



REPUBLIC OF KENYA



KENYA LAW
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**Thamubua v Ntoburi & 18 others (Environment & Land Case
E026 of 2024) [2025] KEELC 1390 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E026 OF 2024**

**BM EBOSO, J
MARCH 17, 2025**

BETWEEN

M'TUARUCIU M'AMERU THAMUBUA PLAINTIFF

AND

COSMAS KABUANGE NTOBURI 1ST DEFENDANT

JOSEPH KALAWA ALIAS KALAVA 2ND DEFENDANT

JULIUS KITHINJI NGERA 3RD DEFENDANT

JEREMIAH MBITI 4TH DEFENDANT

M'MWIRICHIA M'KAUMBUTHU 5TH DEFENDANT

DAVID MBAABU M'MUCHEKE 6TH DEFENDANT

FREDRICK NGORE TUIPUI 7TH DEFENDANT

GEORGE MEME IMUNYA 8TH DEFENDANT

PAUL KAMANDU M'IMUNYA 9TH DEFENDANT

IKIRIMA THETHEA ALIAS THENTHEA 10TH DEFENDANT

DAVID KINJUKI M'MUGWIKA 11TH DEFENDANT

JOYCE NCORO MURIUKI 12TH DEFENDANT

DAVID KARANI MAILANYI 13TH DEFENDANT

JACOB IKANGATU M'IMARIA 14TH DEFENDANT

EDWARD MUNOCIA M'MUGWIKA 15TH DEFENDANT

CHARLES NYUMOO M'IMIRONGO 16TH DEFENDANT

DAVID KINJUKI M'MUGWIKA 17TH DEFENDANT



JAKUBU GICHUNGE 18TH DEFENDANT

DISTRICT LAND REGISTRAR MERU NORTH 19TH DEFENDANT

RULING

1. The plaintiff initiated this suit through a plaint dated 15/9/2024. Among other reliefs, he sought:
 - (i) a declaration that the defendants' ownership and occupation of the suit land (*sic*) is irregular, unlawful and fraudulent;
 - (ii) an order directing the Land Registrar to cancel and nullify the title deeds relating to land parcel numbers Kangeta/Kangeta/20; 21; 23; 2478; 2883; 5176; 7135; 6534;1861; 645; 6533; 6383; 2945; 6282; 5175; 8469; 2479; 7175; and 9 and issue the plaintiff with a title deed for Kangeta/Kangeta/20 measuring 12 acres;
 - (iii) an order directing the 1st to the 17th defendants to vacate the suit land and give vacant possession thereof to the plaintiff; and
 - (iv) damages for loss of user and trespass.
2. Together with the plaint, the plaintiff brought a notice of motion dated 11/9/2024 seeking an interlocutory order of inhibition restraining the defendants against disposing, selling, transferring or dealing with the suit land pending the hearing and determination of this suit. The said application is the subject of this ruling. The application was premised on the grounds outlined in the motion and in the plaintiff's supporting affidavit dated 11/9/2024. It was canvassed through written submissions dated 28/11/2024, filed by M/s Munyoki Maheli & Co. Advocates.
3. The case of the plaintiff is that, he is the proprietor of the suit land which measures approximately 12 acres. He inherited the suit land, from his late father, M'Ameru Thamubua. When titles in the area were issued in 2013, he did not know that his land had been subdivided and transferred to strangers. In 2022, the 18th defendant delivered to him a title deed relating to Kangeta/Kangeta/20. The title deed indicated that his land measured 0.18 hectares (0.44 acres).
4. The plaintiff further contends that in 2013, he noticed that the defendants had encroached on the suit land. Upon inquiring from them, they informed him that they had bought land from Julia Kirimi, his (the plaintiff's) daughter. The plaintiff allegedly warned the defendants that his daughter had no land available for her to sell to them and told them that the suit land belonged to him.
5. The plaintiff argues that unless the inhibition is issued, the suit will be rendered nugatory. He adds that the defendants are likely to dispose the parcels.
6. A joint statement of defence dated 31/10/2024 was filed on behalf of the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 15th, 16th and 18th defendants. It was averred in the statement of defence that the 1st, 7th, 10th and 11th defendants are deceased, hence the claims against them are nullities. The defendants denied the averments made and particularized in the plaint. They averred that they acquired their respective parcels legally and regularly, adding that their parcels were not hived from the plaintiff's land.
7. The 2nd defendant opposes the application through a replying affidavit dated 1/11/2024. His case is that he is the registered proprietor of Kangeta/Kangeta/6534 measuring 0.10 hectares. He bought



