



**Macharia v Maina & 2 others (Environment & Land Case  
E015 of 2024) [2025] KEELC 181 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 181 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE E015 OF 2024**

**JM KAMAU, J  
JANUARY 23, 2025**

**BETWEEN**

**PATRICK NDEGWA MACHARIA ..... PLAINTIFF**

**AND**

**DAMUEL GITHINJI MAINA ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY CRIMINAL INVESTIGATIONS OFFICER, NYANDARUA  
COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the suit dated 22/5/2024 the Plaintiff claims to be the registered owner of the suit property L.R. No. 7675 IR 8682 bought by his father, the late Jackton Macharia Wambu from a European Settler in the 1960s and who transferred the land to the Plaintiff in 1999 which he has developed. The 1<sup>st</sup> Defendant has laid claim over the property on the ground that he is a beneficiary of the Estate of one Irene Rhoda Maruri, the alleged owner of the same. With the assistance of the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant has been trespassing onto the Plaintiff's land. The Plaintiff, therefore, prays for orders of:
  - a. A Declaration that the plaintiff is the rightful owner of Land Reference Number 7675 IR 8682.
  - b. A permanent injunction restraining the defendants by themselves, their officers, servants, agents or anyone acting on their behalf from transferring, alienating, selling, trespassing or in any other way interfering with the property known as 7665 IR 8682.
  - c. Costs of the suit.



2. With the above facts as grounds in the Supporting Affidavit filed contemporaneous with the plaint, the plaintiff filed a Motion seeking for relieves that:

This Honourable court be pleased to issue orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from transferring, alienating, selling, or in any other way interfering with the property known as land reference No. 7675 (IR.8682) pending the disposition of this suit.

3. The same was brought under a certificate of urgency.
4. On his part, the 1<sup>st</sup> Defendant opposes the Application and denies that there is a similar suit pending in Nyahururu ELC court being ELC No. 31 of 2018 with the 1<sup>st</sup> Defendant herein been the Plaintiff in Nyahururu case, that the plaintiffs' Title is a forgery and therefore the Application should be dismissed as being an abuse of the court process.
5. In his supplementary affidavit the Plaintiff has exhibited transfer documents including evidence of payment of stamp duty for the transfer paid on 23/12/1999.
6. Parties were to directed to file written submissions but only the Plaintiff did. It is now my turn to rule on the Application.
7. Needless to emphasize, the remedy of temporary injunction is a vital tool intended to preserve the property in a dispute until legal rights and conflicting claims are established, so as to prevent the ends of justice from being defeated. Order 40 of the Civil Procedure Rules recognizes that a temporary injunction will be sought where a property in dispute is in danger of being wasted, damaged, or alienated, or wrongfully sold in execution of a Decree, or where a party threatens or intends to remove or dispose of the property in order to defeat any execution that may ultimately be passed. An injunction may also be applied for to restrain a party from committing a breach of contract or other injury. It is equally settled that a temporary injunction cannot be claimed as a matter of right, neither can it be denied arbitrarily by the court.
8. The three well-known tests enunciated in *Giella v Cassman Brown* (1973) EA 358 are to the effect that a party seeking a temporary injunction has to establish a prima facie case, whether the party seeking injunction will suffer irreparable damage if injunction is denied, and in case of doubt the issue in contention ought to be decided on the scale of a balance of convenience. It is not uncommon nowadays to have a property in dispute change hands severally before the matter in Court is determined which keeps complicating the matter and necessitates the amendment of the pleadings all the time as a result of which the case remains in Court unnecessarily. It is not also safe to conclude that the Applicant, if successful, would be compensated in monetary terms. Land is very scarce today and extreme care needs to be taken before making a conclusion that the injury or damage to be suffered is not irreparable or is capable of compensation. The Judgment sought herein is a Judgment in rem, in contrast to a judgment in personam. It is meant to determine the status of property on a basis which binds the whole world. In Latin: "with respect to the thing", which concerns proprietary legal rights. It would turn the entire proceedings herein into an academic exercise and later burden this court with a flurry of Applications if the subject of litigation is not reserved. It is of paramount importance to ensure realization of the ultimate winners' fruits of litigation and that nothing complicates the matters after the final Judgment.
9. Although the property is registered in the name of the Plaintiff, there is fear that the 3<sup>rd</sup> Defendant is intent on transferring it. The property therefore needs to be preserved until its ownership is established.
10. Having said so, I allow the Notice of Motion Application dated 22/8/2024 as follows:



- a. The Defendants and/or any other persons acting on their behalf are hereby restrained from transferring, alienating, selling, or in any other way interfering with the property known as land reference No. 7675 (IR.8682) pending the disposition of this suit.
- b. This Suit shall be set down for Hearing to be finalized within the next Ninety (90) Days from the date hereof failure to which the orders herein shall automatically lapse.
- c. The costs of the Application shall be in the course.

11. Ruling dated, signed and delivered at Nyandarua this 23<sup>rd</sup> Day of January, 2025.

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

Court Assistant: Eric.

Mr. Ikua and Mr. Kiptoo for the Plaintiff

Mr. Kinyajui for the Defendants

