



**Muriuki v Muriithi & 2 others (Environment and Land Appeal
E014 of 2024) [2025] KEELC 6296 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6296 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL E014 OF 2024
JM MUTUNGI, J
SEPTEMBER 26, 2025**

BETWEEN

JANE WANJIRA MURIUKI APPELLANT

AND

JAMES MURAGE MURIITHI 1ST RESPONDENT

KAPHA MUGAMBI KARIUKI 2ND RESPONDENT

LUCY WAWIRA MARU 3RD RESPONDENT

*(Being an appeal from the Ruling and subsequent Orders of Hon.
Martha Opanga, Principal Magistrate sitting vide Wang’uru P.M
E.L.C No. E001 of 2021 delivered and dated 27th February 2024)*

JUDGMENT

1. This Appeal is against the Ruling delivered by Hon. Martha Opanga (PM) in Wang’uru MC ELC No. 001 of 2021 on 27th February 2024. Before the said Court the 3rd Respondent herein (3rd Defendant before the Lower Court) had vide a Notice of Motion application dated 4th September 2023, sought injunctive orders against the Appellant herein (Plaintiff in the Lower Court) inter alia restraining the Appellant by way of temporary injunction from trespassing, selling, transferring, alienating, charging, wasting, damaging or howsoever disposing of rice holding No. 3766B Wamumu Section measuring 1 acre pending hearing and determination of the suit.
2. The Learned Magistrate after hearing both parties on the application allowed the application and granted a temporary injunction against the Appellant pending the hearing and determination of the suit on merit.
3. The Appellant dissatisfied and aggrieved by the Ruling has appealed to this Court against the Ruling and has set out the following 5 grounds of Appeal as follows:-



1. The Honourable Learned Magistrate erred in law and fact by finding that the 3rd Respondent's opposition for temporally injunction had merit against the weight of the evidence adduced by the Appellant.
 2. The Honourable Learned Magistrate erred in law and fact by failing to find that granting an injunction order in those circumstances will be tantamount to doing so in vacuo.
 3. The Honourable Learned Magistrate erred in law and fact by failing to find out that the temporally injunctions sought by the 3rd Respondent was in regard to Rice Holding No. 3766 B Wamumu Section whereas the said was not the subject of litigation.
 4. The Honourable Learned Magistrate erred in law and fact by failing to appreciate the principles of granting injunction as per the celebrated case of *Giella v Cassman Brown*.
 5. The Honourable Learned Magistrate erred in law and fact by failing to appreciate the Appellant's written submissions.
4. The Appellant prays that the Ruling/Order be set aside.
 5. The brief facts of the Appeal are that the Appellant was vide succession Cause No. 30 of 1996 adjudged the rightful successor/owner of Rice Holding No. 3766 measuring 4 Acres and was issued Tenant Card for the same on 23rd October 1996. On 30th January 2014 she allowed her 2 sons, Samuel Mwangi Muriuki and Stephen Muthike Muriuki to each utilize 1 acre of the Rice Holding and herself (1) one acre and the daughters the remaining one (1) acre. When her son Samuel Mwangi Muriuki died she reclaimed and occupied the one (1) acre that he had been utilizing as he left no known family.
 6. The 3rd Respondent however entered the scene and laid claim to the portion of one (1) acre of the Rice Holding on the basis that she was married to the Appellant's deceased son, and was therefore entitled as the beneficiary together with their two children to the one (1) acre of the Riceholding that her deceased husband was utilizing.
 7. The 3rd Respondent in support of her application for injunction dated 4th September 2023 swore a Supporting Affidavit of even date where she deponed that following her husband's death she made a report to National Irrigation Authority (NIA) and sought succession of the Riceholding her husband was utilizing before he died and the NIA vide letter dated 1st August 2023 lawfully allocated her the one(1) Acre of the rice holding to utilise. She further deponed that the Respondent unlawfully entered into her Riceholding and continued to carry out cultivation without any color of right and/or her consent.
 8. The Respondent in her Replying Affidavit dated 20th September, 2023 averred that the 3rd Respondent was a stranger to her and that she was alleging to have been married to her late son, Samuel Mwangi Muriuki with the sole intention of invading and/or grabbing the portion of one (1) acre of the Riceholding unlawfully while she was not her lawful dependant. The Appellant contended the Riceholding had not been subdivided into No. 3766B as alleged by the 3rd Respondent. The Appellant averred she was in full occupation of the Riceholding and was cultivating the same.
 9. The 3rd Respondent swore a further Affidavit dated 22nd September 2023 where she deponed that she and her late husband had been utilizing the Riceholding and exhibited a lease agreement dated 11th December 2019 where they leased out ½ acre portion to John Mugo Nyaga ("LWM3"). The 3rd Respondent contended it was the Appellant who had invaded the one (1) acre portion of the Riceholding that belonged to her and her late husband.



