



Gathirwa v Kiambu County Government (Environment and Land Appeal E130 of 2024) [2025] KEELC 4658 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4658 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E130 OF 2024**

**JM ONYANGO, J
JUNE 24, 2025**

BETWEEN

FRACIAH NJERI GATHIRWA APPELLANT

AND

KIAMBU COUNTY GOVERNMENT RESPONDENT

RULING

1. This Ruling is in respect of a Notice of Motion application dated 12th October 2024 filed by the Appellant/Applicant pursuant to Order 42 Rule 6 of the Civil Procedure Rules 2010, Cap 21 of the Laws of Kenya. In the said application, the Applicant seeks the following orders:
 1. Spent.
 2. That the honourable court be pleased to stay the judgment in Kikuyu Chief Magistrate’s Court Environment and Land Court Suit No E001 of 2022: Fraciah Njeri Gathirwa versus Kiambu County Government, the subject of this appeal pending hearing inter-partes of this application
 3. That the honourable court be pleased to issue injunction order restraining the Respondents, its servants, agents or anyone else acting on its authority or direction from interfering with suit property Karai/Lusigetti/T.384 until the appeal is heard and determined.
 4. That the costs of this application be provided be the costs in the appeal. (sic)
2. The Application is supported by grounds on the face of it and by the Supporting Affidavit sworn by Fraciah Njeri Gathirwa (Applicant) on 12th November, 2024. The Applicant avers that she is one of the residents of a colonial village in Lusigetti, Karai, Kikuyu, in Kiambu County. It is her position that in 1975, the County Council of Kiambu decided to allocate the land to the residents. As a result, the then County Council of Kiambu subdivided the land into plots and a balloting exercise was carried out by the residents of the said village. The Applicant contends that she balloted parcel number 384,



which was registered as Land Parcel Number Karai/Lusigetti/T.384 (hereinafter referred to as “the suit property”).

3. The Applicant further contends that she immediately took possession of the suit property and had been in peaceful occupation thereof until sometime in 2017 when some officials of the Kenya African National Union (KANU) made claims against the suit property with the intention of building an office thereon. As a result, the Applicant instituted Kikuyu MCELC No. 15 of 2018 against one of the officials known as Geoffrey Kimani Njuguna, and the court found in her favour.
4. She states that despite being successful in the aforementioned suit, officials of KANU continued to make claims over the suit property and being apprehensive that they might be issued with the title to the suit property, the Applicant filed the suit which is the subject of this appeal seeking an order directing the Respondent to issue her with a title to the suit property. She further states that the Learned Trial Magistrate dismissed her suit on the grounds that:
 - (i) she did not have a letter of allotment or extracted minutes of allocation;
 - (ii) she produced a decree in Kikuyu MCELC No. 47 of 2018 instead of MCELC No. 15 of 2018 which involved her neighbour who had also sued the same KANU official over his land known as Land Parcel Number Karai/Lusigetti/T.385; and
 - (iii) that the requisite fees were paid to the Respondent in 2001 and 2002. Being aggrieved by the decision of the trial court, she filed this appeal. She faults the Learned trial magistrate for dismissing her suit on matters that were never canvassed by the Respondent and which did not have a bearing on the case. She urges this court to stay the impugned judgment until this appeal is heard and determined.
5. The Respondent opposed the Application through Grounds of Opposition dated 24th March 2025. It is their position that this Application does not meet the threshold established in *Giella vs Cassman Brown Ltd* [1973] E.A 358. They contend that the learned trial magistrate did not make any error in the Judgment, therefore they oppose this application and appeal in totality. They further contend that the suit property has always been public land; hence, this Application and Appeal offend the provisions of Article 62(2) of *the Constitution* of Kenya, 2010. They add that the Appellant has no legal or equitable interest in the suit property as she has failed to provide valid proof of ownership.
6. They rely on the decision in the case of *Marcus Mutua Muluvi & Another vs. Philip Tonui & another* [2012] eKLR to assert that it is trite law that a letter of allotment does not confer title or proprietary interest on an individual. They state that the Respondent will be prejudiced if the orders sought are granted because it would interfere with the proper administration and management of public land. They add that the balance of convenience does not favour the Applicant because she has not demonstrated any proprietary rights or legally enforceable interest in the suit property. They conclude by stating that the Application and Appeal are frivolous and vexatious; therefore, they ought to be dismissed with costs to the Respondent.
7. The Application was canvassed by way of Written Submissions. The Applicant filed Written Submissions dated 30th March 2025 while the Respondent filed Written Submissions dated 23rd May 2025 with each party duly filing their respective submissions.



