



**M'muga & 9 others v Mungira (Sued as the Legal Representative of the Estate of Mungira M'runguchi) & another (Environmental and Land Originating Summons E006 of 2024) [2025] KEELC 4067 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4067 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024**

**BM EBOSO, J  
MAY 20, 2025**

**BETWEEN**

**PETERSON KENNETH MUGO M'MUGA ..... 1<sup>ST</sup> PLAINTIFF  
ALEXANDER KIRUJA MIRITI ..... 2<sup>ND</sup> PLAINTIFF  
ROBERT MURITHI CRISPO ..... 3<sup>RD</sup> PLAINTIFF  
JOHN NJAGI MIRITI ..... 4<sup>TH</sup> PLAINTIFF  
JUSTUS MBAE MIRITI ..... 5<sup>TH</sup> PLAINTIFF  
FERDINARD MBABU MIRITI ..... 6<sup>TH</sup> PLAINTIFF  
LINET KARIMI MIRITI ..... 7<sup>TH</sup> PLAINTIFF  
SILAS GITONGA MIRITI ..... 8<sup>TH</sup> PLAINTIFF  
JAMES MUGO MIRITI ..... 9<sup>TH</sup> PLAINTIFF  
CIRIAKA TIRINDI ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**DOMISIANO NJERU MUNGIRA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MUNGIRA M'RUNGUCHI) ..... 1<sup>ST</sup> DEFENDANT  
CELESTINA KARIMI MIRITI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MURUNGI KING'ANG'A) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This suit was initiated by the plaintiffs through an originating summons dated 5/9/2024. Through the originating summons, the plaintiffs seek: (i) a declaration that a customary trust exists in their favour



- in relation to land parcel number Muthambi/Gatua/1XX4 (the suit land) constituting an overriding interest in their favour; (ii) a declaration that they are entitled to proprietorship of the suit land under the doctrine of intergenerational equity; (iii) an order decreeing the Land Registrar to transfer the suit land to the 1st plaintiff to hold it in trust for the other plaintiffs; and (iv) costs of the suit.
2. Together with the originating summons, the plaintiffs brought a notice of motion dated 5/9/2024 seeking: (i) an interlocutory order of inhibition forbidding the Land Registrar against registering any dealings in the land register relating to the suit land; and (ii) an interlocutory injunctive order restraining the defendants against entering, occupying, utilizing or cultivating the suit land or interfering with the suit land or impeding the plaintiffs' use and occupation of the suit land. The said application is the subject of this ruling.
  3. The application was premised on the ground set out in the motion and in the supporting affidavit dated 5/9/2024 and supplementary affidavit dated 27/1/2025. It was canvassed through written submissions dated 27/1/2025 and supplementary submissions dated 20/3/2025, both filed by Basilio Gitonga, Muriithi & Associates. The plaintiffs contend that their case is anchored on the principles of customary trust and intergenerational equity which they have invoked against the estates of the late MM and the late MKI, represented by the 1st and 2nd defendants respectively.
  4. The case of the plaintiffs is that the late MM and the late MKI, the registered co-proprietors of the suit land, were brothers. MM died in 1962 while MKI died in 1937. The two deceased siblings were registered as co-proprietors of the suit land in 1997.
  5. The plaintiffs contend that they are children of the late M'Bundi Muga alias Jotham Miriti Crispo who died in 2015 aged 83 years. M'Bundi Muga was the son of Crispo M'Muga Mungira who died in 1990. Crispo M'Muga Mungira was the son of MM (one of the registered co-proprietors of the suit land).
  6. The plaintiffs add that in 1945, MM took his grandson, M'Bundi Muga to live with him on the suit land, adding that save for intermittent disruptions occasioned by the Mau Mau insurgency, M'Bundi Muga continuously lived on the suit land and established and raised his family on it. They state that subsequently, MM relocated to Kanyakini village and left M'Bundi Muga on the suit land. They add that the family of M'Bundi Muga has ever since lived on the suit land.
  7. It is the plaintiffs' case that the personal representatives of the two deceased co-proprietors initiated separate succession proceedings relating to the estates of the two deceased proprietors, adding that the said succession proceedings do not extinguish their existing overriding interest in the suit land.
  8. The plaintiffs add that they are apprehensive that the defendants would cause the suit land to be transferred to themselves or to third parties, a situation that would adversely affect their proprietary interest in the suit land. They further contend that they are apprehensive the defendants may attempt to forcibly take possession of the suit land and evict them from the land. They urge the court to grant them the interlocutory orders.
  9. The 1st defendant opposed the application through a replying affidavit dated 25/10/2024 and written submissions dated 21/2/2025, filed by M/s Angela Nyagah Advocates. The case of the 1st defendant is that he is a son to the late MM and a step brother to the plaintiffs' grandfather, the late Crispo M'Muga Mungira. He adds that the plaintiffs are children of the late M'Bundi M'Muga who was a son to his step brother, Crispo M'Muga Mungira. The plaintiffs' grandfather, Crispo M'Muga Mungira was born by MM's first wife.
  10. It is the 1st defendant's case that the plaintiffs received a share of their family/ancestral land through their grandfather who in turn gave ancestral land to the plaintiff's father, M'Bundi Muga. He identifies the land as Muthambi/Gatua/2X0 and contends that it is for this reason that when the plaintiffs



