



**Chabari (Suing as the Legal Representative of the Estate of Wallace Chabari Murianki – Deceased) v Kirimi & 3 others (Environment and Land Case E013 of 2024) [2025] KEELC 4827 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4827 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND CASE E013 OF 2024**

**BM EBOSO, J**

**JUNE 23, 2025**

**BETWEEN**

**WILFRED NYAGA CHABARI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WALLACE CHABARI MURIANKI – DECEASED) ..... PLAINTIFF**

**AND**

**JANE IGOJI KIRIMI ..... 1<sup>ST</sup> RESPONDENT**

**KINORO TEA FACTORY COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR THARAKA NITHI COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. On 18/9/2024, Wilfred Nyaga Chabari (the plaintiff) obtained a limited grant relating to the estate of the late Wallace Chabari Murianki (hereinafter referred to as “the late Wallace”). The grant was obtained in Chuka CMC Misc Succession Cause No E066 of 2024. The grant was limited to the filing of a suit on behalf of the estate of the late Wallace against Jane Igoki Kirimi.
2. Subsequent to that, the plaintiff instituted this suit on behalf of the estate of the late Wallace against the three (3) defendants and against the interested party vide a plaint dated 14/11/2024. He sought:
  - (i) a declaration that sale of parcel number Mwimbi/L. East Magutuni/117 to “the new owner” was illegal, irregular, invalid, null and void;
  - (ii) a permanent injunction restraining the 1st and 2nd defendants against developing, trespassing on, construction a house on, selling, disposing, transferring, renting, leasing, or interfering



with parcel numbers Mwimbi/L. East Magutuni/117; 882 and 883 (hereinafter referred to as “the suit lands”);

- (iii) as an alternative relief to the above two reliefs, an order cancelling the existing titles relating to the three parcels;
  - (iv) an order decreeing eviction of the 1st and 2nd defendants from the three parcels;
  - (v) an order directing the Officer Commanding Magutuni Police Station stay to provide security for forcible removal of the 1st and 2nd defendants and their servants/agents from the three parcels;
  - (vi) an order directing the Deputy Registrar of this court to executed all requisite vesting documents;
  - (vii) an order decreeing the defendants to compensate the plaintiff for loss of land at the current market value; and
  - (viii) costs of the suit.
3. Simultaneous with the plaint, the plaintiff filed an undated notice of motion seeking interlocutory injunctive orders against the defendants. The undated notice of motion was amended on 27/1/2025. The said amended notice of motion dated 27/1/2025 is the subject of this ruling. It was opposed by the defendants.
  4. The case of the plaintiff is that he is a son of the late Wallace who died on 14/7/2021. Prior to his death, the late Wallace owned land parcel numbers Mwimbi/Lower East Magutuni/117; 882; and 883 (hereinafter referred to as “parcel number 117”, “parcel number 882”, and “parcel number 883”, respectively). Parcel number 882 and parcel number 883 were at all material times the subject of adjudication under the *Land Adjudication Act* and the adjudication process culminated in Minister’s Appeal Case Nos 356 of 2017 and 232 of 2021 which were disposed by the Maara Sub-County Deputy County Commissioner [a delegate of the Minister under Section 29 (4) of the *Land Adjudication Act*].
  5. The plaintiff contends that whereas the late Wallace was a party to the disputes at the objection stages, the 1st defendant who is a daughter-in-law of the late Wallace mysteriously appeared in the subsequent appeal in place of the late Wallace and procured a determination and an award in her favour culminating in her registration as proprietor of the suit lands. He adds that the 1st defendant subsequently transferred parcel number 117 to the 2nd defendant.
  6. It is the plaintiff’s case that the 1st defendant procured an award from the Minister through fraudulent misrepresentation; the 1st defendant fraudulently caused the suit lands to be registered in her name; and the 1st defendant fraudulently transferred parcel number 117 to the 2nd defendant. He contends that the estate of the late Wallace stands to suffer irreparable loss in the event an injunction is declined. He adds that it is in the interest of justice and fairness that the parcels of land are preserved and safeguarded, pending the hearing and determination of the main suit.
  7. The 1st defendant opposed the application through her replying affidavit dated 23/1/2025 and written submissions dated 25/1/2025, filed through M/s Kijaru Njeru & Co Advocates. She terms the application as grossly misconceived, fatally defective, baseless, a sham, frivolous, vexatious and an abuse of the court process. Her case is that Wilfred Nyaga Chabari (the plaintiff) is her brother-in-law and a brother to her late husband, Frankline Kirimi Muuru. She participated in all litigations/proceedings relating to the suit lands in her capacity as the wife/spouse of Frankline Kirimi Muuru, adding that she started litigating on behalf of her late husband when his health started failing. She contends that her late husband started litigating over the suit lands in 1998. She faults the plaintiff for failing to disclose to



