



REPUBLIC OF KENYA



KENYA LAW
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Wamai & 13 others v County Government of Murang'a & another (Environment and Land Case E012 of 2025) [2025] KEELC 6553 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6553 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE E012 OF 2025
MN GICHERU, J
SEPTEMBER 29, 2025

BETWEEN

NGANGA WAMAI 1ST PLAINTIFF
PRISCILA WANJA KOGI 2ND PLAINTIFF
PAUL KANJI NJOROGE 3RD PLAINTIFF
STANLEY MWANGI MAINA (LEGAL REPRESENTATIVE OF HERMAN MAINA GICHARA) 4TH PLAINTIFF
ANTHONY IRUNGU MUGUR (LEGAL REPRESENTATIVE OF EVELYNN WAITHIRA MUGURO) 5TH PLAINTIFF
PATRICK PETER CHEGE KIBUI (LEGAL REPRESENTATIVE OF MICHAEL KIBUI KIHATO) 6TH PLAINTIFF
JOSEPH KIHARA KAMAU 7TH PLAINTIFF
NANCY NJERI KAMAU 8TH PLAINTIFF
EUTICAS NDEI GAITA 9TH PLAINTIFF
KAMAU WARUHIA 10TH PLAINTIFF
CONSOLATA MUKII KAMAU 11TH PLAINTIFF
JAMES GATUNE WATHIGO (LEGAL REPRESENTATIVE OF WATHIGO GATUNE) 12TH PLAINTIFF
PETER MACHARIA WANJAU (LEGAL REPRESENTATIVE OF MARY MUTHONI WANJAU) 13TH PLAINTIFF
ELIDAH WANGARI MUNENE (LEGAL REPRESENTATIVE OF KEZIAH WANJIKU WANJAU) 14TH PLAINTIFF

AND



COUNTY GOVERNMENT OF MURANG'A 1ST DEFENDANT

KENYA RURAL ROADS AUTHORITY 2ND DEFENDANT

RULING

1. This ruling is on the notice of motion dated 24th March 2025. The motion is by the fourteen(14) Plaintiffs seeks two (2) residual orders.
3. That pending be hearing and determination of this suit, an order of temporary injunction be issued barring the Defendants by themselves or their agents from demolishing the properties of the Plaintiffs, evicting them, transferring or otherwise dealing with the Applicants' properties known as L.R. Loc.11/Muchungucha/889/19,21,22B,23,24A,24B,25,26,27,28,29,32H and 33.
4. That the costs be provided for.
2. The motion which is brought under Sections 3A and 63 (c) of the *Civil Procedure Act*, Order 40 rules 1 and 2 of the Civil Procedure Rules, Article 40 of the *Constitution* and all enabling provisions of the law is supported by the affidavits of the Plaintiffs which have three (3) annexures each. The annexures include copies of letters dated 29-8-24 issued by the 2nd Defendant warning the Plaintiffs of forced removal of their structures if they are not removed voluntarily, copies of valuation reports dated 8-1-2024 and copies of evidence of ownership.
3. The gist of the application is as follows. Firstly, the Plaintiffs are the owners of their respective suit parcels as confirmed by their respective title documents. Secondly, on 29-8-2024 the 2nd Defendant issued notices to the Applicants accusing them encroaching on the road corridor of Muchungucha-Gacheru-Mbombo JCT B25 road. Three, the demolition of the buildings on the suit land will render the Plaintiffs destitute. It is for the above stated reasons that the Plaintiffs pray that the status quo be maintained pending the hearing and determination of this suit. The Plaintiffs seek to be compensated for their land and development before they can move out of the suit land.
4. The Defendants did not file any replying affidavits. However, the 1st Defendant filed a written statement of defence dated 19-6-2025 in which it avers that it is not in any way involved in the construction of the road in question and it has not threatened to demolish any property that belongs to the Plaintiffs. As for the 2nd Defendant, it avers that the Plaintiffs land falls within the road reserve and it is therefore public land as can be seen in the registry index map for Gacheru area.
5. Counsel for the 2nd Defendant filed written submissions dated 23-7-2025. I did not find any other submissions by any other party even though the Plaintiffs' counsel said that he filed his on 30-6-2025.
6. I have carefully considered the motion dated 24-3-2025 in its entirety and I find that it has no merit for one reason. It is averred that the land on which the Plaintiffs say that they have put up storeyed buildings is in fact a road reserve and therefore public land. If this were the case, then the Plaintiffs would be seeking to be rewarded for occupying public land. In the absence of maps produced by the Plaintiffs showing that the land they occupy and have developed belongs to them, then a prima facie case with a probability of success has not been made out. Such proof is a prerequisite to the grant of an order of injunction as per the case of *Giella vs Cassman Brown* 1973 EA 358. The second prerequisite is that the Plaintiffs must prove that they stand to suffer substantial loss that cannot be adequately compensated by an award of damages. This has not been proved by the Plaintiffs. In fact by producing



valuation reports for all the suit properties, the Plaintiffs have shown that their loss is quantifiable and if proved, it can surely be compensated by an award of damages. Finally, the other holding in the case of Giella vs. Cassman Brown(supra) is that if the Court is not sure of the two other conditions listed above, then it should look at the balance of convenience. The balance of convenience tilts in favour of building a public road for the benefit of a bigger part of public than in favour of fourteen (14) private persons. When the road is complete it will be for the benefit of thousands of people including the Plaintiffs.

For the above stated reasons, I find no merit in the motion dated 24-3-2025. I therefore dismiss the said motion.

Costs in the cause.

It is so ordered.

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 Mbuthia

2nd Defendant's Counsel – Miss Kimanthi

