



**Githere (Suing as the Personal Representative of the Estate of John Moffatt Githere) v Scion Healthcare Limited & 3 others (Land Case E007 of 2025) [2025] KEELC 6414 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6414 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E007 OF 2025  
CA OCHIENG, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**NANCY NJOKI GITHERE (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN MOFFATT GITHERE) ..... PLAINTIFF**

**AND**

**SCION HEALTHCARE LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**CONSOLIDATED BANK OF KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

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

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 14<sup>th</sup> January 2025 where she seeks the following Orders:
  - a. That pending the hearing and determination of the Plaintiff/Applicant's suit filed herewith, the 1st Defendant be restrained by way of injunction whether by themselves, their servants and/or agents whatsoever howsoever from trespassing on property L.R. No. 209/11026 belonging to the Plaintiff by way of carrying out any business operations thereon whatsoever howsoever.
  - b. That pending the hearing and determination of the Plaintiff/Applicant's suit filed herewith, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained by way of injunction whether by themselves, their servants and/or agents whatsoever howsoever from alienating, selling, disposing of, transferring, and/or transacting on property L.R. No. 209/11026 whatsoever howsoever.
  - c. That the costs of this Application be provided for.



2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. She avers that she is the registered owner of LR No. 209/11026 pursuant to a Grant issued in Kiambu Succession Cause No. 405 of 1993 with respect to the estate of her late husband, John Moffat Githere. She claims that in November 2009, she instructed her advocates to lodge an Assent of the suit property in her favour in terms of the aforementioned Grant. Further, that subsequently, her lawyers surrendered the original title to the suit property to the Land Registry. She contends that after several follow-ups, the Land Registry informed her lawyers that a copy of the title document in the Deed File to the suit property could not be traced and advised them that the file needed to be reconstructed. She avers that she subsequently filed a Deed of Indemnity dated 5<sup>th</sup> March 2010 for the reconstruction of the Deed file. Further, that around the same time, the Land Registry informed her that the original title in the Deed file had resurfaced, however, the Assent, the original title that had been surrendered and the Deed of Indemnity could not be traced thus she needed to apply for a provisional title.
3. She explains that upon applying for a provisional title, the Land Registry issued a gazette notice on issue of a provisional certificate of title and published it in the Kenya Gazette of 11<sup>th</sup> October 2019 and later issued her with a provisional title on 26<sup>th</sup> October 2023. She reiterates that she then instructed her advocates to apply for replacement of title as it had been gazetted on 11<sup>th</sup> February 2022 amongst those properties ready for conversion under the Ardhisasa system. She claims her application for replacement was rejected on the basis that there existed another title to the property with a different IR Number 194471 purportedly registered in the 1<sup>st</sup> Defendant's name and the 2<sup>nd</sup> Defendant had purportedly secured a Charge on the suit property. Further, a Search revealed that the purported title in the name of the 1<sup>st</sup> Defendant was registered on 16<sup>th</sup> November 2017 in the name of William Wako Tari and Abdullahi Mohammed and was issued pursuant to a Deed Plan No. 142888 but records indicate that the aforementioned Deed plan is registered with respect to another property identified as LR No. 209/11017.
4. She contends that she had always enjoyed quiet possession of the suit property but when she made a physical visit sometime in the year 2023, she found that strangers had trespassed thereon and erected a permanent building of five (5) floors, which operates as a commercial hospital operated by the 1<sup>st</sup> Defendant. She further claims that the suit property is purportedly registered by the 3<sup>rd</sup> Defendant in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on account of fraud.
5. The application is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit of its Chief Executive Officer, one Augustine Kinyua. He avers that the 1<sup>st</sup> Defendant is the registered proprietor of LR No. 209/11026, which it purchased from William Wako Tari and Abdullahi Mohammed, after conducting due diligence. Further, that the 1<sup>st</sup> Defendant was issued with title on 6<sup>th</sup> August 2018 and has invested a substantial amount of money in the development of a modern medical facility on the suit property, which is serving the public.
6. He pleads that if orders sought are issued, it shall cause irreparable losses and inconvenience patients. He also confirms that the 1<sup>st</sup> Defendant secured credit facilities from the 2<sup>nd</sup> Defendant using the title to the suit property and contends that the Certificate of Confirmation of Grant, which the Plaintiff relies on, is not evidence of ownership.
7. The 2<sup>nd</sup> Defendant opposed the application vide a replying affidavit sworn by Jackson Talibong, its acting Branch Manager, Harambee Branch. He points out that by a facility letter dated 11<sup>th</sup> June 2018, it was agreed that the 1<sup>st</sup> Defendant will offer the suit property as security for financing of Kshs.16million. Further, that the 1<sup>st</sup> Defendant offered the suit property as further security for the 2<sup>nd</sup> Defendant bank to create a further legal Charge securing a further Kshs. 57 million. He avers that the



