



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maranga & another v Maranga & 8 others (Family Appeal  
E006 of 2023) [2024] KEHC 2824 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
FAMILY APPEAL E006 OF 2023  
WA OKWANY, J  
MARCH 14, 2024**

**BETWEEN**

**PRISCA KWAMBOKA MARANGA ..... 1<sup>ST</sup> APPELLANT**

**PIUS MARANGA NYAKUNDI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SAMWEL ONSARE MARANGA ..... 1<sup>ST</sup> RESPONDENT**

**GRACE NYABONYI ..... 2<sup>ND</sup> RESPONDENT**

**JAPHETH YOGA MARANGA ..... 3<sup>RD</sup> RESPONDENT**

**JOSEPHINE MORAA ORUCHO ..... 4<sup>TH</sup> RESPONDENT**

**JASON OGECHA ONCHARI ..... 5<sup>TH</sup> RESPONDENT**

**ONCHIRI SAMUEL MAYANI ..... 6<sup>TH</sup> RESPONDENT**

**THOMAS ONSONGO APIRI ..... 7<sup>TH</sup> RESPONDENT**

**KEVIN OMOGA MOGIRE ..... 8<sup>TH</sup> RESPONDENT**

**SAMWEL ONSONGO ..... 9<sup>TH</sup> RESPONDENT**

*(Being an Appeal against the Ruling of Hon. W. K. Chepseba (Mr.) – CM  
Nyamira dated and delivered on the 25th day of September 2023 in the  
original Nyamira Chief Magistrate’s Court Succession Cause No. 155 of 2019)*



## RULING

### Introduction

1. The 1<sup>st</sup> & 2<sup>nd</sup> Applicants herein are the widow and son, respectively, of the late Peter Maranga Nyangau (hereinafter “the deceased”) and the Administrators of his estate having successfully petitioned for the Grant of Letters of Administration, intestate, of the said estate before the Lower Court. The said Grant of Letters of Administration was issued on 8<sup>th</sup> July 2020 and confirmed on 7<sup>th</sup> August 2021.
2. The Applicants had however prior to the confirmation of grant filed an application dated 7<sup>th</sup> August 2020 seeking, *inter alia*, orders for permanent injunction and eviction of the Respondents from the suit property, to wit, Gesima Settlement Scheme/137.
3. The application was heard by Hon. Wambani on 13<sup>th</sup> July 2021 who granted orders of permanent injunction to restrain the Respondents from intermeddling with the estate of the deceased. The said court did not issue any orders in respect to the prayer for eviction on the basis that it was a weighty matter that would require a full hearing.
4. The matter was thereafter heard by Hon. W. K. Chepseba who, in a ruling delivered on 31<sup>st</sup> August 2023, dismissed the application dated 7<sup>th</sup> August 2020 in its entirety.
5. The dismissal of the application dated 7<sup>th</sup> August 2020 precipitated the filing of the instant appeal and the application dated 25<sup>th</sup> September 2023 which is the subject of this ruling.

### Application

6. The Applicants seek orders of injunction to restrain the Respondents from intermeddling with the estate of the deceased by entering, remaining in, selling, leasing, transferring, disposing off or in any way cultivating upon, constructing any structures on and dealing with and/or interfering with the suit land pending the hearing and determination of the appeal.
7. The application is supported by the 2<sup>nd</sup> Applicant’s affidavit and is premised on the main ground that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, who are also the beneficiaries of the deceased’s estate, had prior to the confirmation of grant, intermeddled with the estate of the deceased by sub-dividing and selling portions of the suit land to the 4<sup>th</sup> to the 9<sup>th</sup> Respondents who are not beneficiaries to the said estate thus frustrating the equitable distribution of the estate.
8. It is the Applicants’ case that the Respondents’ actions have had the effect of denying the beneficiaries their rightful inheritance.
9. The Respondents opposed the application through the 1<sup>st</sup> Respondent’s replying affidavit wherein he avers that at no time did Hon. Wambani issue orders of permanent injunction since the parties to the suit were referred to mediation in a bid to securing an amicable mode of distribution.
10. He states that parties did not arrive at an amicable distribution of the estate as the Applicants did not turn up for the mediation after which the trial court heard and dismissed the application for eviction.
11. He further states that the deceased had already sub-divided and allocated the suit land to each of the beneficiaries of his estate prior to his death and that they have since settled and developed their respective portions of land.



