



Ndambo (Suing on his own behalf and on behalf of the Estate of Elizabeth Wairimu Muikia - Deceased) v Mwihoko & 2 others (Land Case E130 of 2024) [2025] KEELC 4656 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4656 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E130 OF 2024
JM ONYANGO, J
JUNE 24, 2025

BETWEEN

FRANCIS MUIKIA NDAMBO PLAINTIFF
SUING ON HIS OWN BEHALF AND ON BEHALF OF THE ESTATE OF
ELIZABETH WAIRIMU MUIKIA - DECEASED

AND

MUGAA MWIHOKO 1ST DEFENDANT
DAVID MUKIRAE NJUNG'E 2ND DEFENDANT
ANNE GATHONI KAIRU 3RD DEFENDANT

RULING

1. What is before me for consideration is the Notice of Motion dated 28th August 2024 brought under the provisions of Rule 3 of the High Court (Practice and Procedure) Rules, Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), and Order 40 Rule 1 of the Civil Procedure Rules, 2010 seeking the following orders:
 1. Spent
 2. That a temporary injunction do issue, to bar the Defendants by themselves, or by their relations, beneficial owners, agents, servants, employees, workmen or hired goons from wrongfully entering upon and evicting the Plaintiff from land parcel number Karai/Gikambura/3637 or otherwise dealing with the suit property in any manner whatsoever, to the detriment of the Plaintiff pending the hearing and determination of the application for injunction, and ultimately the main action.



3. That the Defendants be restrained by themselves, or by their relations, beneficial owners, agents, servants, employees, workmen or hired goons from interfering with the Plaintiff's quiet possession of land parcel number Karai/Gikambura/3637 pending the hearing and determination of the application for injunction, and ultimately the main action.
 4. That the Defendants be restrained by themselves, or by their relations, beneficial owners, agents, servants, employees, workmen or hired goons from further destruction of buildings on land parcel number Karai/Gikambura/3637 pending the hearing and determination of the application for injunction, and ultimately the main action.
 5. That an order do issue, directed to the OCS, Gikambura Police Station and Kikuyu Police Station requiring him/her to supervise the re-admission and putting into possession of the Plaintiff in respect of the property Karai/Gikambura/3637 so as to prevent a breach of the peace while restoring the status quo ante pending the hearing and determination of the application for injunction, and ultimately the main action.
 6. That the costs of this Application be provided for.
2. The application is premised on the grounds on the face of it and supported by the Supporting Affidavit and Further Affidavit of Francis Muikia Ndambo (the Applicant) sworn on 25th August 2024 and 4th March 2025 respectively. He avers that the 1st and 2nd Defendants are successors in title to the Estate of Mary Nyakio Njung'e, who died on or about 9th August 2000 and who was the registered owner of land parcel number Karai/Gikambura/53.
 3. He explains that sometime in 2008, his deceased wife (Elizabeth Wairimu Muikia (deceased)) entered into a Sale Agreement dated 18th December 2008 with the 1st Defendant to purchase his portion of land being 0.20ha, which was to be excised from land parcel number Karai/Gikambura/53 upon completion of the Succession process for the Estate of Mary Nyakio Njung'e. Elizabeth Wairimu Muikia (deceased) was informed that the purpose of the funds was to pay Kikuyu PCEA Hospital who at the time had detained the title to land parcel number Karai/Gikambura/53 owing to the inability of Mary Nyakio Njung'e's (deceased's) family to offset the hospital bills. Pursuant to the said agreement, Elizabeth Wairimu Muikia (deceased) paid a total of Kshs 1,150,000 as the purchase price and took possession of the purchased portion where she began construction of her family home and rental houses pending the succession process.
 4. He states that in compliance with the agreement for sale, his deceased wife, Elizabeth Wairimu Muikia, was included as one of the beneficiaries of Mary Nyakio Njung'e's (deceased's) estate in Limuru Succession Cause No. 64 of 2006 and the original title for land parcel number Karai/Gikambura/53 was handed over to her advocate for safekeeping.
 5. He further states that thereafter his deceased wife found out that the 2nd Defendant had filed parallel succession proceedings in the High Court of Kenya at Milimani, being HCFP&A 1909 of 2009, which Grant was confirmed a few days before the Summons for Confirmation of Grant were filed in the Limuru Succession Cause.
 6. He adds that he also discovered that land parcel number Karai/Gikambura/53 had been subdivided into 3 portions, namely: Karai Gikambura/3635, which was to devolve to the 2nd Defendant; Karai/Gikambura/3636 to devolve to one Peter Kihiko Njung'e; and Karai/Gikambura/3637 to devolve to the 1st Defendant. Upon perusal of the lands register at Kiambu, he discovered that land parcel number Karai/Gikambura/3637 was registered in the name of the 3rd Defendant on 18th April 2024.