- the court that parcel number 882, 883, 3299 and 117 (sic) were all sub divisions out of parcel number 117. She has exhibited what she terms as proceedings relating to Tribunal Case Nos 196 of 1998; 197 of 1998; and 198 of 1998 and contends that in the above proceedings, her late husband was awarded half of parcel number 117; parcel number 882; and parcel number 883. It is her case that the plaintiff never contested the awards. She asserts that her late husband pursued the claims in his own right and not on behalf of the late Wallace Chabari. She further asserts that all proceedings relating to the suit lands were heard and determined during the life time of the late Wallace and that the late Wallace did not challenge the awards.
8. The 1st defendant faults the plaintiff for failing to disclose to the court the fact that the late Wallace gifted to his other sons the following parcels:
    - i. Mwimbi/Lower East Magutuni/649 – Gifted to Wilfred Nyaga.
    - ii. Mwimbi/Lower East Magutuni/583 – Gifted to Wallace Kiruja.
    - iii. Mwimbi/Lower East Magutuni/3055 – Gifted to Peter Muchoki
    - iv. Mwimbi/Lower East Magutuni/3054 – Gifted to Ian Mwiti
    - v. Mwimbi/Lower East Magutunii/3053 – Gifted to Wallace Mutwiri
  9. The 1st defendant faults the plaintiff for seeking a declaration that her late husband’s share of the family land be regarded as part of the deceased’s estate while “conveniently retaining his share.” She further faults the plaintiff for failing to challenge the awards made by the tribunal and by the land adjudication bodies. She contends that she lawfully transferred parcel number 117 to the 2nd defendant. Lastly, it is her case that the order sought by the plaintiff is a permanent injunction which is not available at this stage. She urges the court to reject the application.
  10. The 2nd defendant opposed the application through a replying affidavit sworn on 21/3/2025 by Titus Kirimi Eliphas and written submissions dated 21/3/2025, filed by M/s Mutungi Kithinji & Co Advocates. The case of the 2nd defendant is that, through a sale agreement dated 9/6/2023, they purchased from the 1st defendant land parcel number Mwimbi/Lower East Magutuni/117 measuring 7.08 hectares and land parcel number Mwimbi/Lower East Magutuni/3299 measuring 13.29 hectares. The purchase price for the two parcels was Kshs. 32,183,200. They purchased the parcels for the purpose of wood fuel development. They carried out proper due diligence prior to entering into the sale agreement and the due diligence established that the 1st defendant was the registered proprietor of the parcels. They add that they obtained all the necessary consents from the Land Control Board.
  11. It is the case of the 2nd defendant that they stand to be highly prejudiced if the injunctive orders are issued against them. They urge the court to reject the application.
  12. The 3rd and 4th defendants opposed the application through grounds of opposition dated 20/2/2025 and written submissions dated 26/2/2025, filed through Ms E. Kendi, a Senior Litigation Counsel in the Attorney General’s Office. They term the application as fatally defective, misconceived, mischievous and an abuse of the process of the court. It is the case of the 3rd and 4th defendants that the plaintiff has failed to meet the threshold for grant of the orders sought in the application.
  13. The court has considered the application, the responses to the application, and the parties’ respective submissions. The key question to be determined in this ruling is whether the application under consideration meets the criteria for grant of an interlocutory injunction. I will be brief in my analysis and disposal of the issue.



14. Does the application satisfy the criteria for grant of an interlocutory injunction? The relevant criteria was outlined in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is expected to demonstrate that he would stand to suffer irreparable injury/damage that may not be adequately indemnifiable through an award of damages if the plea for an interlocutory injunction is declined. Thirdly, should the court have doubt on both or either of the above the application should be disposed based on the balance of convenience.
15. Over the years, our superior courts have developed an additional principle relating to pronouncements that should be made at the stage of disposing a plea for interlocutory injunction. As a general principle, definitive or conclusive pronouncements should not be made on the key issues in the dispute at the stage of disposing an interlocutory application. Definitive and conclusive pronouncements on the key issues are to be reserved to be made in the judgment or other final disposal of the case. I now turn to the key issue for determination.
16. First, the plaintiff initiated this suit in his capacity as an administrator of the estate of the late Wallace, holding an ad litem grant of letters of administration issued to him on 18/9/2024. The limited grant only authorized him to file a suit against Jane Igoki Kirimi. Riding on the above limited grant, he proceeded to file a suit against three defendants and against the interested party. At this interlocutory stage, no evidence has been placed before this court to suggest that the limited grant was subsequently amended to authorise the plaintiff to initiate proceedings against the three named defendants and against the interested party. At the time of applying for the limited grant, the plaintiff had the option of avoiding to restrict the scope of the limited grant. He elected to restrict the scope of the limited grant. Without making any definitive or conclusive pronouncement on the competence of the plaintiff's suit, I doubt that the plaintiff can sustain this claim on the basis of the exhibited grant which is specific and explicit on the scope of the grant and on the mandate vested in the plaintiff.
17. Secondly, again without making conclusive or definitive findings, the impugned registrations and the impugned titles are products of a land adjudication process. The land adjudication process is a statutory one and has statutory dispute resolution mechanisms. The law is clear on the circumstances under which the award of the Minister may be challenged in a court of law and be reviewed by a court of law. The procedure for seeking a review is also well-established.
18. At this interlocutory stage, there is doubt that this suit which was commenced by way of plaint is the forum through which to challenge the registrations and the titles that were issued through a land adjudication process.
19. Similarly, the applicant has not satisfied the second requirement in *Giella v Cassman Brown* (supra). It was the obligation of the plaintiff/applicant to demonstrate to the court that in the absence of the injunctive order, the estate which he represents would stand to suffer damage that cannot be indemnified through an award of damages. He has not done that.
20. Lastly, given the above circumstances, the balance of convenience tilts in favour of maintaining the status quo in terms of the awards of the land adjudication dispute resolution organs. It does not favour grant of an interlocutory order whose effect would be to overturn the awards at the interlocutory stage.
21. In light of the foregoing, the plaintiff's undated application which was amended on 27/1/2025 is rejected and dismissed for lack of merit. In line with the general principle in Section 27 of the [Civil Procedure Act](#), the plaintiff/applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 23RD DAY OF JUNE, 2025.**



**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Ms. Otieno Advocate for the Plaintiff

Mrs Kimani for the 2nd Defendant

Court Assistant – Mr. Mwangi

