



REPUBLIC OF KENYA



**Kimani (Suing as Legal Representative of the Estate of Mumbi Njuru (Deceased)) v Amara  
(Environment & Land Case E211 of 2024) [2025] KEMC 48 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEMC 48 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT & LAND CASE E211 OF 2024  
PA NDEGE, SPM  
MARCH 27, 2025**

**BETWEEN**

**MARGARET MUMBI KIMANI ..... PLAINTIFF  
SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF MUMBI NJURU  
(DECEASED)**

**AND**

**WILBUR ONYANGO AMARA ..... DEFENDANT**

**RULING**

1. By Notice of Motion dated 27<sup>th</sup> January, 2025, the Applicant herein seeks the following substantive orders:
  - i. That this Honorable Court be pleased to issue an order of temporary injunction restraining the defendant by himself, his servant, agents, employees and or any other person claiming under him from cultivating, transferring, leasing, charging and or alienating L. R. No. Nakuru/Njoro/Gichobo/496 pending the hearing and determination of this suit.
  - ii. That the officer commanding Njoro Police Station and the area chief do ensure compliance with the order above.
  - iii. The costs of this Application be provided for.
2. The notice of motion is brought under Order 51, rule 1, Order 40, rules 1, 2 and 3 of the Civil Procedure Rules and sections 3 and 3A of the *Civil Procedure Act*. It is based on the grounds on its face and supported by the affidavit of the applicant sworn on 27<sup>th</sup> day of January 2025. It is the plaintiff's case that the suit land herein, which belongs to the deceased and therefore forms part of the deceased's estate, has been illegally transferred to the Defendant despite there being no full grant of representation applied for and granted in respect to the estate.



3. The defendant filed a Replying affidavit sworn on 6<sup>th</sup> day of February 2025 by himself. In the Replying Affidavit, the defendant's main response or defence is that he is an innocent purchaser for value without notice.

### **Applicant's Submissions**

4. The applicant through his counsel Kinyanjui & Njau, filed his submissions dated 6th day of March 2025. It is the learned counsel's submissions that this Application has met the threshold for granting an order of temporary injunction as sought herein. The applicant relies on the case of *Giella v Cassman Brown and Co ltd* [1973] EA.

5. As to whether the application is merited and with high chances of success, learned counsel submitted that the Applicant has exhibited a certificate of title in the name of the deceased Mumbi Njuru issued on 20/07/1989. That the Respondent also exhibited the green card to the suit land which shows that the deceased was the registered proprietor prior to her death in 1991. That it is therefore not in dispute that the land belonged to the deceased as at the time of her death in 1991. It is thus the learned counsel's submissions that there is no evidence that the deceased had sold the suit land to anyone prior to her demise and thus the suit land would form part of her estate. That the Respondent, on the other hand, claims to have purchased the land from a Mr. John Nduiga via a sale agreement that has however not been exhibited herein. That it is thus the Applicant's case that anybody who disposed the property of the deceased herein without having been ordained the Administrator of the Estate of the deceased would be an intermeddler with the estate of the deceased. In a nutshell, the learned counsel for the Applicant submits that the certificate of title exhibited by the Respondent herein as annexure WOA-2, is challengeable and that is why they have filed this suit, to challenge it. Learned counsel relied on the decision in *Re-Estate of Paul M'maria Decased* [2017] e KLR where the court had the following stinging words to all intermeddlers of a deceased property: -

... the restriction provided by law that no immovable property shall be sold or distributed before confirmation of grant is not merely directory or an embellishment. It is a statutory command with fatal consequences on any transaction done in contravention with the said law. Accordingly, acquisition of immovable property of the estate of the deceased in contravention of the *Law of Succession Act* is tinctured with killer poison: and is unlawful acquisition; thus, property so acquired does not enjoy the protection of property rights under article 40(6) of the *Constitution*.

6. Learned counsel, in challenging the legality or credibility of the certificate of title issued to the Respondent herein, submitted that the sale of the suit land alleged by the Respondent is vitiated by the law of succession and is thus an invalid, null and void transaction. Learned counsel submitted that such contract is *ex facie* illegal and unenforceable.
7. Learned counsel for the Applicant further submits that the plaintiff/applicant will suffer irreparable damages if the orders sought are not granted. He submits that the suit land is their ancestral inheritance and that the applicant and other beneficiaries stand to lose the grave yards of the relatives buried on the land including the deceased Mumbi Njuru. That there is therefore no amount of compensation that would be enough in terms of damages for the loss of the cultural and disinheritance that would be visited to the Applicant and that the only way to prevent the loss is by grant of the relief sought. That the Respondent has on the other hand not exhibited evidence of any occupation, cultivation or even development on the suit land. Learned counsel further submitted that the balance of convenience tilts in favour of the Applicant. That the applicant and the other beneficiaries had been adhocly allocated portions that they were cultivating prior to the invasion of the suit land by the Respondent in the year 2023. That thus the Applicant and the other beneficiaries continue to lose subsistence in terms of food that they used to grow.