7. The Plaintiff contends that he discovered that the 2nd Defendant fraudulently transferred land parcel number Karai/Gikambura/3637(also referred to as the “the suit property”) directly from himself to the 3rd Defendant, yet the said land had been allocated to the 1st Defendant in the Confirmed Grant in Nairobi Succession Cause no.1909 of 2009.
8. The Plaintiff further contends that he made reports at both Karai Police Station in Gikambura and Kikuyu Police Stations, and subsequently the County Commander, Kiambu County, and it was only after that the police acted to stop further demolitions. He adds that he was shocked that the 2nd Defendant subdivided land parcel number Karai/Gikambura/53 and transferred the same to the beneficiaries without surrendering the original title as required by law, which title was in the custody of his lawyers.
9. It is his claim that between 25th May 2024 and 31st May 2024, the Defendants, hired goons to maliciously, forcibly and wrongfully enter into the suit property and where they purported to evict him and his tenants and proceeded to demolish part of his houses. He faults the Defendants for the said attempted eviction and destruction of the suit property, given that no notice as envisaged by the law was served on him.
10. In opposing the application, the 2nd Defendant filed a Replying Affidavit sworn by him on 14th January 2025, where he confirms that Mary Nyakio Njung'e'(deceased) was the registered proprietor of land parcel number Karai/Gikambura/53 until 22nd November 2010 when the High Court in Milimani Succession Cause No.1909 of 2009 issued a Certificate of Confirmation of Grant in which the said land was devised to Peter Kihiko Njung'e and the 1st and 2nd Defendants. He contends that pursuant to the said Grant, land parcel number Karai/ Gikambura/53 was subdivided into Karai/ Gikambura/3635, Karai/ Gikambura/3636 and Karai/ Gikambura/3637 (the suit property), which was legally owned by the 1st Defendant but whose title was held in trust for him by the 2nd Defendant. He depones that subsequently, the 1st Defendant entered into a sale agreement dated 10th February 2011 with the 3rd Defendant for the sale of the suit property.
11. He explains that it is after the completion of the sale to the 3rd Defendant that Elizabeth Wairimu Muikia(deceased) trespassed into the suit property, prompting the Defendants to file a complaint at the District Officer's (D.O.) office. The D.O. registered a restriction against the title to the suit property and directed parties to the court that had issued the Grant. He deposes that Elizabeth Wairimu Muikia filed an application in Succession Cause No. 1909 of 2009 seeking to have the Grant revoked and praying for an injunctive order preventing the Defendants from entering the suit property. He further deposes that the said application was denied by the court (Musyoka J.) on 1st October 2013 for the reason that she was found to have no claim over the suit property. He adds that being dissatisfied with the said decision, Elizabeth Wairimu Muikia (deceased) filed Milimani ELC Case No. 1450 of 2014 against the 3rd Defendant and others seeking inter alia a declaration that she is the owner of the suit property. The said suit was dismissed on 23rd November 2021 for want of prosecution.
12. He contends that the Plaintiff continued his trespass on the suit property prompting the 2nd and 3rd Defendants to file Kikuyu ELC Case No. E040 of 2023 against him. Judgment in the said matter was delivered on 17th October 2024, where the court found that the Defendants were the legitimate owners of the suit property. As a result, the court issued an order of permanent injunction against the Plaintiff to cease from trespassing onto the suit property. He further contends that the Plaintiff filed an application seeking to set aside the Judgment delivered in Kikuyu ELC Case No. E040 of 2023. In the said application, he mentioned that he had filed this suit, but he informed the court that the same was yet to be served upon the Defendants. He states that upon perusal of the file in this suit, he discovered that yet again, the Plaintiff seeks to be declared the legal owner of the suit property. He



faults the Plaintiff for forum shopping, given that the matters in issue in this suit have been heard and determined by several judges in different courts. It is his position that this suit ought to be dismissed at the preliminary stage.

