



**Kamichar & 7 others v Delmonte Kenya Limited; Directorate of Criminal Services & 2 others (Interested Parties) (Environment & Land Case E022 of 2025) [2025] KEELC 5017 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5017 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E022 OF 2025**

**MN GICHERU, J  
JUNE 30, 2025**

**BETWEEN**

**ELIZABETH WAMBUI KAMICHAR ..... 1<sup>ST</sup> PLAINTIFF  
MARIONNE WACHEKE THIONG'O ..... 2<sup>ND</sup> PLAINTIFF  
APPOLLO GITHINJI THUNGARI ..... 3<sup>RD</sup> PLAINTIFF  
CHARLES MBATE GITHUA ..... 4<sup>TH</sup> PLAINTIFF  
MARGARET WANJIRA WANJIRU ..... 5<sup>TH</sup> PLAINTIFF  
NELSON MAKUNA THIONG'O ..... 6<sup>TH</sup> PLAINTIFF  
BRENDA WANJIRU KAREE ..... 7<sup>TH</sup> PLAINTIFF  
JOYCE NYAMBURA IRUNGU ..... 8<sup>TH</sup> PLAINTIFF**

**AND**

**DELMONTE KENYA LIMITED ..... RESPONDENT**

**AND**

**DIRECTORATE OF CRIMINAL SERVICES ..... INTERESTED PARTY  
COUNTY GOVERNMENT OF MURANG'A ..... INTERESTED PARTY  
DEPUTY COUNTY COMMISSIONER ITHANGA ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the notice of motion dated 24-2-2025. The motion which is brought under Article 159 of the *Constitution*, Sections 3, 13(7) (a) of the *Environment and Land Court Act (Act No.19 of 2011)*, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*; Orders 40 rules 1, 4 and 7, 51 rules 1,



3 and 15 of the Civil Procedure Rules and all other enabling provisions of the law seeks the following residual orders.

4. That pending the hearing and determination of this suit, an order of injunction do issue restraining the Plaintiffs, their agents, servants, employees or any other person claiming under them from entering, occupying, using, carrying out any rock drilling, rock blasting, rock extraction, tree felling or quarry miming operations in the parcel of land known as land reference number 12157/10 suit land, situated in Ithanga-Kakuzi Subcounty or in any other manner interfering with the Defendant's quite possession and enjoyment of the suit land.
  5. That the Court be pleaded to set aside the order given by Honourable Lady Justice J.M. Onyango on 6<sup>th</sup> February, 2025 and issued on 10<sup>th</sup> February 2025 in its entirety.
  6. That this Court be pleased to issue an environmental preservation order prohibiting further environmental degradation of the suit property.
  7. That the Plaintiffs' process server, Mr. Amos Chege Kanoga, be summoned to court for cross-examination.
  9. That the Officer Commanding Station(OCS) Ngati Police Station to enforce the orders of the court herein.
  10. That the costs of this application be borne by the Plaintiffs jointly and severally in any event.
2. The motion is based on 24 grounds and is supported by two affidavits by Harry Odoni, the legal officer of the Defendant, which have eight(8) annexures. The two affidavits are dated 24-2-2025 and 11-3-2025 respectively. The summary of the above material is as follows. One, the Defendant is the registered owner of the suit land which is situated in Ithanga-Kakuzi Subcounty. Two, the Plaintiffs know the Defendant to be the owner of the suit land and this is a matter of public notoriety. Three, the Plaintiffs have unlawfully entered the suit land and carried out extensive quarrying activities, which include mining, drilling and blasting of the rock on the land. They have also felled numerous trees and purported to make a new road through the Defendant's pineapple plantation which is on the suit land. Four, the Plaintiffs have in all these activities relied on an order issued by this court which refers to some unsurveyed plots in Thika Municipality, yet the quarrying is on the suit land which is neither in Thika nor is it unsurveyed. Five, Thika is in Kiambu County while the suit land is in Murang'a County and there is River Chania which marks the boundary between the two counties and it is not possible that the two parcels in dispute could be one and the same more so because the suit land extends to the centerline of river Chania which the Southmost part of Murang'a County as per Deed Plan Numbers 94718 dated 16-7-1974 and 458195 dated 28-4-2022. Six, when the Plaintiffs trespassed onto the suit land, the Defendant warned them that they were on private land and they should leave. They did not heed the warning but instead threatened to beat up the Defendant's representatives and they were in the company of about 200 persons who were extremely rude. Seven, the Defendants sought lawful means of resolving the dispute including involving the area police and the Director of Survey but instead of the Plaintiffs cooperating with the Defendant, they obtained court orders behind the back of the Defendant by filing false affidavits of service. This misled the court to issue orders that ought not to have been issued had there been service in the first place. Eight, since the Plaintiffs were issued with the order, they have abused it by intensifying their unlawful quarrying activities. Nine, the Plaintiffs' Part Development Plan is suspicious for lack of signatures by the Commissioner of Lands and Director of Physical Planning. Ten, the Plaintiffs are not consistent for claiming their land to be both belonging to the Government and to them. Eleven, the Plaintiffs have filed Thika ELC Case No. E006/2024 against the Defendant claiming to be entitled to L.R. No.12157/4 by adverse possession,



