



Ragi & 3 others v Bosibori & 3 others; Kamau (Proposed Plaintiff) (Environment and Land Case E038 of 2025) [2025] KEELC 5737 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E038 OF 2025**

**MD MWANGI, J
JULY 31, 2025**

BETWEEN

**ALLAN GACHIRI RAGI 1ST PLAINTIFF
NJUGUNA WAHOME 2ND PLAINTIFF
WILSON WAKABA 3RD PLAINTIFF
JAMES MAINA 4TH PLAINTIFF**

AND

**FENNY BOSIBORI 1ST DEFENDANT
GESUMWA MAYIEKA 2ND DEFENDANT
NYANGATE MAYIEKA 3RD DEFENDANT
JEREMIAH MWEBI 4TH DEFENDANT**

AND

PARTRICK KAMAU PROPOSED PLAINTIFF

*(Ruling in Respect of the Applications Dated 24th
March 2025, 7th April 2025, and 24th April 2025)*

RULING

1. Before this Court for determination are three distinct applications, all centered on the parcel of land known as Ngong/Ngong/35216 [“the suit property”]. Although the applications are framed differently and brought by different parties, they all relate to the same piece of land, and are meant to either assert or resist proprietary and possessory claims over the suit property.



2. The three applications under consideration are as follows:

i. Plaintiffs' Application dated 24th March 2025

In this application, the Plaintiffs seek the following substantive orders:

- a. That a temporary order of status quo be issued, restraining any dealings, transactions, or alterations affecting land parcel Ngong/Ngong/35216, pending the hearing of the application inter partes;
- b. That pending the hearing and determination of this suit, the Court do issue an order of status quo with respect to the same property, effectively freezing all activities, transfers, or enforcement actions on the land;
- c. That the costs of the application be provided for.

ii. 4th Defendant's Application dated 7th April 2025

The 4th Defendant on her part seeks injunctive and enforcement orders, including:

- i. That the Plaintiffs be ordered to vacate the suit property forthwith, and to hand over vacant possession to the 4th Defendant;
- ii. That in default, this Court issue eviction orders within 14 days, to be implemented and supervised by the Officer Commanding Station [OCS], Ngong Police Station;
- iii. That a permanent injunction be issued, restraining the Plaintiffs from interfering in any manner with the 4th Defendant's occupation or quiet enjoyment of Ngong/Ngong/35216;
- iv. That the costs of the application be awarded to the 4th Defendant.

iii. Proposed 5th Plaintiff's Application dated 24th April 2025

The third application is brought by Patrick Kamau, who seeks to be enjoined as the 5th Defendant to the present suit. Specifically, he prays; for:

- a. That the Applicant, Patrick Kamau, be joined as the 5th Plaintiff in the present proceedings;
- b. That upon such joinder, he be granted leave to participate fully in these proceedings, including the filing of pleadings and evidence in defence of his alleged proprietary interest in the suit property;
- c. That costs of the application be provided for.

3. It is necessary at the outset to observe that this Court does not operate in a vacuum. This Court takes cognizance that the suit property, Ngong/Ngong/35216, is already the subject of active litigation in this suit as well as ELC No. 046 of 2025, with earlier proceedings in Milimani Civil Case No. E593 of 2021 and ongoing criminal proceedings in Misc. Crim. App. No. E264 of 2024 — all basically involving the same issues. The court has in the course of the proceedings also been informed about a pending appeal before the Court of appeal, yet over the same subject matter.

4. This Court takes cognizance of the existence of Kajjado ELC Case No. 046 of 2025, wherein Patrick Kamau, the very same party seeking joinder herein as the 5th Plaintiff, is actively litigating as a Plaintiff on the same dispute over Ngong/Ngong/35216. In that suit, the named Defendants include Garam Investments Auctioneers, Kenya Women Microfinance Bank PLC, and others.



5. That other suit, and the present one, concern the same parcel of land, raises similar questions regarding ownership, possession, and auction processes, and involve overlapping parties and facts. In effect, what has been presented before this Court amounts to an inappropriate multiplication of litigation over the same property, under various procedural labels, and in separate fora. This is not an innocent overlap. It is a deliberate, strategic fragmentation of litigation designed to confuse and mislead the court into issuing undeserving orders.
6. Litigation is a solemn process; ‘litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks.’ In Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] eKLR, the court observed that:

“The concept of abuse of court/judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions... The employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents... abuse of court process arises in the following situations:

 - [a] Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues...
 - [f] Where a party has adopted the system of forum-shopping in the enforcement of a conceived right...”
7. This Court finds that the current litigation exhibits all the hallmarks of abuse of the court process, including multiplicity of proceedings on the same issue; forum shopping; procedural gaming through a series of status quo requests, injunction applications, and belated joinder attempts. The parties are trying to overwhelm the Court with distractions from the main question with the hope of gaining undue advantage of the other. This Court will not lend its process to parties who come, not in search of justice, but in pursuit of tactical advantage.
8. The application dated 24th March 2025, by the plaintiff, is not about preserving justice; it is about preserving possession while forestalling title enforcement. The Court declines to issue orders that halt the legal consequences of prior inaction, especially where no evidence of procedural irregularity is before the Court. In any event, the law under section 99[4] of the Land Act is clear on the reliefs available to any person prejudiced by an unauthorized, improper or irregular exercise of the power sale; damages. The equitable remedy of a temporary injunction will only issue where damages is not an adequate remedy. In this instance the law is categorical that the only remedy available is damages.
9. The 4th Defendant’s application for orders of eviction and a permanent injunction, is misplaced. Again I must reiterate that the law is clear and elaborate on how the right of entry and or eviction must be exercised. The 4th Defendant has not demonstrated compliance with sections 152E & 152F of the Land Act. She needs to reconsider her litigation strategy. In any event, an order of permanent injunction cannot issue before the hearing and determination of the case.
10. The most egregious of the three applications is the application by Patrick Kamau seeking joinder as a Plaintiff. This Court is aware that he is the Plaintiff in Kajiado ELC No. 046 of 2025. Yet he seeks to be joined as a Plaintiff in this suit to pursue the same cause in the same capacity. The application is clearly unmerited.



11. This Court is duty-bound to protect the judicial process from degradation. Accordingly, this Court makes the following orders:

1. The Plaintiffs' Application dated 24th March 2025 is hereby dismissed in its entirety.
2. The 4th Defendant's Application dated 7th April 2025 is hereby dismissed.
3. The Application by the Proposed 5th Plaintiff, Patrick Kamau, dated 24th April 2025, is hereby dismissed. Each party will bear its own costs.

12. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Gesumwa for the Defendants

Mr. Mongeri h/b for Mr. Wamalwa for the Plaintiffs

N/A by the proposed 5th Defendant

Court Assistant: Edwin

