



REPUBLIC OF KENYA



**Njoroge & another v Gikanga & 2 others (Land Case
E205 of 2024) [2025] KEELC 4219 (KLR) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E205 OF 2024**

JA MOGENI, J

JUNE 3, 2025

BETWEEN

ALICE NJERI NJOROGE 1ST PLAINTIFF

BETH NYAKIO NJOROGE 2ND PLAINTIFF

AND

STEPHEN MUIRURI GIKANGA 1ST DEFENDANT

JOHN GITIBA GIKANGA 2ND DEFENDANT

DAVID KAGEHE GIKANGA 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 11/12/2024 brought under Order 40 Rule 1, 2, 4 & 4 of the Civil Procedure Rules, 2010, Section 3, 3A and 63 (c) & € of the *Civil Procedure Act* 152A, 152B, 152E and 152F of the Land (Amendment) *Act No. 28 of 2016* and all enabling provisions of the law, the Applicants are seeking for the following orders: -
 1. Spent.
 2. That this Honourable Court be pleased to issue a temporary injunction against the Defendants/Respondents, their agents, servants, employees, assigns or any other person whomsoever restraining them from trespassing into, occupying, dealing with and/or interfering in any way with the Plaintiffs/Applicants' quiet enjoyment, possession, use and ownership of the suit property known as Githunguri/Githiga/6187 pending hearing and final determination of this Application or until further Orders of this Honourable Court.
 3. That this Honourable Court be pleased to issue Orders to have the Respondents evicted from Land Parcel No. Githunguri/Githiga/6187 and to deliver vacant possession the same to the Applicants.



4. That this Honourable Court be pleased to issue Orders to have the OCS Githiga Police Station to provide security and ensure compliance of the eviction Orders
5. That any relief as this Honourable Court may deem fit and just to grant.
6. That costs of this Application be provided for.
2. The Application was supported by the Supporting Affidavit sworn by the Applicants on 11.12.2024 and the annexures thereto. The Applicants pleaded that they were the registered proprietors of Title No. Githunguri/Githiga/6187 (the suit property) as per annexures ANN-1 and ANN-2. It was their case that the Respondents are unlawfully trespassing on the suit property known as Githunguri/Githiga/6187.
3. That their right to own and enjoy property is being infringed upon by the Respondents who have erected illegal structures on the suit property and have put the property to waste to the Applicants' detriment and unless restrained the Applicants are likely to suffer immense loss which may not be compensated by way of damages.
4. It is the Applicants' case that the suit property was initially part of Land Parcel No. Githunguri/Githiga/1005 which was co-owned by their late husband the late Gikanga Gachagwi who was the Respondents' father at the ration of 200/645 and 445/645 share as per the Green Card which is attached as annexure ANN-3.
5. That they were granted Letters of Administration following their husband's death and they took steps to have their share of 200/645 in Githunguri/Githiga/1005 registered in their joint names and a title was issued to them as per annexure ANN-1.
6. That despite their having a title to their name the Respondents who had illegally trespassed into their land and constructed structures have unlawfully been in occupation of the said suit property despite having been served with a Notice of Eviction dated 11/04/2024 as shown vide annexure ANN-7 they have adamantly refused to move out of the Applicants' land.
7. Further that the matter has been reported to Githiga Police Station and at the office of the Deputy County Commissioner Githunguri Sub-County as per the annexure ANN-8 and ANN-9. That the Respondents have not challenged the Notice to Vacate the land.
8. The Applicants contend that it has been 17 years since the Confirmation of Grant and they have not been able to use their land. It is their prayer that the Application be allowed.
9. The Application is opposed vide the Respondents' Replying Affidavit sworn on 22/01/2025. It is the Respondents' case that they are the ones occupying the suit property and that they have constructed residential structures on the property and that they had not been served with any eviction order. They have denied the averments of the Applicants and stated that the suit property belongs to them and not the Applicants. Further that they were not served with any eviction notice.
10. In response to the Replying Affidavit the Applicants filed a Further Affidavit and stated that despite the Respondents stating that there was an investigation that was carried out relating to the land, they did not file any report in Court.
11. They further averred that they served the Respondents with an eviction notice which is annexure ANN-7 and that in response to paragraphs 12, 13, 14, 15, 17, 18, 19, 20, 21,22,23,25,26,27 and 28 of the Respondents' Replying Affidavit they reiterate the contents of paragraphs 2,3,4,5,6, 7,8, 9, 10 and 11 of the Affidavit in support of our Application dated 11th December 2024.



