



REPUBLIC OF KENYA



**Ngugi & 2 others v Mwangi (Land Case E014 of 2025)
[2025] KEELC 6608 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6608 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
LAND CASE E014 OF 2025
MN GICHERU, J
SEPTEMBER 29, 2025**

BETWEEN

ROSEMARY NJERI NGUGI 1ST PLAINTIFF

ROBERT MURIU NDUNGU 2ND PLAINTIFF

JENIFER WANJIRU NDUNGU 3RD PLAINTIFF

AND

PETER MWAURA MWANGI RESPONDENT

RULING

1. This ruling is on the notice of motion dated 20-3-2025. The motion is brought under Order 40 rules 1(a), 2 and 3 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* and all other enabling provisions of the law.
2. The motion seeks two (2) residual orders as follows.
 - b. A temporary injunction restraining the Defendant whether by himself, his servants, agents and employees from interfering with the Plaintiffs' right of possession and/or access, picking tea leaves, disposing, evicting or otherwise howsoever interfering with the ownership or interest in land parcel numbers Loc 16/Kigoro 2758, 2759 and 2760 pending the hearing and determination of this suit and/or until further orders of this court.
 - b. The costs of this motion be awarded to the Plaintiffs.
3. The motion is based on five (5) grounds and it is supported by an affidavit sworn by the 1st Plaintiff which has six(6) annexures. The gist of the motion is as follows. Firstly, the Plaintiffs are the registered owners of the suit parcels. Secondly, the Defendant has interfered with the Plaintiff's possession of the suit parcels by illegally trespassing thereon and picking tea leaves. Thirdly, the illegal acts of the Defendants have interfered with the Plaintiffs' quiet possession and enjoyment of the suit parcels and



there have been constant confrontations which may lead to a bloodbath. Fourthly, if the court does not interfere, and grant the orders, there may be continued confrontations between the parties and the suit property may be wasted and alienated beyond the Plaintiff's reach. For the above and other reasons, the Plaintiffs pray for the orders.

4. The motion is opposed by Respondent who has sworn a replying affidavit dated 16-4-2025 in which he replies as follows. Firstly, the three(3) suit parcels were created out of L.R. Loc.16/Kigoro/712 which was previously registered in the name of Milka Kanene Ndungu but occupied by one Robert Muriu Ndung'u and his late brother Newton Mukunya Ndung'u who leased his share to the Defendant. Secondly Milka Kanene sued Margaret Wanjiku Mukunya, his late son Newton Mukunya in Kandara Magistrates Court Case No. MCELC No. E029/2022 seeking to evict them from the suit land. The case is still pending. She also sued the Defendant in Murang'a ELC Case No. E026/2022 seeking to evict him from L.R. No. Loc.16/Kigoro/712. In the case, the Defendant was recognized as a lessee of Newton Mukunya's Land. The application by the Plaintiffs ought to be dismissed with costs because it is an attempt to vary the judgment in the aforesaid case.
5. Counsel for the Plaintiffs filed written submissions dated 23-6-2025 and identified three (3) issues for determination as per the case of Giella vs. Cassman Brown[1973] EA 358. I agree with the learned Counsel for the Plaintiff that the three (3) issues as identified will determine the motion.
6. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and the annexures, the replying affidavit and the annexures as well as the written submissions by learned Counsel for the Plaintiff. On the 1st issue, I find that the Plaintiffs have not made out a prima facie case with a probability of success for the following reasons. Firstly, it is not specified when the alleged trespass on the suit parcels occurred. The affidavit and the plaint have not stated the specific dates. Instead, it is the Defendant who has demonstrated that he may have been on the land from which the suit parcels mutated four years before the Plaintiffs became the registered owners of the Suitland. Secondly the Plaintiffs have not been able to dispute the existence of Murang'a ELC Case No. E026/2022 which recognized the Defendant's lease.
7. On the second issue of the Plaintiffs suffering irreparable loss that cannot be adequately compensated with an award of damages, I find the Plaintiffs have not proved this point either. Should the Plaintiffs eventually succeed in this suit, they will be able to quantify their damages which they can recover from the Defendant. Finally, on the balance of convenience, I find that it tilts in favour of the party in possession who is the Defendant pending the final outcome of the dispute.

For the above stated reasons, I find no merit in the motion dated 20-3-2025 which I dismiss.

Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF SEPTEMBER, 2025.

M.N. GICHERU JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr Wachira, holding brief

Defendant's Counsel – Mr Wainaina

