

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

CIVIL APPEAL NO. E021 OF 2025

DAVIDK MUGAMBI.....APPELLANT/APPLICANT **PIUS**

VERSUS

ANTHONY MWANIKI MWAI.....1ST

RESPONDENT

GEORGE TED OSEWE & NAFTALI APODI OYUGI

(Being the Trustees of LAKELAND WELFARE CLUB)

.....2ND RESPONDENT

DISTRICT LAND REGISTRAR, KAJIADO.....3RD

RESPONDENT

COMMISSIONER OF LANDS.....4TH

RESPONDENT

RULING

1. This **ruling** is in respect of the **Notice of Motion** dated 24th April 2025 brought under;

(Order 42 Rule 6, Order 40 Rules 1 & 2 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Article 159 of the Constitution, and all enabling provisions of the law).

2. It seeks orders that;

1) Spent.

2) Spent.

3) THAT pending the hearing and determination of this Appeal, this Honourable Court be pleased to issue a temporary injunction restraining the 2nd Respondent by themselves, their agents, servants, employees, or any other person acting under their instructions from subdividing, selling, transferring, leasing, developing or in any way dealing with Land Parcel No. Kajiado/Kaputei North/21216.

4) THAT costs of this application be in the cause.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.
4. The Application is supported by the Affidavit of David Pius Mugambi, the Appellant herein, sworn on the 25th May 2025.
5. The Application is opposed. There is a Replying Affidavit sworn by Naftali Arodi Oyugi, a trustee of the 1st Respondent, sworn on the 17th July 2025.
6. On the 17th June 2025 the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
7. The Appellants submissions are dated 22nd July 2025. They raise one issue for determination;

Whether the Applicant has satisfied the legal threshold for the grant of an injunction pending appeal as sought in the Application dated 24th April 2025.

8. Counsel submitted that this Honourable Court has unfettered discretion to grant a temporary injunction where it is necessary to preserve the subject matter of an appeal. He

has put forward the case of **Patricia Njeri & 3 Others Vs. National Museums of Kenya (2004) eKLR.**

9. It is also submitted that the Applicant must demonstrate that the intended appeal raises a reasonable and arguable case and is not frivolous. He has put forward the case of **In re Estate of Bare Adan Mohammed (Deceased) (2024) KECH 3416.**

10. It is the Appellant's case that he purchased the suit property from the 1st Respondent in 2007, paid the full purchase price and was given the original title to the suit land together with original consent to transfer the suit property to himself.

11. Further that the existence of two conflicting titles over the same suit land is a clear sign of fraud or illegal dealings. That the Appeal raises serious and weighty issues touching on the validity of the 2nd Respondents' title to the suit land.

12. It is also submitted that the 2nd Respondent will not suffer prejudice or hardship if these orders are granted and that this Honourable court ought to preserve the subject matter where irreversible loss is likely.

13. Counsel further submitted that the suit land is in real danger of being subdivided and sold off to third parties by the 2nd Respondent. That this would render the appeal nugatory.
14. It is also submitted that the conditions set out in the **Giella Vs. Cassman Brown & Company Limited (1973) EA 358** have been satisfied, hence the Application ought to be allowed.
15. The 2nd Respondent's submissions are dated 16th July 2025. Counsel submitted that the Application has not met the criteria for grant of temporary injunction as set out in the **Giella Case**. He has put forward the cases of **Suleiman Vs. Amboseli Resort Limited Nbi HCCC No. 7078 of 2003; Mrao Limited Vs. First American Bank & 2 Others (2003) eKLR ; Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai (2018) eKLR; Kenya Commercial Finance Company Limited Vs. Afraha Education Society (2001).1 EA 86.**
16. It is further submitted that the Appellant has not demonstrated that he will suffer harm that no monetary

compensation can cure or reverse. He has put forward the case of **George Muritu Gatheca Vs. Family Bank Limited (2017) eKLR** .

They urge that the Application be dismissed with costs.

17. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are;

- i. **Whether orders of temporary injunction ought to be issued pending appeal.**
- ii. **Who should bear costs of the Application?**

18. In the case of **Patricia Njeri & 3 Others Vs. National Museums of Kenya (2004) eKLR** the court gave the following principles as governing grant of temporary injunction pending appeal;

“a) An order of injunction pending appeal is a discretionary one which will not be exercised against an applicant whose appeal is frivolous.

b) The discretion should be refused where it would inflict great hardship than it would avoid.

c) The Applicant must show that to refuse the injunction would render the appeal nugatory.

d) The court should also be guided by the principles of *Giella Vs. Cassman Brown(1973) EA 358.*”

19. I am guided by the above authority in finding that, the learned trial magistrate rightly came to the conclusion that the suit property be transferred to the 2nd Respondent in 2009 after complying with all the conditions of sale.

20. She also found that there was no sale agreement between the Appellant and the 1st Respondent and that the 1st Respondent had explained the circumstances under which he handed over the title to the suit property to the Appellant. That he had secured a loan and handed it as security. It was his case that after repaying the loan, the title was returned to him.

21. It is against this background that I find that the Appeal will not be rendered nugatory, if these orders are not granted.

22. I also find that the conditions set out on the **Giella Case** have not been met.

23. The upshot of the matters that I find no merit in this application and the same is dismissed. The costs shall abide the outcome of the Appeal.

Dated, Signed and delivered virtually this 30th day of October 2025.

L.KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Wangari for the Appellant.

Mr. Ndungu for the 1st - 2nd Respondents.

N/A for the 3rd, 4th Respondents.

Court Assistant - Peter.