



Mwangi (Suing as the Personal Representative of the Estate of Stanley Mwangi Gikumbu alias Mwangi Gikumbu - Deceased) v Warari & 11 others (Environment & Land Case E057 of 2023) [2025] KEELC 3247 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3247 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E057 OF 2023

JM ONYANGO, J

APRIL 3, 2025

BETWEEN

SIMON IRUNGU MWANGI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF STANLEY MWANGI GIKUMBU ALIAS MWANGI GIKUMBU - DECEASED) PLAINTIFF

AND

JOHN MUIRURI WARARI 1ST DEFENDANT
ANNE WATHIRA NGIGI 2ND DEFENDANT
ANN NANCY MUTHONI MUCHURA 3RD DEFENDANT
VINCENT KAMAU MUKAMI 4TH DEFENDANT
GATANA GITARU KARIUKI 5TH DEFENDANT
TERESIA NDUTA GAKUHA 6TH DEFENDANT
RACHEL WANGECHI RUGGU 7TH DEFENDANT
PETER IRUNGU CHEGE 8TH DEFENDANT
EPHANTUS MUIRURI GACHANJA 9TH DEFENDANT
BERNARD KIBORO GATHURA 10TH DEFENDANT
FAMILY BANK LIMITED 11TH DEFENDANT
THE HON. ATTORNEY GENERAL (BEING SUED ON BEHALF OF THE LAND REGISTRAR RUIRU SUB-COUNTY) 12TH DEFENDANT



RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 17th September, 2024 seeking an order of temporary injunction to restrain the Defendants/Respondents from further constructing, building or depositing further building materials or interfering with his quiet possession of land parcel number Ruiru East Block 1/Githunguri/1365 which has since been sub-divided to Ruiru East Block 1 (Githunguri) 6810-6821, pending the hearing and determination of the suit herein. The Plaintiff/Applicant also sought an order directing the OCS Ruiru Police Station to ensure compliance with the injunctive order.
2. The grounds upon which the application is based are contained in the Notice of Motion and the Applicant's supporting and supplementary affidavits sworn on 17th September 2024 and 31st January 2025, respectively. In the said affidavit, the Applicant avers that he is the administrator of the estate of his late father, Stanley Mwangi Gikumbu who was the registered proprietor of Ruiru East Block 1/ Githunguri/1365 (hereinafter referred to as "the suit land"). The said parcel is denoted by ballot no 745 issued by Githunguri Constituency Ranching Company Limited (the company).
3. He deposes that the late Stanley Mwangi Gikumbu became a shareholder of the company by paying the requisite fees and he was issued with Share Certificate No. B 2767 dated 28th May 1990. He further deposes that the deceased acquired the suit land upon balloting by acquiring ballot no. 745. He was later issued with a title deed in his favour on 22nd June 1992.
4. The Plaintiff/Applicant contends that sometime in early 2023, he witnessed disturbance on the suit land prompting him to conduct inquiries at the company and the land registry. He discovered that the 1st Defendant/Respondent had subdivided the suit property into twelve (12) portions to wit Ruiru East Block 1 (Githunguri) 6810-6821, and had even started disposing the same to third parties, some of whom had started construction thereof.
5. The Plaintiff/Applicant further contends that the Defendants/Respondents' ownership of the suit land is fraudulent and amounts to disinherit him, as a result causing him and the beneficiaries of the deceased's estate, mental anguish. He urged the court to grant him the injunctive relief against the Defendant/Respondents.
6. He has annexed a copy of a limited grant of letters of administration for the deceased's estate, a copy of a share certificate in the name of the deceased issued by the company on 28th May 1990, a copy of the title deed to the suit land listing the deceased as the proprietor, and photographs of the construction ongoing on the suit property.
7. The application is opposed by the 2nd and 3rd Defendants/Respondents through the Replying Affidavit sworn by them on 21st January 2025. They contend that they are the registered proprietors of land parcel numbers Ruiru East Block 1/(Githunguri)/6811 and 6812, respectively. They add that they have developed the said properties by constructing storey buildings, which they have rented out to third parties. They further state that they charged their properties with the 11th Defendant/Respondents to get funds for development. They have annexed a photograph of the storey building.
8. The 1st Defendant/Respondent opposes the application through his Replying Affidavit sworn on 31st October 2024. He contends that the pleadings filed by the Plaintiff/Applicant do not disclose any breach on his part that warrants the grant of the orders sought. He denies that the title to the suit land was obtained by him fraudulently. He maintains that he obtained the same legally. He adds that this



application is aimed at frustrating efforts of genuine proprietors to derive income from their properties and enjoy their proprietary rights.

