



**Itura v M’Naituri & 2 others (Environment and Land Appeal
E012 of 2025) [2025] KEELC 6599 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E012 OF 2025
BM EBOSO, J
SEPTEMBER 30, 2025**

BETWEEN

JOANINA ITURA APPELLANT

AND

JAPHET M’NAITURI 1ST RESPONDENT

CHARURU SPA SELF HELP GROUP 2ND RESPONDENT

SERENE AUCTIONEERS 3RD RESPONDENT

*(An appeal against the order/ruling of the Principal Magistrate Court at Tigania
[Hon. E Ayuka] dated 6/2/2025 in Tigania SPMC E & L Case No. E017 of 2025)*

RULING

1. Falling for determination in this ruling is the notice of motion dated 25/2/2025. The 1st, 2nd and 3rd limbs of the application were to abide the inter partes hearing of the application. They are spent at this point of determining this application. The interlocutory relief to be considered in the ruling is prayer 4 which is a plea for an order of injunction framed as follows: -

“ 4. That this Honourable court be pleased to issue an injunction against the respondents, their agents, or persons under their instructions from entering, dealing /selling/ or interfering in any way by public auction of land parcel No. Tigania East/Kitharene/3527 and 4700 until the main suit is heard and determined (sic)”.

2. The application was premised on the grounds set out in the motion; in the applicant’s supporting affidavit dated 25/2/2025; and in the applicant’s supplementary affidavit dated 10/3/2025. It was canvassed through written submissions dated 10/7/2025, filed by Otieno C & Company Advocates.



The written submissions are expressed as relating to the notice of motion dated 31/1/2025. No such motion was filed in this court.

3. The case of the applicant is that, she filed Tigania SPMC E & L Case No. E017 of 2025 seeking a permanent injunction restraining the respondents against interfering with, advertising, selling or dealing with land parcel number Tigania East/Kitharene/4700. Contemporaneous with the plaint, she filed an application dated 31/1/2025 seeking interlocutory orders of injunction restraining the respondents against, “entering, dealing, selling or interfering in any way by public auction” with the suit land. The lower court declined to grant her the interlocutory injunction. Aggrieved, she brought this appeal together with the application that is under consideration.
4. The applicant contends that she is a wife to the 1st respondent, and that the suit land is matrimonial property. She adds that the 1st respondent never obtained her consent prior to entering into an agreement for sale of the suit land to the 2nd respondent. She urges the court to grant the interlocutory orders.
5. The 1st respondent, who is a husband to the applicant did not oppose the application. The 2nd and 3rd respondents opposed the application through a replying affidavit sworn on 18/3/2025 by George Mungiria Akwalu and written submissions dated 27/6/2025, filed by M/S Kevin Ouma & Co Advocates. Their case is that the 1st respondent who is a husband to the 2nd respondent was sued by the 2nd respondent in Tigania SPMC Civil Case No. 43 of 2020 and was granted a decree of Kshs 3,000,000 plus costs and interest from the said court. Aggrieved by the judgement, the 1st respondent filed Meru High Court Civil Appeal No. E157 of 2022. In addition, the 1st respondent sought an order of stay of execution from the Meru High Court in the said appeal. The High Court [E. Muriithi J] granted the 1st respondent a conditional stay order requiring the 1st respondent to pay to the 2nd respondent the sum of Kshs 1,000,000 and deposit the rest of the decretal amount into an escrow account in the joint names of the advocates for the parties within 30 days. In default, the stay order was to lapse. The 1st respondent failed to comply with the order of the High Court, prompting the 2nd respondent to initiate execution of the decree.
6. The 2nd respondent adds that the couple (the applicant and the 1st respondent) schemed to frustrate realization of the decree by filing two identical suits at Tigania Senior Principal Magistrate Court, to wit, Tigania SPMC E & L Case No. E011 of 2025 and E017 of 2025. When the two duplicate suits came up before the lower court, the plea for interim orders was rejected and the auction that was scheduled for 27/2/2025 took place and the land was sold. The 2nd respondent urges the court to reject the application.
7. The court has considered the application; the response to the application; and the parties’ respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The single question falling for determination in this ruling is whether the application satisfies the criteria upon which a third tier appellate court exercises jurisdiction to grant an interlocutory injunction under Order 42 rule 6 (6) of the *Civil Procedure Rules* pending the hearing and disposal of an appeal.
8. It is important to observe from the onset that, although the applicants did not cite Order 42 rule 6(6) of the *Civil procedure Rules*, it is clear from the prayers in the motion that they invited the court to exercise the jurisdiction granted under the above provisions. Order 42 rule 6(6) provides as follows:

“Notwithstanding anything contained in subrule (1) of this rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just, provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”



9. Over the years, Kenya's superior courts have developed principles that guide the courts in the exercise of the above jurisdiction (see (i) *Madhupaper International Limited v Kerr* [1985] KLR 840; (ii) *Venture Capital & Credit Limited v Consolidated Bank of Kenya Ltd*; Civil Application No. 349 of 2003 (174 of 2003 UR); and (iii) *Butt v Rent Restriction Tribunal* (1982) KLR 417).
10. Suffice it to state that, the jurisdiction of a first appellate court to grant an interlocutory injunction under Order 42 Rule 6(6) of the *Civil Procedure Rules* is a discretionary and equitable one. Secondly, the discretion will not be exercised in favour of an applicant whose appeal is frivolous; the applicant must demonstrate that a reasonable argument can be put forward in support of his appeal. Thirdly, the discretion should be refused where it would inflict greater hardship than it would prevent. Fourthly, the applicant must show that refusal to grant the injunction would render his appeal nugatory. Fifth, the court is to be guided by the principles in *Giella v Cassman Brown & Company Ltd* [1973] EA 358. Lastly, whenever disposing a plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the appeal.
11. In the application under consideration, the applicant's plea for an interlocutory injunction is anchored on the contention that the suit land is matrimonial property. She initiated the suit in the lower court for the sole purpose of challenging and stopping execution relating to a subsisting decree that had been initiated against her husband. She claimed to have an equitable interest in the suit property. The suit land had been attached in execution of the decree. Order 22 rules 51 to 55 of the *Civil Procedure Rules* availed to the applicant a platform on which to ventilate her equitable interest. The platform is called Objection Proceedings. She elected not to initiate objection proceedings and instead opted to file two duplicate suits in the lower court.
12. Similarly, the *Matrimonial Property Act* availed to the applicant a forum [the Matrimonial Court] where she would go and ventilate her matrimonial claim against her spouse. She did not do that. I doubt that this court would be the proper court to make a pronouncement on the applicant's alleged matrimonial interest in the suit land. It emerges from the evidence that was summarized by the trial court in the exhibited judgment in Tigania SPMC Civil Case No. 43 of 2020 that the appellant was aware that the 1st respondent sold the suit land to the 2nd respondent. The decree in the lower court was a culmination of the dispute that arose out of the termination of the sale agreement. The applicant elected not to apply to the Matrimonial Court for separation of her alleged interest in the suit property.
13. Thirdly, the 2nd and 3rd respondents filed a replying affidavit through which they exhibited a memorandum of sale indicating that the suit land had been sold in execution of the decree in Tigania SPMC Civil Case No. 43 of 2020. The applicant elected to do nothing in terms of joining the purchaser as a party to this appeal. She, however, expects this court to injunct the purchaser without joinder and without the benefit of hearing the purchaser.
14. Given the above circumstances, I do not think the applicant has satisfied the criteria upon which this court exercises appellate jurisdiction to grant an interlocutory injunction pending the hearing and disposal of an appeal under Order 42 rule 6 (6) of the *Civil Procedure Rules*. Consequently, the application dated 25/2/2025 is rejected and dismissed for lack of merit.

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

B M EBOSO [MR]

ELC JUDGE

