



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kanyeki v Muriuki & 17 others; Kagotho & 3 others (Interested Parties)  
(Civil Appeal 80 of 2022) [2025] KEHC 7832 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7832 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL 80 OF 2022  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**PETER MWANGI KANYEKI ..... APPLICANT**

**AND**

**MARTIN MAINA MURIUKI ..... 1<sup>ST</sup> RESPONDENT**  
**SIMON WACHIRA WANYUKI ..... 2<sup>ND</sup> RESPONDENT**  
**MILLICENT WAMUYU MURAGE ..... 3<sup>RD</sup> RESPONDENT**  
**WINNIE BERTHA WAMBUI KANYEKI ..... 4<sup>TH</sup> RESPONDENT**  
**POLLY WANJIKU RUKENYA ..... 5<sup>TH</sup> RESPONDENT**  
**MILLIAM WAKUTHII KANYEKI ..... 6<sup>TH</sup> RESPONDENT**  
**HENRY MURIIHI NJIRU ..... 7<sup>TH</sup> RESPONDENT**  
**PAUL MWANGI NJIRU ..... 8<sup>TH</sup> RESPONDENT**  
**POLINE WANJIRU KANYEKI ..... 9<sup>TH</sup> RESPONDENT**  
**RACHEAL NJERI ..... 10<sup>TH</sup> RESPONDENT**  
**EMILY KAWIRA WANJIKU ..... 11<sup>TH</sup> RESPONDENT**  
**JANE GACUI MUNENE ..... 12<sup>TH</sup> RESPONDENT**  
**DAVIS KARIMI KANYEKI ..... 13<sup>TH</sup> RESPONDENT**  
**SAMMY BEN MAINA KANYEKI ..... 14<sup>TH</sup> RESPONDENT**  
**LEAKEY MURIUKI KANYEKI ..... 15<sup>TH</sup> RESPONDENT**  
**JACOB MAINA KANYEKI ..... 16<sup>TH</sup> RESPONDENT**  
**EDITH WANJA KANYEKI ..... 17<sup>TH</sup> RESPONDENT**



**BETHA WAMBUI MATHENGE ..... 18<sup>TH</sup> RESPONDENT**

**AND**

**BEATRICE WAMBUI KAGOTHO ..... INTERESTED PARTY**

**MARGARET WANGITHI MAINA ..... INTERESTED PARTY**

**GERALD MUNENE MUGO ..... INTERESTED PARTY**

**DAWSON KIBARA GICHIRA ..... INTERESTED PARTY**

### **RULING**

1. In his application dated 3<sup>rd</sup> November 2022, the applicant has invoked section 47 of the Law of Succession Act, rules 49, 63 and 73 of the Probate and Administration Rules seeking for orders:
  1. ... Spent;
  2. ... Spent;
  3. That the honourable court be pleased to issue a temporary injunction restraining the respondents from subdividing, selling, transferring or charging land reference number Mutira/Kathare/1859, Mutira/Kathare/1860, Mutira/Kathare/1861, Mutira/Kathare/1862, Mutira/Kathare/1863, Mutira/Kathare/1864, Mutira/Kathare/1865, Mutira/Kathare/1866, Mutira/Kathare/1867, Mutira/Kathare/1868, Mutira/Kathare/1869 and Mutira/Kathare/1870 pending the hearing and determination of this application of the appeal;
  4. That the cost of this application be provided for.
2. The application is supported by the grounds on the body of it and the supporting affidavit of the applicant sworn on 3<sup>rd</sup> November 2022. The gist of the motion is that a certificate for confirmation of grant was issued on 23<sup>rd</sup> November 2016 in Baricho PM SC No. 4412 of 2016; In the matter of the estate of Kirige Kanyeki (deceased). Following, L.R. No. Mutira/Kathare/171 was subdivided into Mutira/Kathare/1859, Mutira/Kathare/1860, Mutira/Kathare/1861, Mutira/Kathare/1862, Mutira/Kathare/1863, Mutira/Kathare/1864, Mutira/Kathare/1865, Mutira/Kathare/1866, Mutira/Kathare/1867, Mutira/Kathare/1868, Mutira/Kathare/1869 and Mutira/Kathare/187. The applicant sought to cancel those titles on grounds that the original title deed was not surveyed on the ground. He further cited that the measurements indicated on the certificate were misleading and not a true reflection of what was on the actual ground. In fact, the court ordered for a survey report which was filed on 21<sup>st</sup> January 2018. The same confirmed that there were mistakes.
3. The applicant then filed an application for rectification of grant dated 5<sup>th</sup> September 2018. The same was allowed on 6<sup>th</sup> February 2019. In that vein, the court ordered for the issuance of a fresh certificate of grant; the basis upon which new titles were to be issued to the beneficiaries. In spite of this, the 3<sup>rd</sup> respondent, the administrator of the estate, on 26<sup>th</sup> September 2018, caused the resultant titles of L.R. No. Mutira/Kathare/171 to be issued in terms of the grant dated 23<sup>rd</sup> November 2016.
4. Dissatisfied, the applicant filed an application dated 13<sup>th</sup> March 2019 seeking to cancel the tiles namely Mutira/Kathare/1859, Mutira/Kathare/1860, Mutira/Kathare/1861, Mutira/Kathare/1862, Mutira/Kathare/1863, Mutira/Kathare/1864, Mutira/Kathare/1865, Mutira/



Kathare/1866, Mutira/Kathare/1867, Mutira/Kathare/1868, Mutira/Kathare/1869 and Mutira/Kathare/187. In its ruling delivered on 31<sup>st</sup> August 2022, the trial court dismissed his application.

