

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAIROBI**  
**ELCA NO. E017 OF 2023**

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<b>DANIEL KIMANI NGURURI</b>	-	<b>APPELLANT</b>
<b>VS</b>		
<b>FREDRICK NGANGA KAMAU</b>	-	<b>1<sup>ST</sup> RESPONDENT</b>
<b>DUNCAN MWANGI</b>	-	<b>2<sup>ND</sup> RESPONDENT</b>
<b>WILLIAM MULANDI</b>	-	<b>3<sup>RD</sup> APPELLANT</b>

**(Being an appeal against the Ruling of the Chief Magistrates Court  
in MCELC NO E1222 OF 2023 delivered by Hon B M Cheloti on  
14/8/23)**

**JUDGMENT**

1. On 31/8/2023, the appellant filed this appeal against the respondents on the grounds that the court; disregarded the application dated 29/3/23, the replying affidavit in opposition to the 1st Respondent's application of 20/3/23, and the annexures; granted the orders in favour of the 1<sup>st</sup> Respondent in total disregard of the tested principles in the case of **Giella v Cassman Brown**; failed to determine who between the appellant and the 1st Respondent is entitled to the suit land; failed to preserve the property by issuing status quo orders barring both the appellant and the 1<sup>st</sup> Respondent from in any manner dealing with the suit property pending the hearing and determination of the suit; and granted an injunction in favour of the 1<sup>st</sup> Respondent despite failing to lead evidence to support his occupation of the land.
2. Consequently, the appellant sought orders for;
  - a. That the Ruling delivered on 14/8/23 in MCELC NO E1222 of 2023 be set aside and/or reversed.

- b. That the status quo be maintained on all terms; neither the appellant nor the 1<sup>st</sup> Respondent shall undertake any further construction or development on the suit land; there shall be no eviction of any party from the said parcel; no charging, sale, alienation, or transfer of proprietary interest in the parcel shall occur; and the status quo shall remain in force until the hearing and final determination of the lower court case.
3. On 24/07/25, the parties elected to canvass the appeal through written submissions. I have read and considered the submissions filed by the appellant and the 1<sup>st</sup> Respondent, respectively.
  4. The key issue for determination is whether the appeal is merited.
  5. It is undisputed that the appellant and the 1<sup>st</sup> respondent both claim rights to the suit land. They have both presented their claims through the plaint and the counterclaim, respectively. The primary issue for the court to determine is who is the lawful owner of the land.
  6. It is undisputed that both parties filed notices of motion in the trial court seeking temporary injunctions. Each party claimed to be in possession of the land and accused the other of trespassing. The record shows that the appellants' application dated 29/3/23 was not opposed because it contained an error in the title reference. This is why the trial court considered the application dated 20/3/23, with no mention of the one dated 29/3/23.
  7. Upon reviewing the application, the court granted it in favour of the 1<sup>st</sup> Respondent, thereby instigating the present appeal.
  8. The purpose of a temporary injunction, as outlined in Order 40 Rule 1 of the Civil Procedure Rules 2010, is to stay and prevent the wasting, damaging, alienation, sale, removal, or disposition of the suit property. The Order states that;
    - "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 Respondents 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 Respondents in the suit,

9. The Court may, by order, grant a temporary injunction to restrain such acts or make other orders for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposal of the property as the Court considers appropriate until the disposal of the suit or until further orders.
10. The principles that guide the Court in determining an application of such nature are found in the celebrated case of **Giella vs Cassman Brown & Co Ltd [1973] EA 358** as follows: -
  - a. First, the Applicant must establish a prima facie case with a likelihood of success.
  - b. Secondly, an interlocutory injunction will not normally be granted unless the Applicant could otherwise suffer irreparable harm that cannot be adequately compensated by damages.
  - c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
11. Having found that the two parties are claiming the land, the most efficacious remedy in the circumstances is to order the status quo in the terms proffered by the appellant.
12. This Court recognizes that for an application for an interlocutory injunction like this one, the Court is not required to make final findings of contested facts, as it should only assess the relative strength of the parties' cases. See the case of **Mbuthia Vs Jimba Credit Corporation Ltd (1988) eKLR**.

13. Needless to say, in the ruling delivered by this court on 8/2/24, one of the key orders was that;

“There shall be no eviction of either party from the suit property pending the hearing and determination of this appeal.”

14. It is not in dispute that both parties contest the ownership of this land. Having said that, I am guided by the provisions of Order 40 Rule 1 of the Civil Procedure Rules, read together with Section 3A of the Civil Procedure Act, that justice will be served if the suit land is preserved pending the hearing and determination of the suit so that each party can adduce evidence and prove their claims in court. Evidently, the balance of convenience favours the preservation of the suit land pending the hearing and determination of the suit.

**15. Final orders for disposal**

In the end, I find that the appeal is allowed as follows;

- a. That the Ruling delivered on 14/8/23 in **MCELC NO E1222 of 2023** be set aside and/or reversed.
- b. The status quo shall be maintained on terms; neither the appellant nor the 1st Respondent shall undertake any further construction or development on the suit land; there shall be no eviction of either party from the said parcel; no charging, selling, alienating, or transferring of proprietary interest in the parcel shall occur; and the status quo shall remain in force until the hearing and final determination of the lower court case.
- c. Each party to meet their costs.

16. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9<sup>TH</sup> DAY OF  
OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**  
**JUDGE**

**Delivered Online in the presence of:**

1. Mr Amati for the Appellant
2. Ms Amwama for the 1<sup>st</sup> Respondent
3. N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent
4. CA- Ms Yvette Njoroge

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