yet they have not disclosed this in these proceedings as required by the law and procedure. For the above and other reasons, the Defendant prays for the orders in the motion.

3. The motion is opposed by the Plaintiffs and Elizabeth Wambui Kamichar has sworn a replying affidavit dated 3-3-2025 in which she replies as follows. Firstly, the Plaintiffs were allotted their eight(8) parcels in 1998. Secondly, LR. No. 12157 is an amalgamation of L.R. Nos. 10735, 10733 and 921311/1 which is separate from Government Land under DPD No. TKA 4/99/57 and the Director of Survey has by a letter dated 28-2-2025 outlined clear boundaries between the Plaintiffs' land and that of the Defendant. This means that the Plaintiffs' land is separate and distinct from the Defendant's. Thirdly, the Plaintiff's land was allotted in 1998 and was properly used for grazing and farming until last year when the Plaintiffs decided to use it differently. Fourthly, the Plaintiffs have the requisite permits for stone cutting both manually and by Machine. Fifthly, they have leased the land and the lessees have observed the distance from the River and the Railway line and they too are entitled to use their land in a lawful manner like they are currently doing. Fifthly, the Defendant has harassed and frustrated the Plaintiffs as they seek to enjoy their land yet they employ over 1000 people who will suffer if the order sought is allowed. Sixthly, service upon the Defendant through substituted service was authorized by the court vide an order dated 4-9-2024. For the above and other reasons, they pray for the dismissal of the Defendant's motion.
4. Counsel for the parties filed submission dated 8-4-2025 and 18-6-2025. The issues identified by the Plaintiffs are as follows.
  - a. Whether the Plaintiffs hold a legitimate interest in the suit land.
  - b. Whether the Defendant's acts constitute trespass and unlawful interference with the Plaintiffs' quiet possession of their property.
  - c. Whether the Plaintiffs and their assigns have complied with legal and regulatory requirements regarding land use, particularly in relation to quarrying and environmental concerns.
  - d. Whether the Defendant was properly served with the pleadings in this matter and whether its allegations of non-service hold any merit.
  - e. Whether this court has the requisite jurisdiction to hear and determine this matter.
  - f. Whether the Defendant has established a prima facie case and whether the balance of convenience tilts in favour of the Plaintiffs.

On the other hand, the Defendant's counsel identified the issues as follows.

- (d) Whether the Applicants have met the threshold for staying, setting aside, varying and/or discharging the interim orders issued on 28-2-2025.
- (e) Whether the Applicants have met the threshold for the grant of an order of injunction.

Issues (a), (b) and (c) relate to the notice of motion dated 26-3-2025.