5. The applicant is aggrieved by those findings. He has since filed a memorandum of appeal. He has further requested for typed proceedings to prepare his record of appeal. The applicant has urged this court to issue the injunctive prayers since the respondents might dispose of the suit lands to other third parties not parties to the proceedings. As a consequence, the appeal would be rendered an academic exercise. He further urged this court to allow the application as there was need to preserve the status quo of the subject matter to avoid endless litigation. Finally, the applicant stated that it was in the interest of justice that the application is allowed.
6. The 1<sup>st</sup> respondent opposed the application. He filed a replying affidavit sworn on 15<sup>th</sup> November 2022. He prayed that the application be dismissed with costs on account of the following reasons: the applicant sought to have the titles canceled when at the time of execution of the confirmed grant, there were no conservatory orders barring the execution of it; some of the beneficiaries were sued over the subject matter in Kerugoya CMC EL Cause No. 46 of 2018 compromised by way of a consent order dated 23<sup>rd</sup> May 2018. At this juncture, the proceedings the subject of this appeal had been concluded; the orders were duly executed out of which he got his portion namely L.R. No. Mutita/Kathare/1864 as an innocent purchaser for value.
7. Further justifying the lawfulness of the sale of his parcel of land, the 1<sup>st</sup> respondent noted that the applicant was in attendance of the meeting of the Land Control Board held on 28<sup>th</sup> September 2017 and did not raise any objection. It was this meeting that paved the way for the morphosis of L.R. No. Mutita/Kathare/171. Accordingly, his application was an afterthought since the parcel of land had been subdivided and the beneficiaries sold their parcels to third parties. In any event, the applicant's share did not change the status quo. In his view, the applicant was intent on frustrating the beneficiaries with no lawful cause.
8. The 2<sup>nd</sup> respondent swore an undated replying affidavit. He deposed that the subject suit land was originally L.R. No. Mutita/Kathare/171. It was subsequently subdivided into parcel numbers 1859 – 1870. The appellant owns L.R. No. Mutita/Kathare/1870. He explained that his parcel of land was given to him after subdivision from the original court order in Kerugoya CMC EL Cause No. 46 of 2018 where he was given 0.15ha having purchased the same from the 3<sup>rd</sup> respondent. Arising from those orders, the appellant sought to stay those orders. He maintained that the subdivision was lawful. In his view, the applicant's application, the subject of this appeal, was an afterthought. He lauded the findings of the trial court urging this court to uphold those findings. He prayed that the application be dismissed with costs.
9. The 3<sup>rd</sup>, 13, 14<sup>th</sup> and 16<sup>th</sup> respondents filed grounds of opposition dated 7<sup>th</sup> November 2022. They opposed the application on the following grounds: the application was unmerited as it was frivolous, vexatious and an abuse of the court process; it was fatally defective for being couched under the wrong provisions of the law; the orders sought are not tenable or available to the applicant; the application failed to meet the threshold set out in order 42, rule 6 of the Civil Procedure Rules.
10. Interestingly, the 15<sup>th</sup> and 16<sup>th</sup> respondents filed replying affidavits sworn on 24<sup>th</sup> November 2022. They supported the application. I say interestingly because the 16<sup>th</sup> respondent had already sought to oppose the application in joint grounds of opposition dated 7<sup>th</sup> November 2022. Nonetheless, both replying affidavits were a mirror reflection of each other save the properties assigned to them.
11. They averred that though they were beneficiaries of the subject estate, they were not aware that their properties namely L.R. No. Mutira/Kathare/1868 and L.R. No. Mutira/Kathare/1869, assigned to



