



**Haria (Suing as the Executor of the Will of Hasmukhlal Hirjibhai  
Haria - Deceased) & another v Gateru (Environment & Land Case  
E118 of 2024) [2025] KEELC 484 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 484 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E118 OF 2024  
BM EBOSO, J  
FEBRUARY 10, 2025**

**BETWEEN**

**BHAVESHA HASMUKHLAL HARIA (SUING AS THE EXECUTOR OF THE  
WILL OF HASMUKHLAL HIRJIBHAI HARIA - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF  
AMICHAND POPATLAL SHAH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SAMUEL MUREITHI GATERU ..... DEFENDANT**

**RULING**

1. The plaintiffs initiated this suit against the 1st defendant through a plaint dated 5/6/2024. The plaint was amended on 16/10/2024 to join the 2nd defendant as a party to the case. The plaintiffs contend that the 1st plaintiff is the executor of the will of the late Hasmukhlal Hirjibhai Haria [hereinafter referred to as “the late Haria”] and brings this suit on behalf of the estate of the late Haria.
2. The plaintiffs’ case is that the late Haria and the 2nd plaintiff were at all material times the legitimate registered proprietors of land parcel number Kiambu Municipality Block III/210 measuring approximately 0.2453 hectares, owning it in equal shares. The duo purchased the land from M/s Mumwe Investments Limited in 1996. They contend that they learnt that the 1st defendant had instituted Kiambu CMC MCE&L Case No E035 of 2024 against Duncan Kimani and Monica Mwangi (officials of Runda Mumwe Association) claiming to be the registered proprietor of the suit land. This prompted them to do a search on the land register relating to the suit land. At that point, they discovered that an entry had been made in the land register, transferring the land into the name of the 1st defendant. It is their case that the late Haria and the 2nd plaintiff have never sold nor transferred the suit land to the 1st defendant nor to any other person. They contend that the registration of the 1st defendant as proprietor of the land is illegal and an infringement of their right to property.



3. Through the plaint, they urge the court to grant them: (i) an injunction restraining the 1st defendant against taking possession, transferring or dealing with the suit property; (ii) a declaration that they are the proprietors of the suit property; (iii) damages for trespass; (iv) an order cancelling the registration and the title issued to the 1st defendant; and costs of the suit.
4. Alongside the plaint, the plaintiffs brought a notice of motion dated 5/6/2024, seeking an interlocutory injunctive order restraining the 1st defendant against taking possession of or dealing in any manner with the suit property, pending the hearing and determination of this suit. The said application is the subject of this ruling
5. The application is premised on the grounds set out in the motion; in the affidavit of Bhavesh Hamsukh Haria [the 1st plaintiff] dated 5/6/2024; and in the affidavit of Amichand Popatlal Shah [2nd defendant] dated 12/9/2024. The case of the applicants is that the late Haria and the 2nd plaintiff have never sold nor transferred the suit land to the 1st defendant. They contend that the duo never appended their signatures to the sale agreement nor to the correspondence which the 1st defendant is waving. They challenge the 1st defendant to avail the originals of the conveyance documents so that they can be subjected to a forensic audit. They add that they enjoyed quiet possession of the suit land until recently when the 1st defendant tried to forcefully gain entry into the land. They term the 1st defendant's title as illegal. They add that they paid rates until 2021 when they were told that their rates file was missing
6. The 1st defendant filed a replying affidavit dated 29/8/2024 and a further affidavit dated 24/9/2024. His case is that he purchased the suit property from the late Haria and the 2nd plaintiff in 1999 and he was issued with a title on 24/12/1999. He contends that he has enjoyed quiet possession of the suit land since 1999. He exhibited an unwitnessed sale agreement dated 19/10/1999 which does not bear the name of the advocates who drew it; a certificate of lease expressed as issued by the Kiambu Land Registry on 23/12/1998; and a copy of the green card. He urges the court to reject the application.
7. The court has considered the application, the response to the application; and the parties' respective submissions. The court has also considered the relevant law. The question to be answered in this ruling is whether the application dated 5/6/2024 meets the criteria for grant of an interlocutory injunction.
8. The relevant criteria was spelt out in the case of *Giella Vs Cassman Brown & Co. Ltd (1973) EA 358*. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is required to demonstrate that if the interlocutory injunction is not granted, he would stand to suffer damage that may not be indemnifiable through an award of damages. Thirdly, if the court has doubts on the applicant's satisfaction of both or either of the above two requirements, the court should dispose the application based on the balance of convenience. Lastly, at the point of disposing the plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute.
9. In the present application, there is common ground that at all material times, the late Haria and the 2nd plaintiff were the registered proprietors of the suit land. The 1st plaintiff is the representative of the estate of the late Haria. The two plaintiffs contend that the late Haria and the 2nd plaintiff have never sold nor transferred the suit property to the 1st defendant. They deny appending their signatures to the sale agreement or to the correspondence which the 1st defendant is waving. They have challenged the 1st defendant to produce the originals for forensic examination. They have their original title documents. It is their case that the late Haria and the 2nd plaintiff have had quiet possession until recently when the 1st defendant attempted to enter the suit land waving the impugned title.



10. The 1st defendant is relying on an unwitnessed sale agreement which contains a clause to the effect that purchase price in the sum of Kshs 1,300,000, a substantial amount in 1999, had been paid in cash. At this interlocutory stage, he has not exhibited the instrument of transfer which conveyed the land into his name. He has not exhibited documents relating to consent to transfer. He has not exhibited evidence relating to payment of stamp duty or payment of transfer fees. The advocate who drew the sale agreement is not disclosed. The advocate who drew the instrument of transfer has also not been disclosed. The plaintiffs have indicated that they have all along had possession of both their title and the suit land.
11. Given the evidence that is before the court at this interlocutory stage, the court is satisfied that the plaintiffs have demonstrated a prima facie case warranting grant of an interlocutory injunction.
12. On the adequacy of damages, land is an emotive resource. Damages are hardly an adequate alternative in a scenario where fraud or illegality in the procurement of title is alleged and a prima facie case is established. Similarly, the balance of convenience favours maintaining the status quo where the plaintiffs remain in possession and the land register is preserved.
13. For the above reasons, the Court's finding is that the plaintiffs have satisfied the criteria for grant of an interlocutory injunction. Consequently, the notice of motion dated 5/6/2024 is allowed in the following terms:
  - a. Pending the hearing and determination of this suit, no dealings shall be registered in the land register relating to land parcel number Kiambu Municipality Block 111/210
  - b. Pending the hearing and determination of this suit, the plaintiffs shall continue to have possession of land parcel number Kiambu Municipality Block 111/210.
  - c. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF FEBRUARY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of

Mr. Kamau for the plaintiff

Mr. Tupet – Court Assistant

