



REPUBLIC OF KENYA



Nyamu (Suing as the Personalaltative of the Estate of Lesho Waceke Kamau (Deceased)) v Nyakinyua Investment Limited & 25 others (Environment and Land Case E084 of 2023) [2025] KEELC 4606 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4606 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E084 OF 2023**

JM ONYANGO, J

JUNE 17, 2025

BETWEEN

**PATRICK NGANGA NYAMU PLAINTIFF
SUING AS THE PERSONALALTATIVE OF THE ESTATE OF LESHO WACEKE
KAMAU (DECEASED)**

AND

**NYAKINYUA INVESTMENT LIMITED 1ST DEFENDANT
SUSAN MUNYUTHA MUIRURI 2ND DEFENDANT
SAMUEL MATHERI ITOTIA 3RD DEFENDANT
PATTMOS INVESTMENT LIMITED 4TH DEFENDANT
RUIRU LAND REGISTRAR 5TH DEFENDANT
ATTORNEY GENERAL 6TH DEFENDANT
JANET NJOKI NDUNGU 7TH DEFENDANT
PETER NDUNGU NGANGA 8TH DEFENDANT
JULIUS NJUGUNA MWANGI 9TH DEFENDANT
VIRGINIA NGIMA GICHUKI 10TH DEFENDANT
CAROLYNE NYAMBURA WAMBUI 11TH DEFENDANT
KELVIN CHEGE MBUTHIA 12TH DEFENDANT
JOSHUA WANGOMBE MUGO 13TH DEFENDANT
SIMON WACHIRA MWANGI 14TH DEFENDANT
STEPHEN KURIA NDUNGU 15TH DEFENDANT**



BETH NJERI NDUNGU	16 TH DEFENDANT
JEDIDAH WANGARI NDUNGU	17 TH DEFENDANT
KANGONG'A KANGONG'A NJOROGE	18 TH DEFENDANT
DAVID KIARIE NJOGU	19 TH DEFENDANT
KELLEN KATHURE MURITHI	20 TH DEFENDANT
JAMES MAINA KAMOTHO	21 ST DEFENDANT
HANNAH MUGANE MUNENE	22 ND DEFENDANT
SAMUEL NGURE MWANGI	23 RD DEFENDANT
BENJAMIN GITERU NDUKIU	24 TH DEFENDANT
GEOFFREY NGARI KAGAI	25 TH DEFENDANT
IRENE WAMBUI GITINAIRU	26 TH DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 16th July, 2024 seeking *inter alia* leave to serve summons and pleadings by way of substituted service. The said prayer is now spent. He also sought an order for temporary injunction to restrain the Defendants/Respondents from trespassing, cultivating, disposing off, selling, re-allocating, alienating, transferring or in any manner dealing with Land Parcel Nos. Ruiru/Ruiru East Block 2/22175, 22176, 22177, 22178, 22179, 22180, 22181, 22182, 22183, 22184, 22185, 22186, 22187, 22188, 22189 and 22190 which are subdivisions of Land Parcel Number Ruiru/Ruiru East Block 2/2967 pending the hearing and determination of the suit herein.
2. The grounds upon which the application is based are contained in the Notice of Motion and the Applicant's Supporting Affidavit sworn on 12th July 2024. In the said affidavit the Applicant avers that he is the son of the late Lesho Waceke Kamau and a legal representative to her estate pursuant to a Grant issued by the High Court. He explains that Lesho Waceke Kamau (the deceased) was the owner of Land Parcel Number Ruiru/Ruiru East Block 2/2967 (the suit land) having acquired it from the 1st Respondent through a balloting process where she was the holder of ballot no. 2967. He further states that the suit land acted as a mother acre for another plot being Land Parcel Number Ruiru/Mugutha Block 1/8285 which the deceased also acquired and transferred to her daughter one Kesiah Wanja Mugo.
3. The Applicant contends that despite the 1st Respondent issuing the deceased with a clearance certificate on 28th May 2004 to authenticate her ownership of the suit land, it consented to the illegal transfer of the subdivisions to the suit land to some of the Respondents. The Applicant further contends that in an attempt to sanitize the illegal dealings on the suit land, the 9th Respondent trading as the 4th Respondent purported to enter into a sale agreement dated 17th April 2018 with the 7th and 8th Respondents (children of the deceased), for the sale of the suit property without the deceased's knowledge. He added that the deceased had never sold or transferred the suit land to anyone prior to her death on 13th January 2019.
4. The Applicant states that the 4th Respondent subdivided the suit land into Land Parcel Nos. Ruiru/Ruiru East Block 2/22175, 22176, 22177, 22178, 22179, 22180, 22181, 22182, 22183, 22184, 22185,



