



**Gacheru v Ndirangu & 4 others (Environment and Land Case
E170 of 2024) [2025] KEELC 6481 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E170 OF 2024
JM ONYANGO, J
SEPTEMBER 30, 2025**

BETWEEN

STEPHEN MUNGAI GACHERU PLAINTIFF

AND

JOSEPH KIARIE NDIRANGU 1ST DEFENDANT

DAMSYL INVESTMENTS LIMITED 2ND DEFENDANT

NDIWANJO CONSTRUCTION COMPANY LIMITED 3RD DEFENDANT

THE REGISTRAR OF TITLES 4TH DEFENDANT

THE HON. ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. By a Notice of Motion dated 11th October 2024, the plaintiff filed an application seeking an order of injunction to restrain the Defendants/Respondents, their agents, servants workmen and/or anyone acting through them from dealing with land Reference No. 12959/50, title No. 1R 43255 pending the hearing and determination of the main suit.
2. The application is premised on the grounds set out on the face of the Notice of Motion and the Applicant's Supporting Affidavit sworn on 11th October 2024.
3. In the said affidavit he deposes that he is the owner of land parcel number 12959, title No. IR 43255 situate within Juja Sub-County, Kiambu county having bought the same from the 1st Defendant on 1st April 2003 for a consideration of Kshs. 350,000 after which he took possession thereof.
4. It is his further deposition that 1st Defendant gave him the original title deed which he still holds to date but he delayed in transferring the land to him. However, since he had known the 1st Defendant for several decades, he was not alarmed by the delay in having the title transferred to his name.



5. He depones that when he conducted an official search on 23rd September 2024, he was shocked to discover that the 1st Defendant had reported that the title was missing and he had been issued with a provisional certificate of title on 3rd November 2017. The 1st Defendant thereafter transferred the suit property to the 2nd Defendant on 16th May 2019. The 2nd Defendant in turn transferred the suit property to the 3rd Defendant on 17th March 2023.
6. It is his fear that given the sequence of events, his proprietary interest in the suit property will be extinguished should the land be transferred to another party.
7. The application is strenuously opposed by the Defendants. In his Replying affidavit sworn on 20th March the 1st Defendant deponed that he purchased the suit property from one Danson Wangugu Ngugi who transferred the land to him on 24.6.2002.
8. He avers that he used to operate a garage in Juja town which doubled up as his office and when he moved his documents to his house, he realized that his title deed was missing. He then applied for a provisional title. Following an advertisement in the Kenya gazette on 30.6.2017, he was issued with a provisional title. He subsequently sold the suit property to the 2nd Defendant vide a sale agreement dated 9.4.2019 and the transfer was effected on 16.5.2019. The 2nd Defendant in turn transferred the suit property to the 3rd Defendant after following due process.
9. The 1st Defendant denies that he sold the suit property to the Plaintiff and denies having received any money from him. It is his position that the Plaintiff has no legal or equitable interest in the suit property and denies that the Plaintiff has ever been in possession thereof.
10. He further avers that the Plaintiff's suit is statute barred as it has been filed after a period of more than 12 years and it is therefore caught up by the *Limitation of Actions Act*. It is his contention that the Plaintiff has failed to disclose a *prima facie case* with a probability of success. He urged the court to dismiss the application.
11. The 2nd Defendant responded to the application through the Replying Affidavit of its Director Nixon Wanjohi Mburugo sworn on 16th April 2025. He denied that the Plaintiff ever owned the suit property and criticized the Plaintiff for failing to provide any evidence of payment for the suit property or to prove that he was in possession thereof.
12. He averred that 2nd Defendant purchased the suit property from the 1st defendant at a consideration of Kshs. 6 million pursuant to a sale agreement dated 9.4.2019. The suit property was subsequently transferred to the 2nd defendant on 16.5.2019 and the said company took possession of the land and owned it upto 17.3.2022 when they sold it to the 3rd Defendant pursuant to a sale agreement dated 22nd November 2022.
13. The 2nd defendant faults the Plaintiff for being indolent as he failed to ensure that he completed the transaction with the 1st Defendant for a period of over 20 years and states that equity should come to his aid. He denies having been involved in any fraud and avers that the Plaintiff's suit is time barred.
14. On his part the 3rd defendant opposed the application through a Replying Affidavit sworn by Abraham Ndicu Njoroge, the Director of the 3rd Defendant sworn on 19th March 2025. He averred that the 3rd Defendant was the lawful registered proprietor of the suit property having purchased it from the 2nd defendant after following due process.
15. He deposed that the plaintiff was not the owner of the suit property nor had he demonstrated that there was any fraud or misrepresentation committed by the Defendants. He added that the Plaintiff had no right to claim the suit property.



