



**Thubira & 3 others v Kesha (Sued as a representative of the Estate of Kaio Ole Kaesha - Deceased) & 3 others (Environment and Land Case E118 of 2024) [2025] KEELC 7068 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7068 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E118 OF 2024  
LC KOMINGOI, J  
OCTOBER 15, 2025**

**BETWEEN**

**PATRICK GITAU THUBIRA ..... 1<sup>ST</sup> PLAINTIFF  
PAUL NGIM NGETHE ..... 2<sup>ND</sup> PLAINTIFF  
ELIUD KINYANJUI NGETHE ..... 3<sup>RD</sup> PLAINTIFF  
ANTHONY MARIA NGETHE ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**WILLIAM OLE KESHA (SUED AS A REPRESENTATIVE OF THE ESTATE OF KAIO OLE KAESHA - DECEASED) ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR KAJIADO ..... 2<sup>ND</sup> DEFENDANT  
COUNTY GOVERNMENT SURVEYOR ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is the Ruling in respect of the Notice of Motion dated 18<sup>th</sup> April 2025 brought under;  
(Orders 40 Rules 1 and 2 of the Civil Procedure Rules 2010, Section 1A, 1 b, 3A and 53 of the *Civil Procedure Act* (Cap 21) of the Laws of Kenya)
2. It seeks Orders;
  1. Spent.
  2. Spent.



3. That a temporary injunction be issued restraining the Respondents herein whether by themselves,, their servants, their agents and/or their employees from blocking and/or denying the Applicants herein whether by themselves, their servants, their agents and/or employees access to the suit property pending hearing of this suit.
  4. That an order be issued to the 2<sup>nd</sup> Respondent to show the Applicants herein the suit property thereof.
  5. That a temporary injunction be issued restraining the third parties from constructing and/or building on the suit property and consequently vacating and/or removing them from a portion of the suit property pending the hearing and determination of the application and suit thereof.
  6. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs (a) to n.
  4. The Application is supported by the affidavit of Patrick Gitau Thubia, the 1<sup>st</sup> Plaintiff/Applicant herein sworn on the 18<sup>th</sup> April 2024.
  5. The Application is opposed.  
There is a Replying Affidavit sworn by William Ole Kaesha, the 1<sup>st</sup> Defendant/Respondent sworn on the 18<sup>th</sup> February 2025.
  6. On the 20<sup>th</sup> February 2025 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submission.
  7. The Plaintiff's submissions are dated 14<sup>th</sup> April 2025. It is their case that they have beneficial interest on the suit property Kajiado/Kitengela/2590 which is a sub-division of Kajiado/Kitengela/1947. It is further submitted that they have a title to the suit property hence they are entitled to the orders sought.
  8. The 1<sup>st</sup> Defendant's submissions are dated 27<sup>th</sup> May 2025. It is submitted that the plaintiff/applicants have failed to establish a prima facie case to warrant this court to grant the orders as sought. It is also submitted that the plaintiffs' have stated that they do not know where the suit land is situated hence they do not deserve the orders sought.
  9. I have considered the Notice of motion, the affidavit in support, and the response thereto, the rival submissions and the authorities cited. The issues for determination are;
    - i. Whether the Plaintiff/Applicant's application meets the threshold for grant of temporary injunction.
    - ii. Who should bear costs of this application?
  10. The principles for grant of temporary injunction were set out on the case of Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358 and reiterated in the case of Nguruman Limited Vs. Jan Bunde Nelson & 2 Others (2014) eKLR.
  11. I have considered the facts as presented by the 1<sup>st</sup> Plaintiff/Applicant and I find that the conditions set out in the Giella Case have not been met.
  12. In conclusion I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15<sup>TH</sup> DAY OF OCTOBER 2025.**



**L. KOMINGOI**

**JUDGE.**

In the Presence of:

Ms. Muriungi for the Plaintiffs/Applicants.

Ms. Okeyo for Mr. Nzaku for the 1<sup>st</sup> Defendant/Respondent.

N/A for the 2<sup>nd</sup> – 4<sup>th</sup> Defendants/Respondents.

Peter – Court Assistant.