9. The application is opposed by the 9th Defendant/Respondent through his Replying Affidavit sworn on 29th January 2025. He deposes that he purchased plot numbers Ruiru East Block 1 (Githunguri) 6818, 6819, 6820 and 6821 from the 1st Defendant/Respondent through a verbal agreement sometime in June 2020.
10. He further deposes that he conducted due diligence and inspected the green card to the suit land before purchase, which revealed that the plots were genuine, having been subdivided from the suit land, and that the suit land was registered in the name of the deceased in 2018.
11. It is his claim that ground inspection revealed that the title held by the Plaintiff/Applicant does not correspond to the land on the ground. The land on the ground is land parcel number Ruiru East Block 1 (Githunguri) 1369. He adds that the Plaintiff/Applicant and his family have all along been in occupation of the said parcel number Ruiru East Block 1 (Githunguri) 1369 under the mistaken belief that it is the suit land.
12. The 9th Defendant/Respondent deposes that the title to plot number Ruiru East Block 1 (Githunguri) 1369 was erroneously registered in the name of one Dominic Ndegwa Muruga even though his rightful property is Ruiru East Block 1 (Githunguri) 1370. He further deposes that the company had erroneously allocated two plots to one individual contrary to its regulation that members could only be allocated one plot each. He adds that according to the registry index map for Block 1, plot numbers 1365 and 1369 are adjacent to each other.
13. He contends that the issue about the two plots can be resolved with the help of the company and a surveyor. He urged the court to refer parties to court annexed mediation to solve the issue.
14. The application is opposed by the 11th Defendant/Respondent through the Replying Affidavit sworn by Joan Gachomba (its assistant manager in the legal services department) on 16th October 2024.
15. She states that the 11th Defendant/Respondent's interest in the suit land is that of an innocent chargee for value without notice of defect of title. She adds that neither the 11th Defendant/Respondent nor its employees, agents, assigns, or any person acting upon his instructions is carrying out construction on the suit land.
16. The application was canvassed through written submissions. The Plaintiff/Applicant filed written submissions dated 17th February 2025, while the 9th Defendant/Respondent filed written submissions dated 24th February 2025, which I have carefully considered.
17. The only issue for determination is whether the Plaintiff/Applicant has met the conditions for the grant of a temporary injunction.
18. In order for the court to exercise its discretion in granting injunctive relief the Applicant must meet the conditions set out in the case of *Giella v Cassman Brown & Company Ltd* 1973 EA 358 which are as follows:

“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”



19. In the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed.

20. The first question I must determine is whether the Plaintiff/Applicant has established a prima facie case with a probability of success. The Plaintiff/Applicant has annexed a copy of title to the suit land registered in the name of the Mwangi Gikumba (deceased). I note that it is not disputed that the said parcel is the one that was subdivided to give rise to plots numbers Ruiru East Block 1 (Githunguri) 6810-6821 which were later transferred to some of the Defendants/Respondents. What is contested is whether the title to the suit land corresponds to the property on the ground occupied by the Plaintiff/Applicant. This will only become clear after a full hearing.

21. As was stated in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* 2014 eKLR:

“The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

22. On the material placed before the court, I am persuaded that the Applicant has established a prima facie case with a probability of success.

23. With regard to irreparable loss, the Plaintiff/Applicant contended that he stands to be disinherited from his deceased’s father land and to be rendered destitute if the orders sought are not granted. It was submitted on his behalf that this will cause him irreparable loss despite the fact that the succession cause regarding the deceased’s estate is still pending in Ruiru Succession Cause No. E052 of 2023.

24. The test for irreparable loss is defined in *Halsbury’s Laws of England*, Third Edition Volume 21, P.352 as follows:

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”

25. If indeed the suit land belongs to the estate of the deceased then the acts by the Defendant/Respondents will deprive the Plaintiff/Applicant use of the same and consequently cause him irreparable harm.

26. On the issue of balance of convenience, the Plaintiff/Applicant has demonstrated that he has been inconvenienced by the Defendant/Respondents’ unlawful activities on the suit land and therefore the balance of convenience tilts in his favour.



27. In the final analysis, I am satisfied that this is a proper case where the subject matter of the suit ought to be preserved so as not to destroy the substratum of the suit. Consequently I direct that the status quo prevailing on land parcel number Ruiru East Block 1/Githunguri/1365 which has since been subdivided to Ruiru East Block 1 (Githunguri) 6810-6821 at the date of this order be maintained pending the hearing and determination of the suit herein.
28. The costs of the application shall be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 3RD DAY OF APRIL 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Mr. Wachira for Mr. Kanyi for the Plaintiff/Applicant

Mr Kimata for Mr. Waweru for the 1st Respondent

Miss Kirigo for Mr. Ngumo for the 9th Respondent

Miss Aden for the 11th Defendant

Court Assistant: Hinga

