



**Chelanga v Kigumi & 3 others (Environment & Land Case  
E033 of 2022) [2025] KEELC 71 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 71 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E033 OF 2022  
EO OBAGA, J  
JANUARY 23, 2025**

**BETWEEN**

**ABRAHAM KIPKOSGEI CHELANGA ..... PLAINTIFF**

**AND**

**SALOME WANJIRU KIGUMI ..... 1<sup>ST</sup> DEFENDANT**

**HIGHRISE DESIGNERS COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**BENSON KIMEMIA ..... 3<sup>RD</sup> DEFENDANT**

**SYLVIA WAMBUI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. This is a ruling in respect of a Notice of Motion dated 6<sup>th</sup> December, 2024 in which the 2<sup>nd</sup> Defendant/Applicant seeks the following orders:
  - a. Spent
  - b. Spent
  - c. That an order of temporal injunction do issue against the Plaintiff either by himself, his servants, agents and/or employees restraining them by an order of injunction from constructing, continuing with construction, extraction of hardcore stones, ploughing, planting, selling, leasing, charging and/or doing any other act inconsistent with the 2<sup>nd</sup> Defendant's proprietary rights over that Parcel of land known as Pioneer/Ngeria Block 1/ (EATEC)/114 pending the hearing of the main suit.
  - d. The cost of this application be sourced by the Plaintiff.



## **Background**

2. The 1<sup>st</sup> Defendant is mother to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The suit property that is pioneer/Ngeria Block 1 (EATEC)/1114 measuring 2.023 hectares belonged to David William Kigumi Kimemia who is deceased. The deceased and the 1<sup>st</sup> Defendant had five children. The 1<sup>st</sup> Defendant and one of her sons Joram Kimemia applied for grant of letters of administration in respect of the Estate of the deceased. The grant was given to the two and it was confirmed. On the basis of the confirmed grant one acre of the suit property was bequeathed to Joram Kimemia who sold it to the Plaintiff/Respondent on 19<sup>th</sup> January, 2010.
3. Later on three of the children of the deceased applied for revocation of the grant. In a judgment delivered on 27<sup>th</sup> May, 2021 Lady Justice Omondi (as she then was) revoked the grant issued to the 1<sup>st</sup> Defendant and her son Joram Kimemia. A fresh grant was issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant on 10<sup>th</sup> March, 2022.
4. Before the fresh grant could be given, the 1<sup>st</sup> Defendant purported that she had a general Power of Attorney from her son Joram Kimemia. Based on this fraudulent Power of Attorney, she sold the entire suit property to the Applicant who proceeded to obtain title on 7<sup>th</sup> September, 2011.
5. The new administrators of the Estate of the deceased applied for confirmation of grant. An objection to the mode of distribution of the deceased's Estate was filed by among others Joram Kimemia and the Respondent. Justice Wananda allowed the administrators to distribute the rest of the properties of the deceased but deferred the distribution of the suit property pending the hearing and determination of this suit.

## **Applicant's Contention**

6. The Applicant contends that he is the registered owner of the suit property and that the Respondent has trespassed on to it and started putting up a house and is extracting stones from the land without his consent. He annexed photographs of an upcoming building and others showing extracted stones. He states that since he has title he has a prima facie case with probability of success.

## **Respondent's Contention**

7. The Respondent contends that the Applicant has come to court with unclear hands and is guilty of non disclosure of material facts. He states that he is the owner of the one acre out of the suit property which he purchased on 18<sup>th</sup> January, 2010 at Kshs.2,400,000. He took immediate possession as per the photograph he annexed to the replying affidavit.
8. He stated that before he purchased the one acre, he carried out his due diligence and confirmed that the land belonged to Joram Kimemia who had a confirmed grant in his favour and his mother the 1<sup>st</sup> Defendant herein. In 2019, he discovered that the 1<sup>st</sup> Defendant had forged a Power of Attorney purporting to be from Joram Kimemia and had sold the suit property to the Applicant. Joram Kimemia brought both criminal and Civil proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in collusion with 3<sup>rd</sup> and 4<sup>th</sup> Defendants caused the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to file for revocation of grant in Eldoret High Court Succession cause No. E217 of 2003. He applied and was allowed to join the Succession Cause as Interested Party. The grant was however revoked. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants became administrators. They then purported to give the entire suit property to the Applicant. The Succession court Judge asked the administrators to explain in an affidavit why they



were giving the entire suit property to the Applicant yet there was the Respondent who had purchased one acre from it.

### **Applicant's Contention in Supplementary Affidavit**

10. The Applicant filed a Supplementary Affidavit in which he contended that in a judgement which revoked the grant issued to the 1<sup>st</sup> Defendant and Joram Kimemia, the Respondent herein had been advised to pursue Joram Kimemia for the amount of purchase money he paid to him. He stated that the Respondent has never appealed against the said judgment.

### **Submissions of parties**

11. The application was argued orally. The Applicant submitted that he had met the threshold set out in the case of *Giella -Vs- Cassman Brown & Co. Ltd* (1973) EA 358 and that as per Section 26 of the [Land Registration Act](#), a holder of title is the absolute owner and enjoys all rights appertaining to it. He submitted that if an injunction is not granted, the Respondent will continue to construct the house and this will cause irreparable loss to him. He further submitted that a sale agreement cannot supercede a title and that the photographs annexed to the Respondent's replying affidavit are in direct contradiction with those of the Applicant.
12. The Respondent submitted that he is living in a complete house and that the Applicant has come to court with unclean hands. He submitted that a fresh grant was given in which the 1<sup>st</sup> Defendant was given 4 acres and the Respondent was given one acre. He submitted that he has been in possession since 2010 and that the balance of convenience tilts in his favour.

### **Analysis and Determination**

13. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of an injunction.
14. The principles for grant of an injunction are well known. They were succinctly set out in the case of *Giella -Vs- Cassman* (Supra). I do not have to repeat them here. In the case of [Mrao -Vs- First American Bank of Kenya Limited & others](#) (2003) eKLR, the Court of Appeal stated that a prima facie case in Civil Cases is where based on materials before the court, a tribunal can make a finding that one's rights have been infringed as to call for a rebuttal from the opposite party.
15. In the instant case, the Applicant has only shown a copy of title and photographs which are in direct contradiction to those presented by the Respondent. From the background hereinabove, it is clear that the Applicant has not established that he has a prima facie case with probability of success.
16. From the materials placed before me, the Respondent purchased the suit property in 2010. The Respondent obtained title the following year. It is the Respondent who first sued the Applicant. This being the case, even if it turned out that the land lawfully belongs to the Applicant, he will be compensated in damages.
17. I have no doubt in my mind as to consider the balance of convenience. Even if I were to consider the balance of convenience, it is the Respondent who is in possession and the balance of convenience would tilt in his favour.



**Disposition**

18. From the above analysis it is clear that the Applicant’s application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS 23<sup>RD</sup> DAY OF JANUARY, 2025 AT MAKUENI.**

In the Presence of:

Ms. Angwenyi for Mr. Mathai for 2<sup>nd</sup> Defendant/Applicant

Mr. Mukhabani for Plaintiff/Respondent.

Court assistant Steve Musyoki.

