



**Chege v Kariuki (Enviromental and Land Originating Summons
E013 of 2024) [2025] KEELC 3939 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3939 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024
MN GICHERU, J
MAY 20, 2025**

BETWEEN

BETH WAMBUI CHEGE PLAINTIFF

AND

KARANJA KARIUKI DEFENDANT

RULING

1. This ruling is on the notice of motion dated 10-7-2024. The motion which is by the Applicant is brought under Order 40 rules 1, 2 and 3 of the Civil Procedure Rules, Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of Law.
2. The motion which is by the Applicant seeks the following residual orders.
 - (c) Temporary injunction restraining the Respondent, his agents, servants, employees and/or anybody working for him from interfering with the Applicant's possession and occupation of L.R. No. Loc.3/Kariua/451 measuring 2.71 acres, suit land, pending the hearing and determination of this suit.
 - (e) A prohibitory order over the suit land to inhibit any alienation by the Respondents by way of transmission, transfer, sale, charge and/or lease pending the hearing of this suit.
 - (f) Costs of the suit.
3. The motion is based on fifteen grounds and is supported by an affidavit sworn by the Applicant. In summary, the Applicants states as follows. One, the suit land is registered in the name of the Respondent. Before this, it was in the name of his father Kariuki Irungu. Two, neither the Respondent nor his father has ever occupied the suit land. Instead it is the Applicant's husband who has always occupied the suit land prior to his marrying the Applicant in 1968. Three, after the death of the Applicant's husband in the year 2008, she has continued living on the suit land. Four, since 1968,



seven members of the Applicant's family have been buried on the suit land. They include her husband, her five(5) Children and one(1) grandchild. Five, the Applicant has extensively cultivated on the suit land. Six, neither the registered owner nor his family members occupy or utilize the suit land. Seven, the Applicant seeks to be declared owner of the suit land through the doctrine of adverse possession. Eight, the Respondent and his family members have been threatening to evict the Applicant from the suit land and have gone to the extent of killing her four (4) cows. For the above and other reasons, the Applicant prays for the orders in the motion.

4. The motion is opposed by the Respondent who has sworn a replying affidavit dated 31-1-2025 in which she replies as follows. Firstly, the Respondent is the registered owner of the suit land. Secondly, the Applicant has made legal challenges against him and his father and she has not succeeded. Thirdly, the Applicant should respect the sanctity of title and that is why the Respondent has filed a counterclaim in these proceedings so that the Applicant may be evicted from the suit land as she is a trespasser. Fourthly, the Applicant has no registrable interest over the suitland. Fifthly, the prerequisites to the grant of an order of injunction have not been met in this case as per the case of Giella vs Cassman Brown, Finally, the orders sought should only be allowed as final orders but not at an interlocutory stage. For the above reasons, he prays for the dismissal of the motion dated 10-7-2024.

5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit and the annexures to the Affidavits.

I find that the motion has merit and I allow it for the following reasons.

Firstly, the Applicant is in occupation of the suit land. This is not in dispute because at paragraph 5 of the replying affidavit, the Respondent says that the Applicant is a trespasser. A trespasser is a person in occupation. The Applicant should not be evicted before the suit is heard and determined. Secondly, there is no evidence, so far, to prove that the Applicant's occupation of the suit land is not for long. If the suit land were to be transferred when this suit pending, she would suffer great harm as she would have to file another suit against the new owner. Finally the balance of convenience tilts in favour of the party in possession. In this case, that party is the Applicant.

6. For the above stated reasons, I find that the Applicant has established a prima facie case with a probability of success. She has also proved that unless the orders sought are allowed, she stands to suffer loss that cannot be compensated by an award of damages. The three prerequisites to the grant of an order of injunction as per the case of Giella vs. Cassman have all been met in this case.

7. Consequently, I allow the notice of motion dated 10-7-2024 in terms of prayers (c) and (e).

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 20TH MAY, 2025.

M. N. GICHERU

JUDGE

Delivered online in the presence of:-

Court Assistant –

Plaintiff's Counsel

Defendant's Counsel