- 22186, 22187, 22188, 22189 and 22190 (hereinafter referred to as the “suit plots”) and sold and transferred them to innocent third parties. He further states that he was unable to institute legal proceedings against the Respondents earlier due to financial constraints.
5. He maintains that unless the temporary injunction order sought is granted, he and other beneficiaries of the estate of the deceased will be prejudiced. He has annexed a copy of ballot no 2967, a copy of green card for Land Parcel No. Ruiru/Mugutha Block 1/8285, a copy of a clearance certificate issued by the 1st Respondent, a copy of a sale agreement dated 17th April 2018, copies of registers for the suit plots, a copy of the deceased’s death certificate, a copy of a Grant for the deceased’s estate and a copy of a notice of sale issued by the High Court.
 6. The 2nd and 3rd Respondents opposed this application through a Replying Affidavit sworn by them on 3rd December 2024. They assert that the Applicant lacks locus standi to prosecute this suit, given that the limited grant of letters of administration ad litem stipulates that the grant is “limited for the suit in respect of the accident”. They contend that the Certificate of Death annexed to the Applicant’s supporting affidavit is illegible, hence inadmissible before this court.
 7. They fault the Applicant for failing to attach a clearance certificate from the 1st Respondent despite stating that he had annexed it in his Supporting Affidavit. The 2nd and 3rd Respondents state that instead, the Applicant annexed a receipt of Kshs 4000 issued by the 1st Respondent being payment for a DCI letter which the Applicant did not make reference to. They add that in the absence of a clearance certificate from the 1st Respondent, the Applicant lacks evidence of ownership of the suit land, hence this application ought to fail as a matter of right. It is their claim that the Applicant mischievously failed to annex a letter written by the 1st Respondent addressed to the DCI because the said letter indicates the initial owner of the suit land to be one Njeri Mbugua, who sold it to one Dina Njeri Mburu. They add that the said Dina Njeri Mburu sold the suit land to the 2nd Respondent, who subsequently sold it to the 3rd Respondent. They add that the Applicant has failed to meet the threshold for the grant of a temporary injunctive order hence this application ought to be dismissed.
 8. They have annexed a letter written by the 1st Respondent addressed to the DCI stating that the suit land belongs to one Njeri Mbugua, a copy of a sale agreement between Njeri Mbugua and Dina Njeri Mbugua, a copy of a sale agreement between Dina Njeri Mbugua and the 2nd Respondent and a copy of a sale agreement between the 2nd and 3rd Respondents.
 9. The application is resisted by the 4th, 9th and 26th Respondents through the Replying Affidavit of the 9th Respondent sworn on 14th November 2024. He admits that the suit land initially belonged to the deceased, however, he states that he purchased it at a consideration of Kshs 3,500,000 pursuant to the sale agreement dated 17th April 2018 between him and the 7th and 8th Respondents who are siblings of the Applicant. He depones that he subsequently subdivided the suit land and sold the resultant plots to various third parties. He contends that all the requisite documents were signed and the Land Control Board consent was obtained to facilitate the transfer of the suit land to him. He adds that the suit land had been passed to the 3rd Respondent only for speculative purposes.
 10. He maintains that the occupation of the suit land by the 9th to 26th Respondents has been open and notorious, the same having been sold by the 7th and 8th Respondents. He states that the 9th to 26th Respondents are purchasers for value without notice and that the Applicant’s claim can only be against the 7th and 8th Respondents. He adds that this application is meant to harass people who have built on the suit land and who live freely with their families thereon. It is his position that the application has been overtaken by events, is bad in law, hence it ought to be dismissed.
 11. He has annexed an agreement for sale between him and the 7th and 8th Respondents, a money transfer forms showing the transfer of Kshs 3,500,000 from the 4th Respondent to the 8th Respondent,