- the said land from John Kalare in 2010 and he has been in occupation of the land since then. He has developed the land. He did not hive the land from the plaintiff's land.
8. The 3rd defendant opposes the application through a replying affidavit dated 1/11/2024. He deposes that he is the registered proprietor of land parcel number Kangeta/kangeta/813 measuring 0.06 hectares. He bought the land from Agostino Birithu who had inherited the land from Kirima Thentheha. He denies hiving the land from the plaintiff's land, adding that he has been in occupation of his land for many years and he has developed it.
 9. The 4th defendant opposes the application through an affidavit dated 1/11/2024. He deposes that he owns parcel number Kangeta/Kangeta/2045 measuring 0.54 hectares, adding that the land was previously owned by the late Cosmas Kabuange Ntoburi who gathered it in 1965. He denies taking away the plaintiff's land. He deposes that he has lived on his parcel for the last 74 years, adding that even his children have their homes on the land.
 10. The 8th defendant opposes the application through a replying affidavit dated 1/11/2024. He deposes that he owns land parcel number Kangeta/Kangeta/8469 measuring 0.20 hectares. He has been in occupation of the land for the last 40 years. He gathered the land in 1982 and he was registered as proprietor in 2013
 11. The 9th defendant opposes the application through an affidavit dated 1/11/2024. He owns land parcel number Kangeta/Kangeta/8469 measuring 0.18 hectares. He has been in occupation of his land for over 40 years and he has developed the land. He gathered his land in 1982 and he was registered as proprietor in 2013.
 12. The 12th defendant opposes the application through an affidavit dated 1/11/2024. She owns land parcel number Kangeta/Kangeta/2883 measuring 0.12 hectares. She inherited the land from her late father, M'Muchiri M'Kiambati. The land is located more than 500 metres away from the plaintiff's land. She has never had a land dispute with the plaintiff.
 13. The 14th defendant opposes the application through a replying affidavit dated 1/11/2024. He owns land parcel number Kangeta/Kangeta/5175 measuring 0.36 hectares. The land is located about one (1) kilometre away from the plaintiff's land. He has lived on his land for several decades and he has developed it. He has never had a land dispute with the plaintiff.
 14. The 15th defendant opposes the application through a replying affidavit dated 1/11/2024. He owns land parcel number Kangeta/Kangeta/9 measuring 1.263 hectares. He deposes that he has lived on the land throughout his life, adding that his father and grandfather were buried on the land. He has fully developed the land. His land has no relationship with the plaintiff's land.
 15. The 16th defendant opposes the application through a replying affidavit dated 1/11/2024. He owns land parcel number Kangeta/Kangeta/22. He has lived on the land throughout his life. His land does not border the plaintiff's land and has no relationship with the plaintiff's land.
 16. The 18th defendant opposes the application through a replying affidavit dated 1/11/2024. He deposes that he served as an Adjudication Committee Member for Kangeta/Adjudication Section between 1993 and 2011. He denies taking away the plaintiff's land. He exhibited copies of death documents relating to the 1st, 7th, 10th and 17th defendants.
 17. The above-named defendants filed joint written submissions dated 16/12/2024 through M/s Nkunja & Company Advocates. They urge the court to dismiss the application, emphasizing that the plaintiff has not satisfied the criteria for grant of an interlocutory injunction.



18. The court has considered the application, the responses to the application and the parties' respective submissions. The key issue to be determined in this ruling is whether the application meets the criteria for granting an interlocutory injunction. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v. Casman Brown* (1983) EA 358. First, the applicant is expected to demonstrate a prima facie case with the probability of success. Secondly, the applicant is expected to demonstrate that if the interlocutory injunction is denied, he will stand to suffer injury that may not be adequately indemnifiable through an award of damages. Lastly, should the court have doubt on either or both of the above, the application is to be determined based on the balance of convenience.
19. Over and above the above principles, our superior courts have often-time emphasized that at the stage of disposing the plea for an interlocutory injunction, a court should not make definitive or conclusive pronouncements on the key issues in the dispute. Definitive or conclusive pronouncements on the key issues are to be reserved to be made in the post-trial judgment or in any other final disposal decision of the court
20. Has the applicant demonstrated a prima facie case with the probability of success? At this interlocutory stage, the plaintiff has come to court waving a title and a land register. The title he is waving relates to land parcel number Kangeta/Kangeta/20 which is expressed as measuring 0.18 hectares. It is dated 14/10/2021. The applicant terms the title as fraudulent, contending that the land comprised in the title is supposed to be 12 acres. It is his case that his land which he inherited from his late father, the late M'Ameru Thamubua, was 12 acres. He contends that his land was illegally subdivided into 21 parcels, 20 of which were illegally registered in the names of the defendants. The allegation is contested by all the defendants.
21. At this interlocutory stage, the plaintiff has not placed before court relevant evidential material demonstrating that each of the 21 parcels was surveyed out of what he calls his 12 acre parcel. He has not presented land adjudication records showing that his land underwent the process of adjudication and his entitlement to 12 acres was asserted and affirmed. He has not placed before court the adjudication records relating to the 12 acres that he contends he owns. Neither has he joined the relevant adjudication officer as a party to this case.
22. That is not all. He alleges that his daughter, Julia Kirimi, sold part of his land to the defendants, adding that he learnt about the alleged sales in 2013. He has not joined his daughter as a party to the suit. Secondly, he has not explained why he did not take steps to protect his interest in the land for 11 years.
23. In the absence of evidence linking the defendants' parcels to the plaintiff's alleged 12 acres, the court is not seized of adequate evidential material to warrant issuance of the inhibition order which the plaintiff seeks. Put differently the plaintiff has not demonstrated a prima facie case to warrant issuance of an inhibition order.
24. Lastly on the first limb of *Giella v Cassman Brown* (*supra*), 4 out of the 18 defendants are said to be deceased. The applicant has elected to remain quiet about the fact that he sued deceased persons instead of suing their personal representatives. The court doubts that he can sustain a claim against deceased proprietors other than by suing their personal representatives as required under the [Law of Succession Act](#).
25. Had the plaintiff demonstrated a *prima facie* case, the court would not have hesitated to preserve the relevant land registers through issuance of inhibitory orders.
26. In the absence of the above crucial evidence, and given the above pointed defects/omissions, the balance of convenience favours non-interference with the defendants' proprietary rights as contemplated under the [Constitution](#) and the existing land laws.



27. For the above reasons, the court finds that the application under consideration does not meet the criteria for granting an interlocutory injunction. The application is rejected and dismissed for lack of merit. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF MARCH, 2025

B M EBOSO[MR]

JUDGE

In the presence of:-

Mr. Maheli for the Applicant/Plaintiff

Ms Della Gacheri for the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 15th, 16th & 18th Respondents

Ms Wairimu for the 19th Respondent