12. Further they state that the consent to partition and the subsequent transfer of the suit property to their late husband by the Respondents' late father was duly given on 15th March 1979 and subsequently confirmed by the then Githunguri District Officer in a letter to the Kiambu Land Officer dated 29th May 1985 as per annexures marked "ANN-IO", "ANN-II", "ANN-12", "ANN-13" and "ANN-14" which are copies of acknowledgement of full payment of the purchase price by the Respondents' father, Application for consent to the Land Board Githunguri, the consent, the mutation form and the letter by the then District Officer Githunguri respectively.
13. It was the Applicants' averment that the Respondents' Counsels M/S Mwangi Chege & Company Advocates informed their Advocates on record that they had already commissioned the District Surveyor to compute their portion of the land in terms of acreage and that they had finalized the subdivision process. The Applicants attached annexure "ANN-15" as a copy of the said letter. They further averred that the efforts by the Respondents' Advocates as contained in the above mentioned letter had already been overtaken by events pursuant to the Order of the Court which authorized the Deputy Registrar of the Court to sign the transfer documents in place of the Administrator of the Estate of Gikanga Gachagwi. That the Deputy Registrar duly signed the transfer of the suit property to the Applicants' names pursuant to this Order.
14. The Applicants also stated that pursuant to a letter dated 11th July 2023 by the Survey Office Kiambu to the Respondents, the Chief Githiga Location, the OCS Githiga Police Station and all Interested Parties including themselves, were duly invited to be present at the suit property on 1st August 2023 to witness the partitioning of the property as per annexure ANN -17 which is a copy of the letter.
15. The Application was canvassed by way of written submissions. The Applicant's written submissions were filed on 19/03/2025 and the Respondents filed theirs dated 12/03/2025 which I have duly considered in writing this Ruling

Issues for Determination

16. From my analysis of the Application, the Replying Affidavit, Further Affidavit and submissions there are two issues that are for determination and these are:-
 - i. Whether the Applicants have met the threshold for the grant of an order of injunction.
 - ii. Whether the Applicants are entitled to the eviction orders sought.
 - iii. Who will bear the cost?

Whether the Applicant has met the threshold for the grant of an order of injunction

17. The law that governs Applications for injunction is premised under Order 40 Rule 1 of the Civil Procedure Rules, 2010 which provides as follows:-
 - “ 1) Where in any suit it is proved by Affidavit or otherwise-
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 - b. That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the



execution of any decree that may be passed against the Defendant
in the suit,

The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

18. The principles applicable in an Application for an injunction were laid down in the celebrated case of *Giella Vs Cassman Brown & Co Ltd* [1973] EA 358 where the Court held that in order to qualify for an injunction;
 - i. First the Applicant must show a prima facie case with a probability of success.
 - ii. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - iii. Thirdly, if the Court is in doubt, it will decide an Application on a balance of convenience.
19. The Applicant in an Application for injunction must first establish that he has a prima facie case with a probability of success.
20. A prima facie case was defined by the Court of Appeal in *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR as follows;

“A prima facie case in a civil Application includes but is not confined to a genuine and arguable case”. It is a case 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 by the opposite party as to call for an explanation or rebuttal from the latter.”
21. On the issue as to whether the Applicant has established a prima facie case with a probability of success, the Applicant’s claim over the suit property is anchored on the Certificate of Titles registered in his name. I have carefully looked at the Certificate of Title marked as annexure ANN-1 in the Applicants’ Supporting Affidavit and I find that land parcel number Githunguri/Githiga/6187 are registered in the names of the Applicants herein. The Applicants have clearly demonstrated that they are the registered owners of land parcel number Githunguri/Githiga/6187 and I am satisfied that the Applicants have established that they have a prima facie case with a probability of success.
22. As regards the issue of whether the Applicants will suffer irreparable harm which cannot be adequately compensated by award of damages, the Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
23. The Court of Appeal in *Nguruman Limited Vs Bonde Nielsen & 2 Others* (2014) eKLR held that: -

“On the second factor, the Applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by



which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation of whatever amount, will never be adequate remedy.”

24. It is not in dispute that the Applicants are the registered owners of land parcel number Githunguri/Githiga/6187. The Applicant further submitted that at the demise of their husband, they petitioned and obtained a Grant of Letters of Administration in respect of his Estate and after Confirmation the Plaintiffs commenced the process of transmission of the deceased’s properties including the suit property which was registered in their names and a title deed duly issued. That whereas the administrators of the Estate of Gikanga Gachagwi had initially declined to sign the transfer documents including the then R.L 7 and R.L 19 forms and the Plaintiffs were compelled to seek Orders from the Court for the Deputy Registrar to execute them in place of the said Administrators and an Order to that effect was issued as confirmed vide annexure ANN-6.
25. However that despite the order having been duly served upon the Respondents they have adamantly refused to move out of the suit property.
26. The Applicants further averred that the Respondents had violently denied them from accessing the suit properties. The Applicant produced the OB extract from Githiga Police Station, photographs taken to depict the developments that the Respondents had put up on the suit property all annexed their Supporting Affidavit.
27. From the Applicants’ pleadings and annexures, it is evident that the Applicants have demonstrated that they are the registered owners of the suit property, that the Respondents have trespassed on their property, I therefore find that the Applicants have established that they are likely to suffer irreparable harm which cannot be adequately compensated by way of damages if the orders sought are not granted.
28. I find that the balance of convenience tilts in favour of the Applicant as he is the registered owner and occupier of the suit properties. I also find that the Application dated 11/12/2024 is merited.

