



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Nguchita v Waweru & 2 others (Environmental and Land Originating Summons  
E004 of 2025) [2025] KEELC 6590 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6590 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2025**

**MN GICHERU, J  
SEPTEMBER 30, 2025**

**IN THE MATTER OF SECTIONS 37 AND 38 OF THE  
LIMITATION OF ACTIONS ACT (CAP 22 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF LAND TITLE NO. LOC.1/CHOMO/579**

**BETWEEN**

**JOHN NJOROGE NGUCHITA ..... PLAINTIFF**

**AND**

**PERIS WANJA WAWERU ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH WAINAINA MANG'ARA ..... 2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR MURANG'A ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 21-1-2025. The motion which is brought under Order 40 rules 1(a), 2 and 3 of the [Civil Procedure Rules](#), Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law seeks three(3) residual orders.
  - (c) That the Respondent whether by themselves, their employees, servants, agents and/or any of them or otherwise be restrained by temporary order of injunction from either evicting, entering, trespassing, demolishing, cutting, building or in any way interfering with the Plaintiffs ownership of L.R. No. Loc.1/Chomo/579 pending the hearing and determination of this suit.
  - (d) This court be pleased to make any further orders as it deems fit and just in the circumstances.



- (e) That the costs of this application be awarded to the Plaintiff.
2. The motion is based on six(6) grounds and is supported by an affidavit sworn by the Plaintiff dated 21-1-2025. The affidavit has several annexures which include a copy of the register of the suit land running from 3-12-1999 to 24-10-24, copy of the title deed dated 27-4-2001, copy of receiving order in Bankruptcy case No. 95 of 2006, copy of decree in Thika Civil cases no. 887 of 200 and three (3) photographs.
  3. The gist of the motion is as follows. Firstly in the year 2000, the Plaintiff bought the suit land from the 2<sup>nd</sup> Defendant for Kshs. 680,000/=. The land was duly transferred to the Plaintiff on the 27<sup>th</sup> April 2001. Since then he has been in occupation. Secondly, in a year that is not disclosed, the 1<sup>st</sup> Defendant paid the Plaintiff a deposit of Kshs. 260,000/= as he was in the business of buying and selling land. The 1<sup>st</sup> Defendant refused a refund of the money and demanded the transfer of the suit land. For this reason, the Plaintiff filed case No. 887/2001, at Thika Magistrates' Court. He was granted temporary orders. In the same suit, the 1<sup>st</sup> Defendant filed a counterclaim seeking a refund of Ksh. 271, 775/=.The Plaintiff did not actively participate in the case. Instead he filed Bankruptcy cause No. 95 of 2006 at Milimani High Court where a receiving order was issued. The Plaintiff contends the sale of his land to the 1<sup>st</sup> Defendant who became registered on 19-9-24 vide an order issued in Thika Civil Suit No. 887 of 2001 was fraudulent.
  4. Counsel for the parties filed written submissions dated 7-4-2025 and 1-7-2025 respectively. The said submissions are largely on the principles applicable in a case where an order of injunction is sought and if the Plaintiffs application meets that threshold.
  5. I have carefully considered the motion in its entirety including the grounds, the affidavits by both sides together with the annexures. I have also looked at the available record and considered the submissions by learned counsel for both parties.

I agree with the learned counsel that the test in the case of *Giella vs Cassman Brown* is the one to be used in this case. That being the case, the 1<sup>st</sup> question to ask is whether the Applicant has established a *prima facie* case with a probability of success. My finding is that the Applicant has not attained the said threshold because he has admitted that the 1<sup>st</sup> Defendant became registered as proprietor of the suit land pursuant to a Court order CM's case No. 887/2001. That order has not been set aside on appeal or in review. If it has been set aside the Plaintiff has not adduced evidence of such setting aside or review. It was incumbent upon him to prove this and he has not.

Secondly, without proving that there is a *prima facie* case, the Plaintiff cannot prove that he stands to suffer substantial loss that cannot be adequately compensated with an award of damages. There is no evidence that the Plaintiff has residential house on the suit land and that the land is his only home. The three photographs show vacant land with only crops growing thereon and no house. In fact *vide* paragraph 8 of the affidavit dated 21-1-2025 he states that his house was demolished.

6. For the above stated reasons, I find no merit in the notice of motion dated 21-1-25. I dismiss the motion. Costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -



Court Assistant – Mwangi Njonjo

Applicant’s Counsel – Miss Ngari

Respondent’s Counsel – Miss Waithira Mwangi