8. Having perused the Application, the Grounds of Opposition, and the parties' Written Submissions, the following key issue emerges for determination:

Whether the court should grant an order of injunction pending the hearing and determination of the Appeal.

Analysis and Determination

9. It is the Applicant's contention that this Application for injunction has been brought under Order 42 Rule 6 of the Civil Procedure Rules, 2010. The said Rule provides thus: -

“(6) Notwithstanding anything contained in sub rule (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 subordinate Court or tribunal has been complied with.”

10. It is clear that the court has the discretion to grant an injunction pending appeal if it satisfied that the appeal has been properly filed. The said discretion must be exercised judicially on the basis of law and relevant affidavit evidence. In the case of *Patricia Njeri & Others vs National Museums of Kenya* (2004 eKLR), the court identified the following principles that should guide the court in considering such an application. These are:

1. An order of injunction pending appeal is discretionary and will not be granted where the appeal is frivolous.
2. The discretion should be refused where it would inflict greater hardship than it would avoid.
3. The applicant must show that if the injunction is not granted, the appeal will be rendered nugatory.
4. The Court should be guided by the principles set out in the case of *Giella vs Cassman Brown Ltd* [1973] E.A 358.

11. Further, in *Charter House Bank Limited vs Central Bank of Kenya & Others C.A Civil Application No. 200 of 2006* (2007 e K.L.R.), the Court of Appeal held that:

“The principles upon which this Court exercises its unfettered discretion to grant a stay of execution, stay of proceedings or an order of injunction are settled. The applicant should satisfy the Court that the appeal or intended appeal is not frivolous, that is to say, that the appeal or intended appeal is arguable and, secondly, that unless the application is granted the results of the appeal, if successful would be rendered nugatory. 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”.

12. In the case of *Giella vs. Cassman Brown* [1973] EA 358, the court stated the conditions for grant of interlocutory injunctions as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by



an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

13. A prima facie case was defined in the case of *Mrao Limited vs. First American Bank of Kenya & 2 Others* [2003] eKLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

14. In the instant case, the Applicant has filed a Memorandum of Appeal setting out various grounds upon which she faults the decision of the trial court. She has also annexed the Judgment she seeks to appeal against. From the pleadings, it emerges that the Applicant sued the Respondent at the trial court seeking an order that the Respondent be directed to issue her with a title to the suit property. It was her claim that she was allocated the suit property by the then Kiambu County Council. She stated that she paid all the requisite fees and subsequently took possession of the suit property in 1975 where she lived peacefully until sometime in 1994 when one Geoffrey Kimani Njuguna encroached thereon. As a result, she sued him in Kikuyu ELC Case No.15 of 2018 and obtained a judgment in her favour. She contended that despite requesting the Respondent to issue her with the relevant documents to enable her to register title to the suit property, they have failed to do so. She produced a copy of the ballot issued to her dated 12th April 1975, copies of three receipts issued by the then County Council of Kiambu with respect to the suit property, a copy of the official search and a decree issued in ELC Case No. 15 of 2018: *Samuel Njuguna Kariuki vs Geoffrey Kimani Njuguna*. The Respondent did not participate in the proceedings at the trial court.
15. The trial court delivered its Judgment on 30th October 2024, dismissing the Applicant’s suit on the ground that the evidence she presented did not meet the required standard to warrant the orders sought. In her Memorandum of Appeal, the Applicant faults the Learned Trial Magistrate for rejecting uncontroverted evidence that she balloted the suit property in 1975 and thereafter made all the requisite payments to the Respondent. Due to the foregoing, this court is convinced that the Applicant has demonstrated a prima facie case and that the intended Appeal is not frivolous.
16. On whether irreparable harm would be occasioned to the Applicant if the injunction is not granted, the court takes cognizance of the fact that the Applicant has been in possession and has settled on the suit since 1975. If she is evicted from the suit property before this appeal is heard and determined, she would more than likely suffer irreparable harm, which cannot be compensated by an award of damages because of the sentimental nature of a home.
17. Given that the Applicant has always been in possession of the suit property, I find that the balance of convenience tilts in her favour.
18. In view of the foregoing, it is my finding that the Applicant has met the conditions for the grant of an injunction pending appeal. This application is hereby allowed in the following terms:
- a. An injunction is hereby issued restraining the Respondent, its servants, agents or anyone else acting on its authority or direction from interfering with Land Parcel Number Karai/Lusigetti/T.384 pending the hearing and determination of the intended Appeal.
 - b. The costs shall abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 24TH DAY OF JUNE 2025.



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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Mugu for the Appellant
2. Miss Maina for the Respondent

Court Assistant: Hinga