10. The parties argued the Appeal by way of written submissions. The Appellant's submissions were dated 6th December 2024 and those of the 3rd Respondent were dated 20th March 2025.
11. I have reviewed, evaluated and considered the pleadings and the submissions of the parties. The issues for determination are whether the Record of Appeal is incomplete and therefore rendering the Appeal incompetent; and whether the Learned Magistrate erred in the exercise of her discretion to grant a temporary injunction.
12. The Appellant in her submissions principally argues that the Respondent had not through her defence pleaded a Counterclaim upon which the plea for an interlocutory injunction could be anchored. The Appellant contended that unless the Respondent had pleaded a Counter claim where she sought a permanent injunction she could not properly file an application seeking a temporary injunction. It is evident that the 3rd Respondent did not in her defence plead a Counter claim. The 3rd Respondent in her statement of defence merely denied the averments of the Appellant in her statement of defence dated 11th August 2021. In paragraph 7 of the defence the Appellant pleaded thus:-
 7. That the 3rd Defendant denies that the Plaintiff is the rightful and lawful owner of Riceholding No. 3766B.
13. The 3rd Respondent as per her defence did not lay any claim to the subject Riceholding and it is therefore unclear how she expected the Court would award her ownership. It was only in her application through the Supporting Affidavit and further Affidavit she raised ownership claims. A temporary injunction by its nature is intended to preserve the subject matter of the suit in the condition that it is in at the time the injunction is sought pending the hearing and determination of the suit on merit when the rights and interest of the parties to the suit are finally determined. The Court in the case of *Nganda Kalandi v Tomothy Mutinda Nzioka* (2012) eKLR considered whether a temporary injunction could issue where a party had not prayed for an order of permanent injunction in his pleadings. In the case, Asike Makhandia, J (as he then was) held:-

“It is trite law that an interlocutory injunction relief cannot be granted where there is no relief in the nature of a permanent injunction prayed for in the Plaint. To grant an injunction in those circumstances will be tantamount to doing so in vacuo (see *Shah v Shah* (1978) KLR 374 and *Southern Credit Banking Corporation Ltd v Charles Wachira* HCCC No. 1780 of 2000(UR). ---- As correctly submitted by Counsel for the Defendant, the application is surreptitious way of evicting the Defendant before trial. In the Case of *Mohammed K. Abdulaziz & 2 Others v The Commissioner of Lands & 2 Others* (2006) eKLR, it was held that it would be futile to seek to restrain a party from doing acts that have already taken place. If the Plaintiff had any issue with the acts that have taken place so far, then his remedy would procedurally lie elsewhere”.

14. In the case of *Josphine Chebet Ruto v Stanley K. Chepkwony & Another* (2017) eKLR the Defendants opposed an application for interlocutory injunction on the grounds that the Plaint did not contain a prayer for permanent injunction and hence the interlocutory injunction could not be given in vacuo. Onyango, J in dismissing the application relied on the case of *James Archimedes Gichana v Pyrethrum Board of Kenya* HCCC No. 237 of 2007 where the Court held as follows:-

“Both rules 1 (a) and 1 (b) of Order 40 have been judiciary considered to require clear indication or prayer in the suit seeking such an injunction. Where an applicant for injunction fails to demonstrate that he sought an order of permanent injunction in his suit his application is said not to sound with rule 1(a) or 1 (b) of Order 40 and will be deemed



incompetent. The reason for this is clear. It is found in Order 2 rule 6 of the *Civil Procedure Rules* that no party may in his pleadings make allegations of fact or raise any new ground of claim inconsistent with his pleadings. No party can depart his pleadings whether in evidence or in an interlocutory application. To do so, a party must first amend his pleadings.”

15. In the instant matter the 3rd Respondents application for interlocutory injunction before the Lower Court was not supported by her pleadings and was therefore made in vacuo. The application was incompetent. The 3rd Respondent save for the prayer to have the Appellants suit dismissed by the Lower Court sought no other relief against the Appellant. The application clearly had no substratum and was misconceived and the Learned Magistrate lacked any basis to grant the injunction in favour of the 3rd Respondent. The 3rd Respondent to anchor her application would have required to have pleaded a Counterclaim perhaps where she would have pleaded entitlement to the portion of one (1)acre and sought to be granted a permanent injunction against the Appellant.
16. The upshot is the Appeal is meritorious and is hereby allowed. The order of the trial Magistrate dated 27th February 2024 is set aside and is substituted with an order dismissing the 3rd Respondent’s application dated 4th September 2023.
17. I award the Appellant the costs of the Appeal.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 26TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC- JUDGE

