



Gacoki & 6 others v Nyaga & another (Environment & Land Case E004 of 2024) [2025] KEELC 4149 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4149 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE E004 OF 2024**

**BM EBOSO, J
MAY 21, 2025**

BETWEEN

**MARGARET KANYUA GACOKI 1ST PLAINTIFF
DENIS KARIUKI JOHN GACHOKI 2ND PLAINTIFF
CASTY WAWIRA GACHOKI 3RD PLAINTIFF
MARTIN BUNDI GACHOKI 4TH PLAINTIFF
LUCY KARIMI GACHOKI 5TH PLAINTIFF
ELIUD KIMATHI GACHOKI 6TH PLAINTIFF
EUNICE GICHUKU RUGANO 7TH PLAINTIFF**

AND

**PHILISKA KAGUNA NYAGA 1ST DEFENDANT
DOROTHY MURUGI JAMES 2ND DEFENDANT**

RULING

1. The plaintiffs initiated this suit through an originating summons dated 26/4/2024. The originating summons was taken out under Order 37 rules 7 and 8 of the Civil Procedure Rules. The originating summons was subsequently amended on 13/12/2024. Through the originating summons, the plaintiffs invited the court to determine the following questions:
 1. Whether or not the plaintiffs have been in open, exclusive, continuous and uninterrupted occupation of approximately three (3) acres of land parcel number Magumoni/Itugururu/829 for a period of over 12 years in the proportions detailed below.



2. Whether or not the plaintiffs have become entitled to three (3) acres of land parcel number Magumoni/Itugururu/829 by adverse possession in the portions detailed below.
 3. Whether or not the land register of land parcel number Magumoni/Itugururu/829 should be rectified and the plaintiffs registered as the owners of three (3) acres thereof in the proportions detailed below.
 4. Whether or not the Deputy Registrar of this Honourable Court should be empowered to sign all the necessary documents to transfer three (3) acres of land parcel number Magumoni/Itugururu/829 to the plaintiffs in the proportions detailed below and in default of the defendant so signing.
 5. Whether or not the defendants should pay the plaintiffs cost of this suit.
2. The plaintiffs urged the court to make a finding that the plaintiffs have acquired titles to land parcel number Magumoni/Itugururu/829 in the following portions:
- a. Margret Kanyua Gacoki 0.25 Ha (0.62Acres)
 - b. Denis Kariuki John Gachoki 0.12 Ha (0.30Acres)
 - c. Casty Wawira Gachoki 0.13 Ha (0.32Acres)
 - d. Martin Bundi Gachoki 0.12 Ha (0.30Acres)
 - e. Lucy Karimi Gachoki 0.13 Ha (0.32Acres)
 - f. Eliud Kimathi Gachoki 0.23 Ha (0.57Acres)
 - g. Eunice Gichuku Rugano 0.17 Ha (0.42Acres)
3. Subsequent to the initiation of the suit, the plaintiffs brought a notice of motion dated 13/12/2024 seeking: (i) an interlocutory injunction restraining the defendants and their agents/servants against entering into, occupying, remaining on or interfering with the plaintiffs' use, occupation or enjoyment of land parcel number Magumoni/Itugururu/829 (hereinafter referred to as "the suit land"); and (ii) an inhibition forbidding registration of dealings in the land register relating to the suit land. The said application is subject of this ruling.
 4. The application was premised on the grounds set out in the motion and in the supporting affidavit of Denis Kariuki dated 13/12/2024. It was canvassed through written submissions dated 20/3/2025.
 5. The case of the plaintiffs is that they have occupied the suit land as adverse possessors for over 12 years. The first plaintiff buried her husband on the suit land in 2018. In April, 2024, they instituted this suit seeking adverse possession orders. Upon serving the 1st defendant with the pleadings, the 1st defendant transferred the suit land to the 2nd defendant who in turn issued an eviction notice against the 1st plaintiff and her children who are also plaintiffs in this suit. They are apprehensive that they will be evicted from their houses if a restraining order is not issued. They are also apprehensive that ownership of the suit land will change further to their prejudice. They contend that initially, the 1st plaintiff and her late husband entered the suit land through purchase of the 3 acres in 1982. They have had exclusive possession of the land and have lived on it since then. They urge the court to grant them the interlocutory injunctive orders.
 6. The 2nd defendant opposed the application through a replying affidavit and written submissions dated 9/4/2025, filed by I.C Mugo & Co. Advocates. The case of the 2nd defendant is that she is the current registered proprietor of the suit land, which was transferred to her by the 1st defendant. She contends



that her mother is elderly and weak, and she is not in a position to defend this suit. The 2nd defendant further contends that originally, the suit land was the property of the late Nyamu Ngai who died in 1987. The 2nd defendant adds that the suit land is a subdivision out of parcel number Magumoni/Itugururu/309, adding that the subdivision was done when Nyamu Ngai was alive.