12. The 1<sup>st</sup> Respondent contends that the orders sought in the instant application are meant to disinherit them from their respective portions.
13. The Respondents contend that the suit property is not in any danger of being wasted, damaged or alienated or wrongfully sold as each beneficiary is occupying and utilizing the portions of land allocated to them by the deceased.
14. The application was canvassed by way of written submissions which I have considered.
15. The main issue for determination is whether the Applicants have made out a case for the granting of orders for injunction pending appeal. Order 40 rule 1 and 2 of the [Civil Procedure Rules](#) provides as follows on temporary injunction: -

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

[Order 40, rule 2.] Injunction to restrain breach of contract or other injury.

2.

- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
- (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.

16. The principles governing the granting of orders of injunction were stated in the oft cited case of *Giella vs Cassman Brown* [1973] E.A 358 . The principles include; whether the applicant has shown *prima facie* case with a probability of success; whether the applicant shall suffer irreparable injury which cannot be compensated by damages; and if the court is in doubt then it can decide the application on a balance of convenience.
17. On prima facie case, the Applicants submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have, since the demise of the deceased, engaged in unlawful, illegal and irregular sale and occupation of the suit property to the detriment of the other beneficiaries.
18. It was the Applicants' case that the Respondents' actions have frustrated the distribution of the estate of the rightful beneficiaries. The Applicants attached Sale Agreements (annexures marked "PMW5") to support their contention that the Respondents had sold portions of the suit land.



19. The Respondents, on their part, submitted that there was no evidence of any further/intended sale of the suit land and that the injunctive orders sought, if granted, will be orders issued in vain.
20. I have perused the annexures marked “PMW5” and I note that they comprise of several land sale agreements executed on diverse dates by the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents in favour of the 4<sup>th</sup> to 9<sup>th</sup> Respondents.
21. The Respondents did not deny the existence of the said Sale Agreements but appeared to suggest that they do not intend to enter into any further agreements.
22. My finding is that in light of the uncontested fact that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents sold the suit land prior to the confirmation of grant is proof that their actions amounted to intermeddling with the estate of the deceased which is a matter that the court dealing with the succession cause cannot take lightly. I am in this regard, satisfied that the Applicants have demonstrated that they have a *prima facie* case against the Respondents.
23. Turning to the limb of irreparable loss, I find that it cannot be gainsaid that land is an emotive issue in this county owing to the commercial and sentimental value that parties attach to it. In this regard, I find that the loss that can occur, in the event an injunctive order issued in a matter such as the one before me can be monumental and even unimaginable.
24. I am satisfied that this application meets the second condition for the granting of orders of injunction.
25. My further finding is that the balance of convenience tilts in favour of granting the injunctive orders sought in order to preserve the deceased’s estate pending the hearing and determination of the appeal.
26. For the above reasons, I allow the application dated 25<sup>th</sup> September 2023 in the following terms: -
  - a. An order of injunction is hereby issued to restraining the Respondents herein, their agents, servants or anyone acting on their behalf from selling, leasing, transferring, disposing off or constructing on the suit land (Gesima Settlement Scheme/137) pending the hearing and determination of the appeal.
  - b. The costs of the application shall abide the outcome of the appeal.
  - c. Considering that the Record of Appeal has already been filed, I hereby admit the appeal for hearing and direct the parties to file and exchange their respective written submissions to the appeal before the next mention date.
  - d. Mention on 29<sup>th</sup> April 2024.
27. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 14<sup>TH</sup> DAY OF MARCH 2024.**

**W. A. OKWANY**  
**JUDGE**