- the 15<sup>th</sup> and 16<sup>th</sup> respondents respectively, were sold to the 3<sup>rd</sup> respondent. That in fact the subdivisions took place in their absence. They maintained that the properties were not assigned to them by way of transmission since they didn't execute any forms. They opined that the 3<sup>rd</sup> respondent colluded with the 3<sup>rd</sup> interested party in this process yet the grant issued on 26<sup>th</sup> November 2016 was defective on account of the acreage.
12. The application was canvassed by way of written submissions. The applicant filed written submissions dated 2<sup>nd</sup> March 2024. He abridged the facts giving rise to this application to submit that by dint of section 47 of the *Law of Succession Act* and rule 73 of the Rules thereunder, he had met the test for grant of injunctive relief. He attached his draft memorandum of appeal to demonstrate that his appeal was arguable. That there was need to preserve the subject matter since the properties were at a risk of being disposed to third parties. He urged this court to allow his application.
  13. The 1<sup>st</sup> respondent filed written submissions dated 17<sup>th</sup> November 2023. He submitted that the applicant failed to meet the threshold for the exercise of this court's discretion for the reason that the applicant was utilizing possession of his property; which was not detrimental to any of the parties. Citing several decisions, he prayed that the application be dismissed with costs. The 2<sup>nd</sup> respondent's written submission dated 1<sup>st</sup> August 2023 adopted his replying affidavit praying that the application be dismissed with costs.
  14. The 3<sup>rd</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 16<sup>th</sup> respondents filed joint written submissions dated 12<sup>th</sup> August 2024. They adopted the contents of the grounds of opposition praying that the application be dismissed with costs. The 3<sup>rd</sup> interested party filed written submissions dated 10<sup>th</sup> November 2023. His submission was that the applicant had failed to meet the ingredients constituent required to grant the orders sought. His position was that all the respondents were satisfied with the parcels since the survey works were accurate. Similarly, he prayed that the application be dismissed with costs.
  15. I have considered the application, the supporting affidavit together with the annexure thereto as well as the responses in support and opposition thereto, examined the submissions and analyzed the law. Though the applicant cited the wrong provisions of the law, he is succored by the dictates of Article 159 (2) (d) of *the Constitution* which provides that justice shall be administered without undue regard to procedural technicalities. Order 42 rule 6 of the Civil Procedure Rules provides as follows:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
  16. Section 79G of the *Civil Procedure Act* provides that an appeal to this court shall be filed within thirty days from the date of the decree or order appealed against. In this instance, the applicant's memorandum of appeal dated 14<sup>th</sup> September 2022 was filed on 20<sup>th</sup> September 2022. This was within the stipulated time frame since the impugned ruling was delivered on 31<sup>st</sup> August 2022. In the circumstances, I will proceed to determine whether the application is merited.
  17. The principles that are taken into account in considering whether an application for injunction pending appeal is merited are now settled. In *Patricia Njeri & 3 others vs. National Museum of Kenya [2004] eKLR*, the court gave the following yardstick:
    - a. An order of injunction pending appeal is a discretionary one and the discretion will be exercised against an applicant whose appeal is frivolous.



- b. The discretion should be refused where it would inflict greater hardship than it would avoid.
  - c. The applicant must show that to refuse the injunction, would render the appeal nugatory.
  - d. The court should also be guided by the principles in *Giella vs. Cassman Brown Ltd* 1973 EA 358.
18. Laying emphasis on his principle, the Court of Appeal in *Charter House Bank Limited vs. Central Bank of Kenya & others* [2007] eKLR held as follows regarding an application for injunction pending appeal:
- “The purpose of granting an injunction pending appeal is to preserve the status quo and to prevent the appeal, if successful, from being rendered nugatory. (See also *Madhu Paper International Limited v Merr* [1985] KLR 840.”
19. The locus classicus case of *Giella vs Cassman Brown* (supra) has since settled that in order to succeed, an applicant must demonstrate that he has a prima facie case with a probability of success, that he will suffer irreparable damage which cannot be compensated by an award of damages or that if in doubt the court should decide the case on a balance of convenience.
20. A prima facie case with the probability of success was held in *Mrao vs. First American Bank of Kenya & 2 others* [2003] KLR 125, to mean:
- “A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
21. Has the applicant met the threshold? In this case, the applicant has annexed his memorandum of appeal that has raised five grounds disputing the findings of the trial court. In summary, the applicant lamented that the learned magistrate failed to issue orders cancelling the title numbers when they had been obtained fraudulently by the 3<sup>rd</sup> respondent; the learned magistrate disregarded that an order for rectification was issued on 6<sup>th</sup> February 2019 and the reasoning behind it; and the learned magistrate ruled against the weight of the evidence adduced.
22. The respondents that participated in the application by and large submitted that the subdivision of the parcels of land were lawful since at the time the grant was confirmed, there were no orders barring its execution from taking place. The applicant has not opposed these facts and in my view, I find that indeed there is no genuine or arguable case before this court since there is no subject matter to be preserved. See the titles were already issued and potentially, those titles have since changed hands. Though this application was filed in 2022, the applicant has to date not convinced this court if there were any adverse events precedent considering the fact that three years have since lapsed. I find that the application has indeed been overtaken by events.
23. Turning to the second limb, this court in *Karen Bypass Estate Ltd vs. Print Avenue and Company Ltd* [2014] eKLR, held that the second condition can only be addressed if the court is satisfied with the first one. Going by that authority, I need not address the second limb. The upshot of the above findings is that the application dated 3<sup>rd</sup> November 2022 lacks merit. It is hereby dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 14<sup>th</sup> respondents and 3<sup>rd</sup> interested party. For the reason that the 16<sup>th</sup> respondent had conflicting positions, and the 15<sup>th</sup> respondent supported the application, I exercise my discretion to not award them costs.



It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JUNE 2025 IN THE PRESENCE OF;**

No appearance for the Appellants

No appearance for the Respondents

Siele /Mark (Court Assistants)

.....

**J. NG'ARNG'AR**

**JUDGE**

