BM EBOSO, J
MARCH 24, 2025**

BETWEEN

**GLADYS KAINDA MBAE (SUING AS THE LEGAL REPRESENTATIVE OF
M’NKANATA M’NJIIMA) PLAINTIFF**

AND

THARAKA NITHI COUNTY GOVERNMENT’ DEFENDANT’

RULING

1. The plaintiff, Gladys Kainda Mbae, initiated this suit on behalf of the estate of the late M’Nkanata M’Njiima (the deceased) through a plaint dated 12/1/2022. She sought an order annulling the registration of Tharaka Nithi County Government as proprietor of land parcel number Mwimbi/L.E Magutuni/1714 and 1225 and decreeing registration of the deceased as proprietor of the two parcels of land. As an alternative relief, she sought an order decreeing compensation equivalent to the current value of the two parcels of land. She also sought costs of the suit.
2. Hearing of the suit proceeded before Yano J. Ultimately, the Court (Yano J) rendered a Judgment in the suit on 25/9/2024. The court found that the plaintiff had failed to prove her case on a balance of probabilities. The court dismissed the suit with costs. The plaintiff subsequently filed a notice of appeal intimating her intention to challenge the judgment in the Court of Appeal.
3. Subsequent to that, the plaintiff brought a notice of motion dated 28/10/2024 seeking a temporary injunction in the following verbatim terms:

“The honourable court be pleased to issue a temporary injunction against the respondent and its agent from evicting the applicant and her family members from L.R No. Mwimbi/ E.Magutuni/1714 and 1225 pending hearing and determination of the intended appeal.”



4. The said application is the subject of this ruling. The application was expressed as anchored on Order 42 of the Civil Procedure Rules and Section 1A and 1B of the *Civil Procedure Act*. It was premised on the grounds outlined on the face of the motion and in the applicant's supporting affidavit dated 28/10/2024. It was canvassed through written submissions dated 5/2/2025, filed by M/s L. Kimathi Kiara & Co. Advocates. In summary, the case of the applicant is that, she is dissatisfied with the Judgment rendered in this suit. She has initiated an appeal against the said Judgment. She contends that the defendant has sent its agents to survey the suit lands with the intention of allocating the two parcels to third parties. It is her case that, together with other family members, they reside on the suit lands. She is apprehensive that the defendant will maliciously evict them from the suit lands, adding that she will suffer great loss and her appeal will be rendered nugatory. She urges the court to grant her the interim injunction.
5. The defendant/respondent opposed the application through a replying affidavit sworn on 27/1/2025 by Lilian Gatwiri Kirunja, a Principal Legal Officer in the County Government, and written submissions dated 6/2/2025, filed by Saluny Advocates LLP. The case of the respondent is that, the application is untenable and bad in law. The respondent contends that this court having rendered its Judgment on 26/9/2025, it is now functus officio. The respondent further argues that a period of more than four months has lapsed since the notice of appeal was filed and no appeal papers have been served on them. It is the respondent's case that the application is meant to delay it from enjoying its lands despite the fact that it is the registered proprietor of the parcels.
6. The court has considered the application, the response to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The two key issues falling for determination in this ruling are: (i) Whether this court has jurisdiction to grant a temporary injunction in this matter under Order 42 of the Civil Procedure Rules; and (ii) Whether the application meets the threshold for grant of a temporary injunction. I will be brief in my analysis.
7. The applicant anchored her application on Order 42 of the Civil Procedure Rules and Sections 1A and 1B of the *Civil Procedure Act*. Order 42 of the Civil Procedure Rules grants this court jurisdiction to issue orders of stay of execution when exercising jurisdiction as a trial court as well as when exercising jurisdiction as an appellate court. It also grants the court jurisdiction to issue interlocutory injunctions when exercising jurisdiction as an appellate court. As a trial court, this court's jurisdiction to issue an interlocutory injunction is granted by Order 40 of the Civil Procedure Rules. Once this court renders a judgment in a case before it, it has no jurisdiction to grant an interlocutory injunction under Order 40 of the Civil Procedure Rules. Similarly, as a trial court, this court has no jurisdiction to grant a post-judgment interlocutory injunction under Order 42 of the Civil Procedure Rules. It only has powers to grant an interlocutory injunction under Order 42 rule 6 (6) of the Civil Procedure Rules when exercising jurisdiction as an appellate court.
8. This court is seized of the present application as a trial court. It heard the parties involved in the dispute and rendered its Judgment on 25/9/2024. It dismissed the plaintiff's suit for lack of merit. It did not issue any substantive positive order. The dispute is no longer pending before this court to warrant grant of an interlocutory injunction. Clearly, the court having rendered a judgment in the suit, it no longer has jurisdiction to grant an interlocutory injunction in the suit. That jurisdiction is at this point vested in the Court of Appeal under rule 5 (2) (b) of the Court of Appeal Rules. That is my finding on the first issue.
9. In tandem with the principle in Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR, this court is expected to down its tools for want of jurisdiction. Consequently, the court will not make any merit pronouncement on the second issue.



10. For the above reasons, the application dated 28/10/2024 is struck out. In tandem with the principle in Section 27 of the *Civil Procedure Act*, the plaintiff/applicant shall bear costs of the application.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24TH DAY OF MARCH, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant – Moses

Plaintiff – Absent

Ms. Samena for the Defendant

