



REPUBLIC OF KENYA



KENYA LAW
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**Muturi & 10 others v Runji & 4 others (Environment and Land Case
E011 of 2023) [2025] KEELC 5874 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5874 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E011 OF 2023**

AK BOR, J

JULY 3, 2025

BETWEEN

**JOHN NYAGA MUTURI & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10
OTHERS PLAINTIFF**

AND

FRANCIS NJERU RUNJI 1ST DEFENDANT

SILVANO NDARU NGARI 2ND DEFENDANT

**MARGARET MUTHONI MUTAI LAND REGISTRAR, MBEERE
SOUTH 3RD DEFENDANT**

SUB-COUNTY SURVEYOR, MBEERE SOUTH 4TH DEFENDANT

**MICHAEL MITARU NJERU (CHIEF, MAVURIA LOCATION) 5TH
DEFENDANT**

RULING

1. The Plaintiffs filed the application dated 21/3/2023 seeking a temporary injunction to restrain the 1st, 2nd, 4th and 5th Defendants from subdividing and creating new title deeds over the Plaintiff's parcels of land known as Mbeere/Kirima/3925, 3895, 3896, 4077, 4079, 5719, 3899, 3885, 3926, 5717, 3918 and 3876 to 3926 pending hearing and determination of the suit. They also sought to have the 3rd Defendant inhibit the registration of any dealings on those parcels of land pending determination of the suit.
2. The application was made on the grounds that Mbeere/Kirima/2976 was subdivided in 2011 among members of the Ikandi clan to which the Plaintiffs belong, and that they were part of the 53 beneficiaries of the resultant subdivisions. Their contention is that the new attempts by the Defendants



- to revive and subdivide the same parcel of land were unlawful and prejudicial to the Plaintiffs. The 2nd Plaintiff, Ambrose Kithaka Njeru swore the affidavit in support of the application.
3. The 1st and 2nd Defendants, Francis Njeru Runji and Silvano Ndaru Ngari, filed a replying affidavit in opposition to the application. They deponed that Mbeere/Kirima/2976 belonged to two Ikandi families, that is, Karia and Kirimiri, which were represented by the late Daudi Ngari Njiru and Zakayo Njeru Njagi, who were mandated to subdivide it equally among clan members. They averred that Daudi Ngari Njiru unlawfully included non-clan members as beneficiaries and fraudulently transferred several resultant parcels to himself and other people. They urged that all the resultant subdivisions of parcel no. 2976 should be cancelled for having been carried out illegally and unprocedurally. They contended that the area map for parcel 2976 did not conform with the area on the ground and that the Plaintiffs do not hold valid title deeds. They prayed for dismissal of the application so that the counterclaim and the main suit could be determined on merit.
 4. The 3rd, 4th and 5th Defendants in response to the application raised a preliminary objection on the grounds that the application offended Section 16[1][i] of the [Government Proceedings Act](#).
 5. Parties filed and exchanged written submissions on both the preliminary objection and the application which the court has considered. The Plaintiffs reiterated the grounds on which their application is premised and submitted that the preliminary objection was pegged on Section 16[1] of the [Government Proceedings Act](#) which was found to be unconstitutional when read against Article 22 of the [Constitution](#) in [Kenya Council of Employment and Migration Agencies v Kenya Literature Bureau & 3 others](#) [2016] eKLR. They urged the court to dismiss the preliminary objection and order that the status quo on the disputed land be maintained.
 6. The 1st and 2nd Defendants submitted that the Plaintiffs failed to meet the threshold for the grant of a temporary injunction as established in law. That they had not demonstrated a prima facie case with a probability of success and that they failed to provide any documentary evidence such as mutation or partition forms to support their claim that the 1st and 2nd Defendants were attempting to subdivide Mbeere/Kirima/2976. They averred that on the contrary, they had produced a surveyor's report showing the lawful subdivision of the land into Mbeere/Kirima/3876 to 3926 which measures approximately 54.53 hectares [ha]. That 26.4 ha was part of the remainder left after subdivision took place, and which the county surveyor requested the 3rd Defendant to register. That the 3rd Defendant relied on the surveyor's report to register Mbeere/Kirima/5370 and that there was no fraud or illegality in the transaction as the Plaintiffs claim. They contended that parcel number 5370 was the only land that they participated in causing its subdivision and that they did not intend to subdivide parcel 2976. Further, they contended that the Plaintiffs had not shown any form of investment or development on the suit land or that they would suffer irreparable harm that could not be compensated by damages. That given these failures, the balance of convenience did not tilt in favour of the Plaintiffs. It was urged that the application lacked merit and should be dismissed with costs.
 7. The 3rd, 4th and 5th Defendants submitted that the preliminary objection met the required threshold as it raised a pure point of law. They submitted further that the Plaintiffs are improperly seeking injunctive relief against government officers the 3rd, 4th, and 5th Defendants who are acting in their official capacities. They contended that under Section 16[1][1] of the [Government Proceedings Act](#) [Cap 40] and Order 29 Rule 2[2] of the [Civil Procedure Rules](#), courts are expressly barred from issuing injunctions or orders for specific performance against the government and that only declaratory relief may be granted. They averred that the Plaintiffs' application was fatally defective for seeking reliefs that the court is not empowered to grant.



8. The issue for determination is whether the preliminary objection has any merit and whether the orders sought by the Plaintiffs' should be granted. A preliminary objection should raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It should not be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
9. The 3rd, 4th and 5th Defendants' preliminary objection is that the application offends Section 16[1][i] Cap 40 Laws of Kenya since the Plaintiffs seek among other orders, an order of permanent injunction against the 1st, 2nd, 4th and 5th Defendants. Section 16[1][i] of the Government Proceedings Act bars the court from issuing injunctions against the Government. The court is instead required to make declaratory orders on the rights of the parties.
10. Kenya Council of Employment and Migration Agencies v Kenya Literature Bureau & 3 others [2016] eKLR which the Plaintiffs relied on was a constitutional petition, which is why the court addresses the nature of reliefs or orders that a court can grant under Article 22 of the Constitution. The present matter is an ordinary suit that seeks a permanent injunction to bar the subdivision of some specified parcels of land until the suit is determined.
11. The 4th and 5th Defendants are government officers acting within the course of their official duties. The orders sought against them are injunctive in nature and therefore fall within the scope of Section 16[1][i]. The preliminary objection has merit.
12. The Plaintiffs seek an order directed at the 3rd Defendant inhibiting the registration of any dealings on the disputed land. Section 68[1] of the Land Registration Act empowers the court to inhibit any dealings with land for a specified period or until the occurrence of a specific event. The purpose of an inhibition is to preserve the status quo pending the determination of a matter before the court. In the interest of justice and to preserve the subject matter of this dispute, the prevailing status quo will be maintained on the disputed land pending hearing and determination of the suit.
13. The costs of the application shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Momanyi Gichuki for the Plaintiffs

Mr. Francis Njeru Runji- the 1st Defendant

No appearance for the other Defendants