13. He explains that the Plaintiff's claim that Elizabeth Wairimu Muikia (deceased) purchased the suit property from the 1st Defendant on 18th December 2008 is legally impossible, given that on the said date, the suit property was still registered in the name of Mary Nyakio Njunge (deceased) who had passed on 9th August 2000 and succession proceedings with regard to her estate did not commence until the year 2009.
14. He states that the Plaintiff's claim that he has gained title to the suit property by adverse possession is false, given that the parties have been litigating over the suit property since Elizabeth Wairimu Muikia (deceased) trespassed onto the suit property. He explains that contrary to the averments made by the Plaintiff, there is no danger that has been posed on the developments made on the suit property. He adds that demolitions were only done on land parcel number Karai/Gikambura/3636 by the registered owners pursuant to orders given in Nairobi ELC Case 467 of 2015 directing the registered owners to remove all developments made by the Plaintiff on the said land if he failed to remove the same within 90 days from 9th June 2022.

Submissions

15. The application was canvassed by way of written submissions. The Applicant filed his submissions dated 5th March 2025, while the 2nd and 3rd Respondents filed his dated 20th March 2025.

Analysis and Determination

16. Having considered the issues raised in the application and the rival submissions, the main issue for determination is whether the application is merited.
17. The law on temporary injunction is provided under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 as follows:

“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.”

18. The conditions for the grant of applications for injunctions were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] E.A 358, where the court expressed itself in the following terms:

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be 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."

Whether the Applicants have established a *prima facie* case.

19. The court shall examine whether the Applicants have fulfilled this first limb to determine whether the court shall put into consideration the rest of the requirements. The case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* (supra) defined a prima facie case as follows;

"A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in 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 or rebuttal from the latter."

20. The Applicant has contended that he has filed this suit on his behalf and as the administrator of his deceased wife's (Elizabeth Wairimu Muikia) estate. He has explained that Elizabeth Wairimu Muikia (deceased) purchased the suit property from the 1st Defendant in 2008 and immediately took possession of the same, where she built their family home and other rental houses. The Applicant has further contended that the 1st Defendant had inherited the suit property from the estate of his late mother, Mary Nyakio Njung'e (deceased), and the same was to be excised from land parcel number Karai/ Gikambura/53 upon the completion of the succession proceedings for the estate of Mary Nyakio Njung'e (deceased). The Applicant was even included as a beneficiary in the succession proceedings for the estate of Mary Nyakio Njung'e (deceased) filed at the Limuru Law Courts. He later discovered that parallel succession proceedings had been conducted at the Milimani High Court over the estate of Mary Nyakio Njung'e (deceased), and that a Grant in the matter was confirmed a few days before the summons for confirmation of Grant were filed in the suit at the Limuru Law Courts. He also discovered that the suit property had been transferred to the 3rd Respondent.
21. In response, the 2nd Respondent has stated that the claim that Elizabeth Wairimu Muikia purchased the suit property on 18th December 2008 is legally impossible, given that on the said date, the suit property was still registered in the name of Mary Nyakio Njunge (deceased) who passed on 9th August 2000 and succession proceedings with regard to her estate did not commence until the year 2009.
22. The 2nd Respondent further contended that the 2nd and 3rd Respondents filed Kikuyu ELC Case No. E040 of 2023 against the Applicant seeking a permanent injunction restraining the Applicant from trespassing on the suit property. Judgment in the said suit was entered in favour of the 2nd and 3rd Respondents on 17th October 2024. The court found as follows:

"The defendant was served but did not file any defence to controvert the plaintiffs' case and to demonstrate what interest he has in the suit land. "The plaintiff having proven that he is the registered owner of the suit property he is entitled to enjoy quiet possession of his land and has a right to sell it to the 2nd plaintiff.

I therefore find that the defendant has trespassed on the said land. And I enter judgment in favour of the plaintiff against the defendant as prayed in the plaint. He is restrained from trespassing on the said land. An order of eviction do issue ordering the defendant to remove the structures 21 days after service of this order upon him failure of which the plaintiff is at liberty to remove the structures at the cost of the defendant. With the supervision of OCS Gikambura police station."



23. There is no evidence presented before this court to show that the said decision was set aside. The said court having found that the 2nd Respondent had proven that he is the registered owner of land parcel number Karai/Gikambura/3637, this court finds that the Applicant has not demonstrated a prima facie case. I will therefore not consider the other limbs espoused in the case of Giella v Cassman Brown & Company Limited (supra).
24. Consequently, I find that this application lacks merit and it is hereby dismissed. The Applicant shall bear the costs of the application.

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

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J. M ONYANGO

JUDGE

In the presence of:

Miss Njiru for the Plaintiff

Miss Maina for the 2nd and 3rd Defendants

Court Assistant: Hinga

