



**Njoroge & 2 others (All Suing as the Legal and Personal Representative of the Estate of Antony Njoroge Kuria - Deceased) v Mosigari (Environment & Land Case E021 of 2025) [2025] KEMC 45 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEMC 45 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT & LAND CASE E021 OF 2025  
PA NDEGE, SPM  
MARCH 27, 2025**

**BETWEEN**

**LOISE NJOKI NJOROGE ..... 1<sup>ST</sup> APPLICANT**

**MICHAEL NJUGUNA ..... 2<sup>ND</sup> APPLICANT**

**ELIZABETH NYAMBURA NGIGE ..... 3<sup>RD</sup> APPLICANT**

**ALL SUING AS THE LEGAL AND PERSONAL REPRESENTATIVE OF THE  
ESTATE OF ANTONY NJOROGE KURIA - DECEASED**

**AND**

**JOHNSTONE ONSONGO MOSIGARI ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 06<sup>th</sup> January, 2025, the Applicants herein seek the following substantive orders:
  - i. That pending the hearing and final determination of the suit, this Honorable Court be pleased to issue an order of injunction restraining the defendant/ respondent herein either by himself, his agents, servants and/or any other person acting on their behalf from entering, trespassing, ploughing, leasing, putting up structures thereupon, cultivating, alienating, and/or in any way interfering with all or any portion of all that parcel of land known as Elburgon/ Elburgon Bblock 6/9 (ITURA) situated at Gatura location within Elburgon.
  - ii. That this Honorable Court be pleased to issue an eviction against the defendant/ respondent.
  - iii. That the costs of this Application be borne by the Respondent.



2. The notice of motion is brought under Order 40, rules 1 and 2, Order 51 Rule 1 of the Civil Procedure Rules and sections 1(a) and (B) of the Civil Procedure Act. It is based on the grounds on its face and supported by the affidavit of the applicant sworn on 06th day of January 2025.
3. It is the plaintiff's case that the suit land herein, belongs to the deceased Antony Njoroge Kuria forming part of the deceased's estate, and that the respondent has illegally entered, trespassed and started claiming ownership of the suit parcel herein thereby interfering with the said deceased's property yet he is neither a beneficiary of the estate nor a dependant of the deceased.
4. The defendant filed a Replying affidavit sworn on 12<sup>th</sup> day of February 2025 by himself. In the Replying Affidavit, the defendant's main response or defence is that he was gifted the land parcel by one Pius Nyaaga, who is also deceased and that it is the applicants herein who have encroached into his parcel of land. A Land Sale Agreement dated 27/05/2018 was annexed as JO1 and witnessed by amongst others, the learned counsel for the Applicants, herein. It shows that on 27/05/2018, the applicants herein acting as the personal and legal representatives of the estate of Antony Njoroge Kuria sold 10 acres of the suit parcel herein to Pius Nyaaga. This was however before the full grant had been issued to the applicants herein.

### **Determination**

5. 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?

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

6. 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

7. 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

8. The evidence so far adduced herein indicate that the purported sale of the land to one Pius Nyaaga on 27/05/2018, whom the respondent claims gifted him the 10 acres of the suit land herein was



done before the full grant of representation was issued and confirmed. That transaction is therefore challengeable as it, on the face of it, appears illegal and in violation of the provisions of sections 45 and 82 (b) (2) of the Law of Succession Act. Based on the foregoing, it is my view that the plaintiffs have 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.

9. Such property forming part of a deceased person's estate need to be preserved and the issue of whether damages shall be an adequate remedy or not should not be entertained at any stage as that shall amount to condoning an illegality.
10. I therefore grant an order of temporary injunction restraining the defendant/ respondent herein either by himself, his agents, servants and/or any other person acting on their behalf from entering, trespassing, ploughing, leasing, putting up structures thereupon, cultivating, alienating, and/or in any way interfering with all or any portion of all that parcel of land known as ELburgon/ Lburgon Bblock 6/9 (itura) situated at Gatura location within Elburgon.
11. As to the other prayer herein, that is an order for an eviction, I find the same not awardable at this interlocutory stage. The prayer for an order of eviction may therefore await the final determination in the main suit. I do therefore decline to issue the same at this stage.

**Who shall bear cost?**

12. 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 applicants are awarded the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 27<sup>TH</sup> DAY OF MARCH, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Present for Plaintiffs/ Applicants: N/A

Present for Defendant/ Respondent: N/A

1<sup>st</sup> Plaintiff/ Applicant: N/A

2<sup>nd</sup> Plaintiff/ Applicant: N/A

3<sup>rd</sup> Plaintiff/ Applicant: N/A

Defendant/ Respondent: N/A