- mutation forms for the subdivision of the suit land, photos depicting developments on the suit land, title to the suit land in the name of the 3rd Respondent and a consent from the Land Control Board to transfer the suit property from the 3rd Respondent to the 4th Respondent.
12. The 7th and 8th Respondents oppose this application through a replying affidavit sworn by them on 23rd October 2024. They confirm that they are children of the deceased and siblings to the Applicant. They contend that during her lifetime, the deceased distributed her estate among her four children. They further contend that each child got their respective parcel of land at the same time, however, the deceased held the properties in trust for her children, until the completion of a transfer. They point out that the Applicant in his application acknowledged that Land Parcel Number Mugutha Block 1/8285 was given to their sister Kesiah Wanja Mugo as her share of the distribution. They fault the Applicant for failing to disclose that he was allocated Land Parcel Number Ruiru/Ruiru East Block 2/3193 as his share of the deceased estate. They add that the Applicant subsequently sold part of his property to the 9th Defendant a confirmation that he was fully aware of and was actively involved in the distribution and subsequent dealings of the deceased's properties. They add that the Applicant's attempt to now contest the subdivision and ownership of other portions of the deceased's estate is disingenuous.
 13. It is their position that the deceased transferred the suit land to the 8th Respondent and that he signified acceptance of the land by slaughtering a goat in accordance with Gikuyu cultural tradition. They contend that the suit land did not have a title deed at the time of distribution; instead, the deceased provided the original ballot papers, certificates, and receipts to the 8th Respondent, which served as evidence of ownership and transfer of the suit land. They further contend that the deceased also assisted the 8th Respondent to acquire the title deed from the 1st Respondent, demonstrating her full involvement in the transfer of the suit land.
 14. They assert that the Applicant's attempt to challenge these transactions amounts to an abuse of the court process and is contrary to the doctrine of equity, which demands that a party must approach the court with clean hands. They add that the Applicant, having sold part of his allocated parcel, cannot now interfere with the lawful ownership of the 8th Respondent's portion.
 15. They contend that the Applicant raised similar issues for determination in Ruiru ELC *Case No. 71 of 2020* and ELC *Appeal No E028 of 2021*, which were both dismissed for procedural and jurisdictional reasons. They are of the opinion that the repeated attempts to revive the matter by the Applicant are intended to harass the Respondents and to disrupt their property rights.
 16. They state that despite the deceased being aware of the transaction relating to the suit property in 2016, as admitted by the Applicant, the deceased did not report the matter to the police or object to the subdivision.
 17. They contend that the 9th Respondent and other third-party purchasers who acquired the suit plots are innocent purchasers for value without notice. They further contend that granting the orders sought by the Applicant will cause prejudice to these purchasers and disrupt their quiet possession. They maintain that the applicant has failed to establish a prima facie case with a probability of success. They contend that the balance of convenience favours the Respondents, who lawfully hold and occupy their parcels, having received them with the deceased's full consent and assistance. They further contend that the Applicant will suffer no irreparable harm, given that he was already allocated his portion of the estate, which he sold part of. They add that on the other hand, the disruption caused if this application is allowed would be unjust to the Respondents, given that they have developed their portions of the suit land.



18. In conclusion, they state that it is in the interest of justice that this application be dismissed as it is both unmeritorious and inequitable given the Applicant's concealment of the fact that he had previously benefited from the estate of the deceased.
19. The application was canvassed by way of written submissions. The Applicant filed his written submissions dated 20th February 2025, while the 7th and 8th Respondents filed theirs dated 11th March 2025. I have carefully considered both submissions.

