



**Kenyagi v Kendi & another (Environment and Land Appeal  
7 of 2023) [2025] KEELC 3833 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3833 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL 7 OF 2023**

**E ASATI, J  
MAY 15, 2025**

**BETWEEN**

**VINCENT MIGALIA KENYAGI ..... APPELLANT**

**AND**

**PAUL OSIDE KENDI ..... 1<sup>ST</sup> RESPONDENT**

**ELIZABETH MMOJI KENDI (SUING ON BEHALF OF THE ESTATE OF THE  
LATE MAHUNYA OKELLO) ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling of R. M. Ndombi  
PM in Vihiga PMC EL Case No. 037 OF 2023)*

**JUDGMENT**

**Introduction**

1. Vide the Memorandum of Appeal dated 6<sup>th</sup> September 2023, the appellant challenged the ruling dated 31<sup>st</sup> August 2023 delivered by the trial court in Vihiga PMC MELC No. 037 of 2023 (the suit)
2. The record shows that the appellant Vincent Migaliza Kenyagi was the 1<sup>st</sup> Defendant in the suit where he, together with the Land Registrar, had been sued by the Respondents herein over a parcel of land known as TIRIKI/SENENDE/258. The Respondents sought for orders against the appellant and the Land Registrar that the transfer of the suit land in favour of the appellant be declared unlawful hence null and void, a declaration that the deceased was the owner of the suit land, an order compelling the Land Registrar to recall and cancel the registration of the suit land in favour of the appellant and to direct that the land be registered in the name of the deceased, an eviction order for the eviction of the appellant from the suit land, a permanent injunction, special damages, mesne profits and costs of the suit.



3. The record of appeal shows that in the pendency of the suit, the Respondents filed an application which the court allowed vide its ruling dated 31<sup>st</sup> August 2023. The ruling dated 31<sup>st</sup> August 2023 granted an order of temporary injunction restraining the Appellant herein and the Land Registrar by themselves and/or their agents from trespassing, entering, damaging, alienating, building any structures or otherwise dealing with the parcel of land known as TIRIKI/SENENDE/258 pending determination of the suit. The ruling also directed the OCS Serem police station to ensure compliance, struck out the Interested Party from the proceedings and awarded costs to the Respondents.

### **The appeal**

4. Dissatisfied with the Ruling/order dated 31/8/2023 the appellant preferred the present appeal on the grounds that:-
  1. The learned trial Magistrate erred in law and in fact in failing to find that the order made on 14<sup>th</sup> day of June 2023 amounted to granting eviction orders which is a substantive prayer in the interlocutory stage.
  2. The learned trial Magistrate erred in law and in fact in granting an interlocutory injunction in favour of the Respondents in the circumstances of this case.
  3. The learned trial Magistrate erred in law and in fact in deciding the main case through an interlocutory application.
  4. The learned trial Magistrate erred in law in awarding costs to the Respondents for the application dated 13<sup>th</sup> day of July 2023 contrary to the applicable legal principle
  5. The ruling was arrived at in a perfunctory occasioning miscarriage of justice.
  6. The learned trial Magistrate erred in law and in fact in granting interlocutory orders of injunction contrary to the principles set out in the case of *Giella vs Cassman Brown* 1969 EA.
5. The Appellant now seeks for orders that the appeal be allowed with costs.

### **Submissions**

6. The appeal was disposed of by way of written submissions. Written submission dated 10<sup>th</sup> February 2025 were filed by Marisio Luchivya & Co Advocates on behalf of the appellant.
7. Counsel submitted that from the Replying Affidavit of the appellant, he is the registered owner of the suit land. That he was at the time the suit was filed in occupation and use of the suit land and hence one of the prayers sought in the plaint was for eviction of the appellant from the suit land.
8. That before the fraud pleaded is proved, the appellant is protected by sections 25 and 26 of the RLA. Counsel relied on the cases of *Nguruman Ltd vs Jan Bonde Nelson & 2 others* (2014) eKLR and *Esso Ltd vs Mark Makivate Okiya Civil Appeal No. 69 of 1991* to support the submissions. Counsel submitted further that the principles for the grant of injunction set out in *Giella vs Cassman Brown* were flouted by the court in granting the impugned orders.
9. Counsel urged the court to allow the appeal with costs to the appellant.
10. On behalf of the Respondent written submissions dated 11<sup>th</sup> March 2025 were filed by the firm of Orlando & Co Advocates. Counsel submitted that Judgment in the suit was delivered on 27<sup>th</sup> February 2025 in favour of the Respondents and that in the circumstances the appeal had been overtaken by events.



11. That without prejudice, it had been demonstrated in prosecuting the application before the trial court that the appellant does not live on the suit land and that was the basis for grant of the interlocutory injunction orders. A copy of the judgment in the suit, delivered on 27/2/2025 was attached to the submissions.
12. I have considered the grounds of appeal, the submissions and the record of appeal generally. This is an interlocutory appeal against a ruling dated 31<sup>st</sup> August 2023 granting a temporary injunction barring the appellant from entering onto or in any way dealing with the suit land pending hearing of the suit.
13. The Respondents contended that as the suit has since been heard and determined, the appeal has been overtaken by event.
14. The question before court for determination is whether or not on the material placed before the trial court, the court erred in granting the order of temporary injunction.
15. The grounds upon which the application for injunction was brought as contained in the Supporting Affidavit were that the appellant had forcefully and unlawfully entered the suit land and destroyed property thereon and started constructing a semi-permanent house. That as at the time of making the application, the appellant was in the process of erecting a permanent house with the sole purpose of relocating from his parent's homestead to the suit land. It was pleaded that the purpose of the temporary injunction sought was to stop the wanton acts of continued trespass.
16. The appellant's response was that he had been on the land for 7 years. That he lives at Marsabit with his family. That he had been in occupation and use of the land since the year 2017 after purchasing it and that he had carried out extensive development on the land.
17. The appellant's complaint in this appeal is that in the circumstances the order of injunction had the effect of evicting him from the land.
18. An order of temporary injunction is not equivalent to an eviction order. In the wording of order 40 Rule 1 the purpose of an order of temporary injunction is to stop damage, wastage or alienation of the subject land. The Respondents had stated clearly that the purpose of the injunction was to stop the wanton acts of continued trespass.
19. No evidence was placed before the trial court that the appellant had his home on the suit land. The effect of the order was to halt the developments the appellant had embarked on on the suit.
20. After re-examining the material placed before the trial court in support and in opposition of the application for injunction I find that the trial court did not err in granting the order of temporary injunction. And now that the suit is determined, the parties ought to comply with the decree.
21. For the foregoing reasons the court finds that the appeal has no merit. The appeal is hereby dismissed. Costs to the Respondents.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 15<sup>TH</sup> DAY OF MAY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Ajevi-----Court Assistant.



Appellant present in person.  
Olando for the Respondents.