- 2<sup>nd</sup> Defendant acted lawfully to create and perfect its securities, including conducting adequate due diligence, which demonstrated that the suit property belongs to the 1<sup>st</sup> Defendant.
8. He points out that the Land Survey Plan No. 142888 was verified on 30<sup>th</sup> September 2016 by the Director of Surveys as belonging to the suit property, LR No. 209/11026. Further, that the 2<sup>nd</sup> Defendant also conducted post registration due diligence, of which it commissioned M Zenith (Management) Valuers Limited to conduct independent inspections and valuations on 26<sup>th</sup> June 2023, which confirmed proprietary status to the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant holding registered security interests over the suit property. He asserts that the Plaintiff will not suffer irreparable loss while the 2<sup>nd</sup> Defendant stands to suffer irreparable loss as the invalidation of its securities shall leave it exposed.
  9. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not file responses.
  10. The application was canvassed by way of written submissions.

### Submissions

11. The Plaintiff submits that she has established a prima facie case as defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125, having exhibited evidence that her deceased husband acquired ownership of the suit property in 1991 and she followed due process in obtaining a provisional title. Further, that she will suffer irreparable injury if the court declines to issue an injunction as she has an emotional attachment to the suit property, being that it forms part of the estate of her late husband and is part of his legacy to their children. She cites the case of *Mbutia v Jimba Credit Finance Corporation & Another* [1988] eKLR to submit that the balance of convenience tilts in her favour.
12. On its part, the 1<sup>st</sup> Defendant submits that it has proven lawful ownership of the suit property while the Plaintiff makes vague historical claims of ownership and allegations of fraud, without formal certification of ownership. Further, that the Plaintiff's interest (if any) is not proprietary, thus monetary compensation would suffice. It also submits that it is in actual possession, providing public health services thus the balance of convenience lies squarely in its favour, adding that it has also lawfully secured financial facilities thus disruption of its activities would result in irreparable loss and public harm to patients using its hospital. To buttress its submissions, the 1<sup>st</sup> Defendant relied on the case of *Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another* [1990] KLR 557.
13. The 2<sup>nd</sup> Defendant submits that the Plaintiff has not established a prima facie case since she failed to demonstrate it infringed on her right. Further, that she failed to offer this Court, Letters of Grant of Administration or any Limited Grant thus she has no authority to institute the suit. To this end, it relied on the following decisions: *Mwakivonje (On his Behalf and on Behalf of the Estate of Kassim Ali Nzimu, Salim Mwatenga, Jumaa Vwinyu and Mwamoyo Moyo-Deceased) v Mwakaonje* [2024] eKLR.
14. It also submits that the 1<sup>st</sup> Defendant has demonstrated that it is the current registered owner of the suit property while there is no evidence that mirrors the Land Register to suggest that the Plaintiff's late husband had any proprietary rights over the suit property thus the Plaintiff has no recognized interest in law. Further, that since it exercised the requisite due diligence on the suit property, it does not owe the Plaintiff any rights and that contrary to her own apprehension, there is no evidence that the suit property is in danger of alienation thus damages are an adequate remedy to the Plaintiff as any errors on the Register, if proven, shall be compensated by the 3<sup>rd</sup> Defendant.