- appeared in the succession cause relating to the estate of their great grandfather, MM, they swore an affidavit indicating that they were not beneficiaries of the estate of their great grandfather. The 1st defendant adds that this suit is the third attempt and tactic the plaintiffs have employed with a view to snatching the suit land from them.
11. The 2nd defendant opposed the application through a replying affidavit dated 18/2/2025. Her case is that she is a daughter to the late MKI who was a brother to MM. The two were registered as co-proprietors of the suit land in equal shares. She is the rightful beneficiary of the estate of the late MKI. She contests the allegation that the plaintiffs were born and brought up on the suit land, adding that the plaintiffs have their family/ancestral land, to wit, parcel number Muthambi/Gatua/2X0, which was given to their late grandfather (the late Crispo M'Muga Mungira) and subsequently passed to their father, (the late M'Bundi Muga). It is the case of the 2nd defendant that the plaintiffs are in occupation of parcel number Muthambi/Gatua/2X0, adding that the plaintiffs do not have any equitable or legal rights in the suit land.
  12. The court has considered the application, the response to the application, and the parties' respective submissions. The key issue to be determined in this ruling is whether the application dated 5/9/2024 meets the criteria for grant of an ordinary interlocutory injunction.
  13. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of *Giella v Cassman Brown* (1973) EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the plea for an interlocutory injunction is declined, he will stand to suffer damage that may not be adequately indemnifiable through an award of damages. Thirdly, should the court have doubt on either or both of the above, the application is to be determined on the basis of the balance of convenience.
  14. Over the years, our superior courts have developed a fourth principle to the effect that, at the stage of disposing the plea for an interlocutory injunction, the court should refrain from making conclusive or definitive pronouncements on the key issues in the dispute. The courts have emphasized that definitive and conclusive pronouncements/findings should be reserved for the final disposal of the dispute.
  15. Have the plaintiffs satisfied the criteria for grant of an interlocutory injunction? It does emerge from the interlocutory evidence presented to the court that the plaintiffs filed in this court Chuka ELC Case No E004 of 2021 in which they contended that they had a crystalized interest in the suit land under the doctrine of adverse possession. They contended that they had all along lived on the suit land as adverse possessors. They subsequently abandoned their claim. They are now before the same court contending, in the present cause, that they are beneficiaries of the suit land under the equitable principles of customary trust and inter-generational equity. At this interlocutory stage, they have not told the court the point at which they ceased to be adverse possessors and became beneficiaries under the equitable principles of customary trust and intergenerational equity.
  16. At this interlocutory stage, the defendants have tendered evidence to the effect that the plaintiffs' grandfather, Crispo M'Muga Mungira, who was a son to MM, was given his share of family/ancestral land, to wit, Muthambi/Gatua/2X0, which he transferred to the plaintiffs' father, M'Bundi M'Muga Crispo. The defendants contend that that is the land which the plaintiffs were entitled to and that is the land which the plaintiffs occupy.
  17. Thirdly, the plaintiffs have at this interlocutory stage not told the court why their customary interest in the suit land was not ventilated during the land adjudication process. The core purpose of the land adjudication process is to give residents of an adjudication section the opportunity to ventilate their customary interest in land within the adjudication section.



18. For the above reasons, this court is not satisfied that the plaintiffs have demonstrated a prima facie case with a probability of success.
19. No evidence of likely irreparable damage was tendered by the plaintiffs. Not a single photographic evidence of the plaintiff's developments on the suit land was exhibited.
20. The balance of convenience at this interlocutory stage tilts in favour of the two deceased proprietors who were adjudged to be absolute proprietors of the land during the adjudication process that preceded the registrations. It also tilts in favour of those who were adjudged to be beneficiaries of the two estates during the succession proceedings in which all those who were beneficiaries to the respective estates were heard.
21. For the above reasons, the application dated 5/9/2024 is rejected for lack of merit. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the applicants shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 20TH DAY OF MAY, 2025.**

**B M EBOSO [MR.]**

**JUDGE**

In the Presence of:

Mr. Muriithi for the Plaintiffs

Ms. Nyaga and Mr. Omari for the Defendants

Court Assistant – Mr. Mwangi