## Defendant's Submissions

8. The defendants/respondents, through their counsel Nom Law Advocates LLP, filed their submissions dated 7th day of March 2025. Learned counsel submitted that the plaintiff/ applicant's application does not meet the legal threshold in law for grant of temporary injunction in the case of *Giella vrs Cassman Brown (1973) EA*.
9. As to whether a prima facie case has been established or not, learned counsel submitted that the Applicant has not demonstrated that the deceased, Mumbi Njuru, had any legal restriction preventing the transfer of the suit land prior to her demise. That the Respondent's title is protected under Section 26 of the *Land Registration Act*, 2012. That the plaintiff is simply relying on the provisions of the *Law of Succession Act*, which cannot be used to prove that the Certificate of Title was acquired fraudulently, illegally, unprocedurally or through misrepresentation. That the alleged previous transactions were conducted long before the plaintiff obtained the limited grant, and therefore, no legal prohibition against such transfers was in place. That furthermore, Mr. Nduiga's title was valid and properly registered, thus allowing him to sell the land lawfully.
10. As to whether the plaintiff will suffer irreparable loss that cannot be compensated by way of damages or monetarily, learned counsel challenged the plaintiff's contention that the suit land constitutes ancestral land whose loss cannot be compensated by damages. That the Defendant, as the legal/ registered owner, would suffer greater prejudice if the injunction were granted as he would be deprived of the use and enjoyment of his lawfully acquired property. That the plaintiff's allegation of disinheritance are speculative as no evidence has been tendered to show that the beneficiaries have been unlawfully deprived of their rightful inheritance. That since purchase, the Defendant has been in actual possession of the land without interference from the Plaintiff or her alleged beneficiaries. That the land had been used productively, and there is no evidence of the Plaintiff's involvement in its use before filing this suit.
11. As to where the balance of convenience tilts, the Respondent/ Defendant submitted that it tilts in his favour. That he has been in possession of the suit land since 2018, a fact that, he argues, remains uncontested. That the plaintiff has not demonstrated any urgent or imminent harm that would justify the issuance of the injunctive orders sought. That issuing those injunctive orders would unfairly prejudice the Respondent by denying him his legal and proprietary rights over the suit land. That the Respondent/ Defendant has charged the suit land as security for a loan facility thereby demonstrating a legitimate investment in the property. That due diligence was conducted before the title was charged, further affirming the validity of the Defendant's ownership. That the plaintiff's claim is a belated afterthought, contrived solely as a stratagem to unjustly enrich herself at the Defendant's expense. That the late Mumbi Njuru passed away several decades ago, and the suit property has changed hands through multiple lawful transactions. Thus the plaintiff's newfound interest in the suit land, after years of dormancy, is a flagrant attempt to destabilize a settled legal position and exploit the Defendant's bona fide investment. That this court should not countenance such opportunistic litigation that seeks to disrupt legally recognized property rights. On this point, learned counsel relied on the case of *Permanet Fold Ltd vrs Zhong Wu E-commerce Kenya Co. Ltd [2023] KEELC 21378 [KLR]*, where the superior court stated that an application for injunction being an application seeking equitable relief must fail the moment the court finds the applicant's hands tainted.

## Determination

12. After considering the application, replying affidavit and submissions, the following issues arise for determination:



- a. Whether the plaintiff/ applicant has met the criteria for the grant of an order of temporary injunction pending hearing and determination?
- b. who shall bear cost of application?

**a. Whether the plaintiff/ applicant has met the criteria for the grant of temporary injunction pending hearing and determination?**

13. The guiding principles for grant of orders of temporary injunction are set out in the case of *Giella vrs Cassman Brown*, supra, and reiterated by the Court of Appeal in the case of *Nguruman Limited vrs John Bonde Nielsen & 2 Others C/ A No 77 of 2012* where it was held as follows: -

In an interlocutory injunctions application, the applicant has to satisfy the triple requirements to establish his case only at (a) prima facie level (b) demonstrate irreparable injury if a temporary injunction is not granted and (c) allay any doubts as to b, by showing that the balance of conveniences is in his favor. These are the three pillars on which rest the foundation of any order of injunction, if it is established that all the above three condition and states are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially

14. The plaintiff has to first demonstrate that he has a prima facie case. The court in *Mrao Ltd vrs First American Bank of Kenya Ltd (2003) eKLR* stated as follows on what constitutes a prima facie case \_

...in the civil case, it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by opposite party as to call for an explanation or rebuttal from the latter

15. The green card exhibited herein proves that the title deed for the suit land herein was issued to the deceased Mumbi Njuru on 20/07/1989. The exhibits annexed to the Application herein, further indicate that the deceased passed on 20/01/1991. On a prima facie basis, the transfer of the suit land herein to Simon Njuguna on 05/10/2015 was done after the death of the deceased. The applicant contention that the transfers were done illegally and in violation of the provisions of sections 45 and 82 of the *Law of Succession Act* appears valid at this stage, before I hear the main suit and interrogate all the evidence that both sides might have in the main suit herein. Based on the foregoing, it is my view that the plaintiff has established a prima facie case for the court to grant the order of the injunction sought. Other issues shall be canvassed during the hearing of the main suit herein.

16. The applicant submits that their livelihood fully relies on the suit property herein which she and her siblings have all along been cultivating. It is true that this suit land belonged to their deceased's mother and I do therefore find that she has been able to establish that she will suffer irreparable damages if the temporary injunction is not granted as this is a parcel that they believe they are entitled being inheritance from their deceased mother.

17. I therefore grant an order of temporary injunction restraining the defendant by himself, his servant, agents, employees and or any other person claiming under him from cultivating, transferring, leasing, charging and r alienating L. R. No. Nakuru/Njoro/Gichobo/496 pending the hearing and determination of this suit. The officer commanding Njoro Police Station and the area chief do ensure compliance with the order above.



**(b) Who shall bear cost?**

18. The general rule is that costs follow the event in accordance with provision of section 27 of the *civil procedure Act*. A successful party should ordinarily be awarded cost of an action unless the court, for good reasons, directs otherwise. Therefore, the applicant is awarded the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 27TH DAY OF MARCH, 2025.**

**ALOYCE-PETER-NDEGE**

**\*\*SENIOR PRINCIPAL MAGISTRATE\***

In the presence of;

Present for Plaintiff/ Applicant: F. M. Kinyanjui

Present for Defendant/ Respondent: n/a

Plaintiff/ Applicant: n/a

Defendant/ Respondent: n/a