7. The 2nd defendant states that she learnt that the late Nyamu Ngai was part of the family of the 1st plaintiff's late husband, John Gachoki, adding that the duo hailed from Kirinyaga District. It is her case that when the late John Gachoki came to Itugururu in Tharaka Nithi, he stayed at the home of one Nkungi and upon being chased from the said home, he lived at the home of his brother, one Mucira. After differing with Mucira, John Muchoki approached Nyamu Ngai in 1982 and Nyamu Ngai agreed to give him a small portion of the suit land in which to construct a make shift shelter for his family as he looked for land to buy.
8. The 2nd defendant contends that the late John Gachoki and his family moved to the suit land in 1982 with the license of Nyamu Ngai, adding that by the time Nyamu Ngai died in 1987, John Gachoki had not found land to buy. The 2nd defendant states that after Nyamu Ngai died, John Gachoki and his family started increasing the portion of the suit land under their occupation.
9. It is the 2nd defendant's case that time stopped running for the purpose of adverse possession in 1987 when Nyamu Ngai died and started running again on 7/12/2023 when the suit land was registered in her name. She contends that, for the above reasons, the plaintiffs cannot lay a claim of title to the suit land under the doctrine of adverse possession.
10. The 2nd defendant contests the allegation that the late John Gachoki purchased the suit land from Nyamu Ngai, arguing that the plaintiffs have not presented any documentary evidence of purchase. She contends that the 1st plaintiff and her husband took possession of only a portion of the suit land measuring about 30 by 50 feet when Nyamu Ngai was alive and not the entire land. She urges the court to reject the application.
11. 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 two questions to be answered in this ruling are: (i) Whether the application dated 13/12/2024 meets the criteria for grant of an ordinary interlocutory injunction; and (iii) Whether there is a proper basis for issuance of an inhibition order relating to the suit land.
12. The relevant criteria on grant of an interlocutory injunction 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.
13. The plaintiffs' claim is anchored on the doctrine of adverse possession. It is not disputed that the 1st plaintiff and her children who are co-plaintiffs in this suit have lived on the suit land for years. Indeed, the 2nd defendant deposed that the family of the late John Gachoki has lived on the suit land since 1987. What is contested is the size of the land which the plaintiffs have been occupying. The 2nd defendant swore an affidavit in which she deposed that the 1st plaintiff and her late husband were given only a small portion measuring 30 by 50 feet and that is the portion they have occupied all along. What is also contested are the circumstances under which the plaintiffs have been occupying the suit land.



Another key issue that will require determination is whether time continued to run for the purpose of adverse possession after Nyamu Ngai died in 1987.

14. Secondly, it is not contested that during the pendency of this suit, the 1st defendant caused the suit land to be transferred to the 2nd defendant. It has also not been denied that the 2nd defendant issued an eviction notice against the plaintiffs intimating her intention to uproot them from the home(s) they have occupied since 1987.
15. Given the above circumstances, the court is satisfied the first and the second limbs of the requirements in *Giella Vs Cassman Brown & Co. Ltd* (1973) EA 358 have been met. The balance of convenience, too, tilts in favour of maintenance of the status quo in term of occupation and registration of the suit land.
16. The court is therefore satisfied that the application under consideration meets the criteria for grant of an interlocutory injunction. The court is also satisfied that there is need to maintain the obtaining status quo in terms of the register of the suit land pending the hearing and determination of this suit.
17. Consequently, the application dated 13/12/2024 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 Magumoni/Itugururu/829.
 - b. Pending the hearing and determination of this case, the defendants are restrained against evicting the plaintiffs from the suit land, Magumoni/Itugururu/829.
 - c. Pending the hearing and determination of this suit, no new structure, permanent or otherwise, shall be erected on the suit land.
 - d. Unless extended by the court, the above orders shall lapse on expiry of 12 months from today.
 - e. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 21ST DAY OF MAY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Muthomi Njeru for the 1st Plaintiff

Mr. I.C Mugo for the 2nd Defendant

Court Assistant – Mr. Mwangi