16. It was his contention that the plaintiff had not disputed the fact that the suit property had changed hands from Juja Farm Limited which was the first owner to the 1st, 2nd and subsequently to the 3rd Defendant. He averred that apart from alleging that he had the original title for the suit property and a sale agreement, the Plaintiff had not presented any completion documents nor had he demonstrated that he paid the consideration for the suit property in full.
17. He further averred that the plaintiff had not pleaded any particulars of irregularity or fraud on the part of the defendants. Further, the plaintiff had not demonstrated that the title to the suit property ever passed to him.
18. Mr Njoroge contended that they conducted an official search before purchasing the suit property and established that the suit property originally belonged to Juja Farm Limited. It was later transferred to the 2nd Defendant from whom he purchased the same at a consideration of KShs. 5 million pursuant to a sale agreement dated 22nd November 2022. They thereafter paid the purchase price in kind after which the 2nd defendant signed the transfer forms, paid stamp duty, and the suit property was transferred to the 3rd Defendant.
19. Mr Njoroge avers that they took possession of the suit property in March 2023 and have been in possession thereof to date. It is his contention that the 3rd Defendant is a bona fide purchaser for value without notice. He adds that neither the 3rd nor 2nd defendant had notice of any other person's claim to the suit property.
20. It is his contention that the Plaintiff's case having been filed more than 12 years after the alleged purchase is caught up by the *Limitation of Actions Act*.
21. He concludes that the Plaintiff has not met the threshold for an order sought and prays that the application be dismissed with costs.
22. The application was canvassed by way of written submissions and the parties filed their submissions which I have read and considered in arriving at this ruling.
23. Having considered the application, Replying Affidavits and the parties' submissions, the following issues emerge for determination;
 - i. Whether the suit is time barred.
 - ii. Whether the Plaintiff/Applicant has met the threshold for a temporary injunction.

(i) Whether The Suit Is Time Barred.

24. The 2nd and 3rd Defendants have raised the issue that the Plaintiff's suit is time-barred and it is incumbent upon the court to determine this issue at a preliminary stage before delving into the merits of the application.
25. Section 7 of the *Limitation of Actions Act* provides as follows:
 7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.Additionally, Section 9 provides that:-
 9. (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and while entitled to the land been dispossessed or



discontinued his possession, the right of action accrues on the date of the dispossession or the discontinuance.

26. From his plaint the Plaintiff seeks a declaration that he is the legal and/or equitable owner of land parcel number 12959/50 Title No. 43255. He also seeks an order that the 3rd Defendant's title be cancelled and that he be registered as the proprietor of the suit property. He further seeks an order of eviction and injunction against the 3rd Defendant.
27. Although the Plaintiff claims that he took possession of the suit property in March 2003 and that he has remained in possession thereof, the fact that he is seeking an order of eviction against the 3rd Defendant suggests that his possession may have been interrupted. This then means that he is seeking to recover land which he acquired in 2004 well outside the 12-year limitation period.
28. However, the Plaintiff has pleaded that the defendants used fraudulent schemes to obtain title over the suit property. What is not clear is when the Plaintiff discovered the alleged acts of fraud. This is because Section 26 of the Limitation of Actions Act, provides for an extension to the limitation period where the fraud or mistake complained of was concealed from the plaintiff. At this early stage in the proceedings, the court is unable to determine when the Plaintiff discovered the alleged fraud as this will only become clear during the hearing. For that reason, I would hesitate to hold that the suit is time-barred.

(ii) Whether the Plaintiff/Applicant Should Be Granted a Temporary Injunction.

30. I will now proceed to determine whether the plaintiff has made out a case for a temporary injunction.
31. 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.”

32. The conditions for the grant of applications for injunctions were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] EA 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.”



33. With regard to the first limb, the Plaintiff acknowledges that the suit property is currently registered in the 3rd Defendant's name although he alleges to have bought it from the 1st defendant way back in 2003. He has annexed a copy of the sale agreement between him and the 1st defendant but there is nothing to show that he paid the consideration in full. He has also not annexed any document to show that he is possession of the suit property. On the material placed before the court, the plaintiff has not established a *prima facie case* with a probability of success.
34. Having failed to establish a *prima facie case*, there is no need to delve into the other prerequisites for an injunction. Be that as it may, the plaintiff has not demonstrated that he is likely to suffer irreparable loss which cannot be compensated by an award of damages.
35. Consequently, the application is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF SEPTEMBER, 2025.

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J. M. ONYANGO

JUDGE

In the presence of:

Mr Njoroge for the Plaintiff/Applicant

Miss Njuguna for the 4th and 5th Defendant

Mr. Irungu for the 2nd Defendant

Mr. Kamau for the 3rd Defendant

Miss Macharia for Mr Maina for the 1st Defendant

Court Assistant: Hinga