5. I have carefully considered the motion in its entirety including the grounds, the affidavits, the submissions and the case law cited therein. I make the following findings on the issues raised by both sides.

Starting with the Plaintiffs' first issue, I find that it too early to determine whether the Plaintiffs hold a legitimate interest in the suit land. At this preliminary stage, it is not yet clear if land reference No. 12157/10 Ithanga-Kakuzi is distinct from the 8 parcels claimed by the Plaintiffs parcels described as unsurveyed commercial plot Nos. 'M', 'C' 'Q', 'C' 'J' 'D', 'M' and 'B' Thika Municipality. This will



only become clear after the we have heard all the witnesses and the evidence. A look at case file shows that the Defendant is yet to file a defence. Seven persons are seeking to join the suit as interested parties. The Pleadings are yet to close. This makes it difficult to determine the legitimacy of the Plaintiffs' claim at this early stage.

6. Regarding the second of the Plaintiffs' issues, I find that it is only after deciding on whether the two claims by the two sides relate to the same or separate parcels that the court can determine whether there is trespass or not. Before we know whether the Plaintiffs' land is embedded in the Defendants land or not, we cannot establish if there is trespass or not.
7. Looking at the Plaintiffs' 3<sup>rd</sup> issue of compliance with legal and regulatory requirements regarding land use in relation to quarrying and environmental concerns, prima facie, one would say, they seem to have complied but that will finally be known at the conclusion of the suit after the testimony of the witnesses from the agencies that issue the necessary permits.
8. As for service of the Defendant with pleadings, I am not satisfied that the Defendant was properly served. Under Order 5 rule 8, Civil Procedure Rules, service shall be made on the Defendant in person and under Order 5 rule 3, service on a Company should be on the Secretary, Director or other Principal Officers of the Company. Service is vehemently disputed and the stamp on the mention notice dated 20-1-25 purporting to belong to the Defendant is said to be a forgery. Also said to be a forgery is the signature on the mention notice. With this denial and with the signature thereon appearing different from the one an affidavits sworn by the legal officer of the Defendant, I am not convinced that the service was proper.
9. As for the issue of jurisdiction, it will depend on whether the Plaintiffs' parcels of land are in Kiambu or Murang'a County. If they are in Kiambu County, then the geographical jurisdiction will be with ELC Thika and not this Court. This is as per Section 12 of the *Civil Procedure Act* which requires that suits for recovery of immovable property be instituted where the subject matter is situated. This court will only have jurisdiction if the Plaintiffs' property is within Murang'a County. As of now, the precise location of the Plaintiffs' land parcels remains a contentious issue.
10. I find it prudent to determine the Plaintiffs' issue (f) together with the Defendant's issue (e) because they are one and the same thing. They relate to whether the Defendant in its motion dated 24-2-2025 has met the threshold for an order of injunction.  
  
In the case of *Giella vs. Cassman Brown and Co. Ltd* [1973]E.A. 358, it was held that for a party to qualify for an order of injunction, that party must prove two things. Firstly, it must demonstrate a prima facie with a probability of success. Secondly, it must prove irreparable loss that cannot be adequately compensated with an award of damages. If the court is in doubt as to whether the two conditions have been satisfied, it will consider the balance of convenience.
11. In this case at this preliminary stage when pleadings have not closed, it is too early to establish if either party has established a prima facie case with a probability of success. Secondly, should quarrying continue before the ownership dispute is determined, the Plaintiffs and their lessees will have mined on land that could ultimately be found to belong to the Defendant. It is therefore prudent to order that there should be no quarrying on the disputed land until the ownership dispute is resolved. Once the ownership dispute is resolved, the land will be available to the lawful owner to do all that appertains to such ownership.
12. For the above reasons already given, I find merit in the Defendant's notice of motion dated 24-2-2025 and I allow it in terms of prayers 4,5,7 and 9.

Costs in the cause.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr. Mwenesi

Defendant's Counsel – Mr. Thuo and Mr Oduor

Miss Maina holding brief for Matu