15. It further submits that it would be inconvenienced if an order of injunction is granted, as the same shall amount to a final order which shall be the equivalent of invalidating its legal securities over the suit property and shall prevent it from liquidating its financing to the 1<sup>st</sup> Defendant and in doing so shall subject it, to an unsecured loan without the benefit of a legally registered security.
16. To buttress its averments, the 2<sup>nd</sup> Defendant relied on the following decisions: *Ngala v Kilumo & 5 Others* [2023] eKLR, *Gakuya v Gatuiku* (Environment and Land Appeal E028 of 2023) [2025] KEELC 3972 (KLR) (20 May 2025) (Judgment) and *Embakasi Properties Limited & Anor v Commissioner of Lands & Another* [2019] eKLR.

### **Analysis and Determination**

17. Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, the only issue for determination is whether the Plaintiff has met the threshold to warrant the issuance of an interlocutory injunction to restrain the Defendants from the suit property pending the outcome of this suit.
18. The Plaintiff has sought for orders of injunction to restrain the Defendants from interfering with the suit property. She contends that she is the registered owner of LR No. 209/11026 pursuant to a Grant issued in Kiambu Succession Cause No. 405 of 1993 with respect to the estate of her late husband, John Moffat Githere. Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants opposed the instant application with the 1<sup>st</sup> Defendant insisting it is the legal owner of the said land and operates a hospital thereon. The 2<sup>nd</sup> Defendant contends that the Plaintiff has no locus to bring this suit on behalf of the estate of her late husband as she failed to exhibit a grant of representation. However, I beg to disagree because as per annexure ‘NNG 2’, which is the Amended Certificate for Confirmation of Grant to the estate of John Moffat Githere, it confirms that the Plaintiff Nancy Njoki Githere is indeed the Administrator of the said estate.
19. On the issue of whether the Plaintiff has established a prima facie case to warrant the orders as sought, I wish to rely on the principles espoused in the case of *Giella v Cassman Brown* (1973) EA 358 as well as the description of a prima facie case as stated in the case of *Mrao Ltd v First American Bank Limited* (2003) eKLR.
20. The Plaintiff contends that the suit property was owned by her late husband and upon obtaining a grant of representation, she procedurally surrendered the original title to the Land Registry, for the same to be transferred in her name. However, the said title including the Assent got lost in the Land Registry and she was advised that the Deed file had to be reconstructed. She explains that after gazettment of the lost title, she was unable to procure another title since the 1<sup>st</sup> Defendant held a title to the suit property. Further, that when she went to the suit property she found that the 1<sup>st</sup> Defendant had constructed a storeyed building thereon where it was operating a hospital. She hence seeks an injunction to restrain the 1st Defendant from operating a hospital on the suit property and to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from transferring the said suit property, pending the hearing of the suit.
21. The 1<sup>st</sup> Defendant claims to be the lawful proprietor of the suit property and argues that an injunction would cause irreparable harm, as it would disrupt the hospital's operations while the 2nd Defendant contends that injunction would be a final order as it would invalidate its financial security interests. The 1st and 2nd Defendants also assert that the Plaintiff has no prima facie case as she did not establish proprietorship to the suit parcel.
22. Looking at the documents presented by both the Plaintiff and 1<sup>st</sup> Defendant, it seems there are two competing titles over the suit property. Further, I note it is the 1<sup>st</sup> Defendant who is in possession



thereon and operating a hospital. It has also emerged that the suit property is currently Charged to the 2<sup>nd</sup> Defendant as a security for a loan issued to the 1<sup>st</sup> Defendant.

23. Insofar as I find that the Plaintiff has established a prima facie case to warrant the orders of interlocutory injunction, I opine that since there are two competing titles, noting that the 1<sup>st</sup> Defendant is currently in possession of the suit property and operating a hospital, an Order of injunction cannot issue at this juncture as this would amount to an eviction. It is my considered view that the current status quo should be maintained and the matter to be set down for hearing expeditiously.
24. In the circumstances, I find the instant Notice of Motion application compromised and will proceed to make the following Orders:
  - a. Obtaining Status Quo be maintained where no party should interfere with the person in possession of the suit property. Further, there should be no further developments on the suit property nor dealings on the two titles.
  - b. Each party to bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Atancha for 2<sup>nd</sup> Defendant

Nyagaka for Nyamweya for 1<sup>st</sup> Respondent

Mbugua Njoroge for Plaintiff

Court Assistant: Joan

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