Analysis and Determination

20. The only issue for determination is whether the Applicant has met the conditions for the grant of a temporary injunction.
21. In order for the court to exercise its discretion in granting an injunctive relief, the applicant must meet the conditions set out in the case of *Giella v Cassman Brown & Company Ltd* 1973 EA 358 which are as follows:

“First, the applicant must show that he has 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 damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”

22. In the case of *Mrao v First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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.

23. This court must first determine whether the Applicant has established a prima facie case with a probability of success. The Applicant, who is the Administrator of the deceased's estate, has contended that the deceased never sold or transferred the suit land to anyone prior to her death on 13th January 2019. The Applicant has further contended that the sale agreement dated 17th April 2018, signed by the 7th and 8th Respondent in favour of the 4th Respondent, indicated that the 7th and 8th Respondent as the vendors. He adds that at the time, the deceased was alive, yet no power of attorney has been presented in court to show that the two had the authority to act on behalf of the deceased.
24. He has annexed a copy of ballot no 2967 and a copy of a clearance certificate for the suit land issued to the deceased by the 1st Respondent. He has also annexed a copy of the deceased's death certificate, a copy of a Grant for the deceased's estate and a copy of a notice of sale issued by the High Court in the succession suit for the deceased's estate.
25. In response, the Respondents contend that the suit land was bequeathed to the 8th Respondent in accordance with the Gikuyu customary practices. In turn, the 8th Respondent sold the same to the 4th Respondent. What is contested is whether the suit land was part of the deceased's estate upon her death or whether the same had already been transferred.
26. As was stated in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* 2014 eKLR:

The applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of



probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.

27. Based on the material presented to the court, I am persuaded that the Applicant has established a prima facie case with a probability of success.
28. On irreparable loss, the Applicant has submitted that if the injunctive relief is not granted, the suit property will be irreversibly lost, given that the Respondents have continued to subdivide, sell and develop portions of the suit land despite the ongoing dispute. The Applicant has further submitted that it would be difficult to reverse the transactions even if the court were to later declare them illegal. In response, the Respondents submit that the suit land has already been transferred and that no evidence has been adduced to show that the Applicant has any legal or beneficial interest in the land that he alleges would be permanently lost. They add that granting an injunction would cause undue hardship to the Respondents who own and possess the land.
29. The test for irreparable loss is defined in *Halsbury's Laws of England*, Third Edition Volume 21, P.352 as follows:

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”

30. The court notes that both parties agree that the suit land has already been transferred and that development thereon has already commenced. The court is in doubt on whether the second limb has been established and will therefore consider the question of balance of convenience.
31. Turning to the question of the balance of convenience, this court is of the opinion that the balance of convenience lies in favour of maintaining the status quo in order to preserve the suit property and to avoid further transfer of the suit plots to third parties.
32. The purpose of a status quo order was explained as follows in Kenya *Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another* [2020] eKLR:

“...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

33. Similarly, in *Texaco Ltd v Mulberry Ltd* [1972] 1 WLR 814, the court stated as follows:

“The end result is that status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders, but also when the court is of the view that as a case management strategy it would be more proportionate and appropriate without prejudicing one party but both, to issue a “status quo” order.”

34. Consequently, this court issues the following orders:



- a. That pending the hearing and determination of the suit herein, the status quo both on the ground and in the register of Land Parcel Numbers Ruiru/Ruiru East Block 2/22175, 22176, 22177, 22178, 22179, 22180, 22181, 22182, 22183, 22184, 22185, 22186, 22187, 22188, 22189 and 22190 which are subdivisions of Land Parcel Number Ruiru/Ruiru East Block 2/2967, be maintained pending determination of this suit.
- b. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JUNE 2025.

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J. M ONYANGO

JUDGE

In the presence of :

Mr Wakiaga for the Plaintiff/Applicant

Mr Kimani for the 1st Defendant /Respondent

Mr Mboha for the 2nd & 3rd Defendant/Respondent

Court Assistant - Hinga