The second issue is whether the Applicants are entitled to the eviction order sought

29. The Court has considered the material and submissions on record. The Applicants submitted and adequately demonstrated that the 1st and 2nd Respondents have barred them from their land where they are the owners. That being the registered proprietors of the suit property they are entitled to the eviction order sought. It was submitted that the relevant notices under Sections 152A, 152B, 152E and 152F of the *Land Act* were duly served but the Respondents had failed to voluntarily vacate the suit property.
30. The Respondents, on their part, disputed that they were illegally on the land if anything they contended that it was the Applicants who fraudulently apportioned parcel 200/645 without involving all the parties and that the matter was reported to the DCI headquarters in Nairobi, Nyeri, Kiambu and Githunguri and the matter is still under investigation.
31. Further that the Applicants lifted the caution on the suit property without the knowledge of the Defendants and the Cautioners. That despite knowing that the Dependants of Gikanga Gachagui were on the suit property the Applicants took no action for over 17 years. That any claim to the suit property by the Applicants is based on forged processes which the Court is urged to investigate.
32. The Respondents contended that the husband of the Applicants cheated the father of the Respondents who was illiterate out of his land which he had leased to him. No documents were presented to support this claim. Further that there are other dependants of the late Gikanga Gachagui who the Applicants’ have not sued and that they were not clear if they were being sued as administrators of Gikanga’s estate.



They further submitted that the issues in dispute among the parties could only be effectively resolved through a formal hearing where evidence would be tendered and tested in the normal manner. They consequently urged the Court to dismiss the Application with costs.

33. This Court noting how emotive land matters are, is convinced as per the Respondent's position that the dispute among the parties is not suitable for resolution in a summary manner since it is not a simple and straightforward matter. This is not a case where the Applicants are the only title holders and the Respondents are merely occupying their property without any colour of right. It is evident from the material on record that the Applicants' allegation of Respondents having trespassed on their land and denying them access needs to be interrogated further through a trial.
34. There is no credible and independent evidence filed on record to demonstrate the alleged trespass. There is no report from a Surveyor, Land Registrar or other expert to demonstrate the alleged trespass. The Respondents' answer to the Applicants' claim is that they are simply occupying and working on their own parcels. The Court is thus of the opinion that the instant dispute can only be effectively and completely resolved through a hearing in a Civil suit. As a result, the Court is not satisfied that the Applicant is entitled to the eviction order without a trial.
35. This being my observation, it follows that the consequential orders sought by the Applicants for the purpose of enforcing the eviction orders will not be granted.
36. Now therefore, given that the Court has declined to grant the eviction order, then it would not serve any purpose to direct the OCS Githiga Police Station to ensure compliance with a non-existent order.

Who shall bear costs of the Application?

37. Although costs of an action or proceeding are at the discretion of the Court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The Court is aware that all the parties to the proceedings are close relatives. The Court is thus of the view that the appropriate order to make is that each party shall bear his own costs.

Conclusion and Disposal Order

38. The upshot of the foregoing is that the Notice of Motion Application dated 11/12/2024 succeeds partially and the Court issues the following Orders:-
 1. That this Honourable Court hereby issues a temporary injunction against the Defendants/ Respondents, their agents, servants, employees, assigns or any other person whomsoever restraining them from trespassing into, occupying, dealing with and/or interfering in any way with the Plaintiffs/Applicants' quiet enjoyment, possession, use and ownership of the suit property known as Githunguri/Githiga/6187 pending hearing and final determination of the suit.
 2. Parties to go for Pre-trial Conference on 3/07/2025.
 3. Each party to bear their own cost of this Application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 3RD DAY OF JUNE, 2025
VIA MICROSOFT TEAMS.**

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MOGENI J



JUDGE

In the presence of:

Mr. Mitiambo for the 1st and 2nd Plaintiffs/Applicants

Mr. Stephen Muiruri – In person

2nd Defendant – Absent

David Kageche Gikanga – In person

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

