



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karanja & another v Karanja (Civil Appeal 238 of 2023)  
[2025] KEHC 13459 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13459 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 238 OF 2023  
H NAMISI, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**BENSON HARRISON KURIA KARANJA ..... 1<sup>ST</sup> APPLICANT**

**JULIUS MAINA KARANJA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SIMON CHEGE KARANJA ..... RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. S. Atambo, Chief Magistrate delivered on 28 March 2023 in Thika CM Misc. Application NO. E062 of 2022)*

**JUDGMENT**

1. This is an appeal against an interlocutory Ruling and attendant orders emanating from a Miscellaneous Application filed in the lower court. The dispute, at its core, is a conflict between neighbours over land use, rendered more poignant by the fact that the litigants are brothers. The Appellants sought the following reliefs before the trial court:
  - i. Spent;
  - ii. That this Court be pleased to grant a temporary restraining order against the Defendant who has placed beehives with bees in his neighbouring the applicants which have been attacking people and animals in Applicant's farm pending hearing and determination of the Application;
  - iii. This Honourable Court be pleased to grant an order against the Defendant to construct apiary to contain his bees as per the recommendation of Ministry of Fisheries and Livestock;
  - iv. That this Honourable Court be pleased to grant a permanent order against the Defendant to contain his bees in an apiary which will be recommended by the Ministry of Fisheries and Livestock so that they stop attacking the Applicants/agents/their livestock;



- v. The OCS Ndaka-ini Police Station to effect the order;
  - vi. The costs of this Application be provided for.
2. The Application was premised on the grounds on the face of it and the Supporting Affidavit sworn by the 1<sup>st</sup> Applicant. He deponed that the Respondent had unlawfully and intentionally placed bee hives on his land, land parcel number LOC.16/Mbugiti/1467, which is situated between the Appellants' parcels, LOC.16/Mbugiti/1466 and LOC.16/Mbugiti/1468. He averred that the bees were a menace and a big threat affecting their farming activities and peaceful enjoyment of their land.
  3. The Respondent opposed the application through a Replying Affidavit sworn on 13 June 2022, in which he contended that the application was based on falsehoods, was an attempt to mislead the Court and constituted a witch hunt. He provided crucial context, stating that the parties are brothers and that their family has been embroiled in a myriad of suits since time immemorial. He challenged the Appellants to table any evidence of the alleged disturbance or harm. He argued that the orders sought were substantive in nature and could not be granted in a miscellaneous application. He posited that the proper course of action would have been to file a full suit founded on tort, where evidence could be adduced and tested, rather than this procedural shortcut.
  4. The Respondent also filed Notice of Preliminary Objection dated 21 June 2022, challenging the geographical jurisdiction of the Chief Magistrate's Court at Thika. He argued that the suit properties were situated in Mbugiti Location, Muranga County and that he resided and worked for gain thereat, thus ousting the Thika Court's jurisdiction under the *Civil Procedure Act*.
  5. The learned Magistrate heard both the Preliminary Objection and the Notice of Motion concurrently. In her considered Ruling, the learned Magistrate first addressed the issue of jurisdiction. She found that the Appellants had annexed title deeds issued by the Thika Land Registry, which was sufficient proof that the properties fell within the Court's jurisdiction. She accordingly dismissed the Preliminary Objection with costs to the Appellants.
  6. Turning to the substantive application, the learned Magistrate identified the legal test for the grant of interlocutory injunctions as laid down in the celebrated case of *Giella vs Cassman Brown & Co Ltd EA 358*. Upon evaluating the material before the Court, the learned Magistrate found that the Appellants had failed to establish a prima facie case with a probability of success. Her reasoning was twofold: first, that the Respondent was the registered proprietor of his land and enjoyed all rights appurtenant thereto; and second, that the evidence adduced was wholly insufficient. Consequently, the learned Magistrate found the application to be without merit and dismissed the same with costs to the Respondent.
  7. Being aggrieved by the said decision, the Appellants lodged this appeal on the following grounds:
    - i. The learned Magistrate erred in law and fact in failing to appreciate that the reasonable explanations advanced by the Appellants constituted sufficient reasons to compel the Respondent to relocate the bee hives that had been a menace to the Appellants' Day to day activities;
    - ii. The learned Magistrate erred in law and in fact in failing to hold that the Appellants raised serious pertinent/triable issues of law and fact which ought to be settled once and for all;
    - iii. The learned Magistrate erred in law and fact in exercising his discretion injudiciously and arbitrarily in failing to appreciate and to take into account and to consider the evidence



adduced on behalf of the Appellants that had established the existence of the bee hives vide their attached photographs as tangible evidence;

- iv. The learned Magistrate erred in law and in fact in failing to consider the relevant institutions to render a conclusive report to establish the existence of beehives rather than tendering non-conclusive findings;
  - v. The learned Magistrate erred in law and fact in failing to appreciate the long-established principle of stare decisis, bringing law into confusion and thereby deriving an erroneous finding/conclusion.
8. Parties canvassed the Application by way of written submissions.
  9. In their submissions, the Appellants argued that the standard of proof in a civil matter is on a balance of probabilities, a standard they believe they met. They further submitted that the learned Magistrate ought to have applied the strict liability principle enunciated in the English case of *Rylands & Another -vs- Fletcher* [1861-1873] All ER, arguing that the Respondent, by bringing bees onto his land, did so at his own peril,
  10. Finally, the Appellants faulted the Magistrate for not taking the proactive step of ordering an expert report from an entity such as the Kenya Agricultural and Livestock Research Organisation (KALRO) or the National Environment Management Authority (NEMA) to resolve the factual uncertainty.
  11. On his part, the Respondent argued that the Appellants had failed to discharge their evidentiary burden as mandated by sections 107 and 108 of the *Evidence Act*.

### **Analysis & Determination**

12. This Court has carefully considered the Record of Appeal, the submissions of both parties and the authorities cited. As a first appellate court, it is the duty of this Court to re-evaluate the evidence that was before the trial court and draw my own conclusions. This principle was authoritatively stated in the locus classicus of *Selle & Another -vs- Associated Motor Boat Co. Ltd & Others* EA 123. The question before this Court is whether the learned Magistrate, on the material placed before her, exercised her judicial discretion in accordance with the established principles.
13. Before delving into the merits of the appeal, I wish to address one pertinent issue; whether the miscellaneous application filed in the lower court met the conditions set to warrant the orders sought.
14. From the prayers in the Application, it is clear that the Applicant sought mandatory injunctive orders. The question then arises whether a miscellaneous application is the proper way of initiating a suit as the instant one, seeking substantive and final orders.
15. The law that governs applications for injunction is premised under Order 40 Rule 1 of the Civil Procedure Rules which provides as follows:
  1. Where in any suit it is proved by affidavit or otherwise-
    - a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
    - b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the



wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

16. The above provisions point to the fact that any application for injunction ought to be anchored in a suit. Unfortunately, this is not the case herein. An application for injunction can only be issued where there is a substantive suit in place otherwise the injunction will be in vain and it cannot stand in law. This was the position held by the court in the case of Cresta Investments Limited –vs- Gulf African Bank Limited & Another [2020] eKLR which held:

“Moreover, an application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”

17. In view of the foregoing, the Notice of Motion dated 24 May 2022 had no legs upon which to stand. This appeal, therefore, must face the inevitable fate of dismissal.
18. This appeal is hereby dismissed with costs to the Respondent, assessed at Kshs 50,000/=.

**DATED AND DELIVERED AT THIKA THIS 30 DAY OF SEPTEMBER 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Applicants: Ngeresa

Respondent: N/A

Court Assistant: Lucy Mwangi

