



Gathuku v District Land Registrar Naivasha Land Registry (Environment and Land Miscellaneous Case E010 of 2025) [2025] KEELC 7796 (KLR) (Environment and Land) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7796 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND MISCELLANEOUS CASE E010 OF 2025
MC OUNDO, J
NOVEMBER 13, 2025**

BETWEEN

JECINTA MUKUHI GATHUKU APPLICANT

AND

DISTRICT LAND REGISTRAR NAIVASHA LAND REGISTRY RESPONDENT

RULING

1. Coming up for determination is a Notice of Motion Application dated 19th June 2025 brought under the provisions of Article 22 & 23 of *the Constitution* of Kenya 2010, Section 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Order 40, Order 51 Rule 1 of the Civil Procedure Rules, Section 30(1) of the *Land Registration Act* No. 3 of 2012 Laws of Kenya and all other enabling provisions of the law) wherein the Applicant has sought for orders compelling the Respondent herein to issue the Applicant with the Title Deed for Parcel of Land known as L.R. Kijabe/Kijabe/ Block 1/26417 a subdivision of Kijabe/ Kijabe/Block 1/2601 situated within Mai Mahiu within the County of Nakuru with immediate effect and thereafter issue injunct the Respondent from interfering whatsoever with the said parcels of land. The applicant also sought for Costs of the Application.
2. The said application was supported by the grounds therein as well as the supporting Affidavit of 19th June 2025, sworn by Jecinta Mukuhi Gathuku, the Applicant herein who deponed that she was the registered proprietor of all that parcel of land known as L.R. Kijabe/Kijabe/Block 1/26417 which was a subdivision of Kijabe/Kijabe/Block 1/2601 and which land was situated in Mai Mahiu within the County of Nakuru in the Republic of Kenya.
3. That the said subdivision of Kijabe/Kijabe/Block 1/2601 was contained on the maps Sheet Number 9 of Kijabe/Kijabe/Block 1 herein annexed and marked as “JMG1” and “JMG2” and which are evident



- from the copies of Title Deeds in her possession namely L.R. Kijabe/Kijabe/ Block 1/26416 and L.R. Kijabe/Kijabe/ Block 1/26418 issued by the Respondent and annexed as “JMG3” and “JMG4”.
4. She deponed that the Respondent had issued her with the Certificates of Titles (Title Deeds) for all of her other parcels of land arising out of the subdivisions of Kijabe/Kijabe/Block 1/2601 situated in Mai Mahiu within the County of Nakuru ranging from L.R. Kijabe/Kijabe/ Block 1/26415 to L.R. Kijabe/Kijabe/ Block 1/26425 save for L.R. Kijabe/Kijabe/Block 1/26417, without lawful justification.
 5. She asserted that this failure was causing her great danger of losing her property and that she is suffering immensely financially and psychologically. She deponed that the Respondent's actions violated her Constitutional Rights specifically Articles 28 (Dignity), 31(b) (Privacy, includes freedom from psychological torture), 40 (Property), and 43(1)(b) (Housing) of *the Constitution*.
 6. That the Respondent has stubbornly declined, ignored, refused, neglected, and failed to issue the deed and therefore she sought that the orders sought be granted immediately to prevent the continued violation of her rights and avoid irreparable loss and damage. She further argues that the Respondent would suffer no prejudice if the orders are granted.
 7. In response and in opposition to the Applicant's Application, the Respondent filed its Grounds of Opposition dated 10th July, 2025 opposing the said Application on the grounds that;
 - i. The Application is procedurally misconceived, an abuse of court process and ought to be dismissed at the first instance.
 - ii. The Applicant has not satisfied the grounds needed for the grant of the orders sought.
 - iii. The Applicant has not demonstrated the principles set out in the precedent setting case of *Giella v Cassman Brown & Co. Ltd (1973) EA 358*.
 - iv. The Applicant has not demonstrated in her application that she has a prima facie case for the court to grant the orders sought.
 - v. The Applicant has not demonstrated that she will suffer irreparable injury if court does not grant the injunction.
 - vi. That the Applicant had not presented any evidence in support of her claim that she was the proprietor of the suit parcel of land and that she had requested for the issuance of the certificate of title and the same was denied.
 - vii. That the Honorable Court dismisses the Application herein.
 8. In retort, the Applicant's stand through her further Affidavit was that the Respondent's Grounds of Opposition dated 10th July 2025 were frivolous, in bad taste, a red herring, a waste of judicial time and resources, an abuse of court process and should be dismissed with costs. That she had the Respondent on various occasions which was not denied wherein on 12th October 2017, the Mutation Form Serial Number 04328483 had been submitted to the Respondent by a Licensed Surveyor who had carried out the Sub-divisions which had yielded land parcel No. L.R. Kijabe/Kijabe/ Block 1/26417 from L.R. Kijabe/Kijabe/ Block 1/2601, the suit property herein as could be seen from the copy of the said Mutation Form annexed and marked as “JMG1”.
 9. She reiterated the contents of her Supporting Affidavit on how the Respondent had issued her with all the Title Deeds for the subdivisions of Kijabe/Kijabe/Block 1/2601 save for land parcel No. L.R. Kijabe/Kijabe/ Block 1/26417, stating that 12 years was a very long time to wait for the issuance.



10. Directions were taken for the disposal of the Application by way of written submissions which I shall proceed to summarize as herein under.

Applicant's Submissions.

11. The Applicant vide her submissions dated 31st July, 2025 reiterated the contents of her Notice of Motion Application herein and the Supporting Affidavit to submit that it was fair, just and in the interest of justice that the orders sought were granted.

Respondent's Submissions

12. The Respondent's Submissions, dated 7th August 2025, was for the dismissal of the Applicant's suit for reason that the Applicant failed to comply with statutory requirements for title issuance and had not met the legal threshold for the equitable relief of an injunction. The Respondent framed their issues for determination as follows:
 - i. Whether the Applicant committed material non-disclosure.
 - ii. Whether the Applicant satisfied all statutory requirements under the [Land Registration Act, 2012](#).
 - iii. Whether the Respondent breached any statutory duty owed to the Applicant.
 - iv. Whether the orders of injunction sought should be issued.
13. On the first issue on material non-disclosure, the Respondent argued that the Applicant seeks an equitable remedy of injunction but has failed to "come to court with clean hands." That while providing general documents like the mutation form and Land Control Board (LCB) consent, the Applicant failed to "specify the specific parcels of land they claim entitlement to" following the subdivision. That this omission was a "fundamental omission" and a "material non-disclosure" that renders the case "fundamentally defective and unsustainable" because the Land Registrar cannot issue a title without the unambiguous identification of the specific parcel claimed (L.R. Kijabe/Kijabe/Block 1/26417). Reliance was placed in the decided cases of *Eric V. J. Makoka & 4 others v Lawrence Sagini & 2 others*, Civil Application No. 20 of 1994 (12/94/UR) and *Brinks-MAT Ltd v Elcombe* (1988) 3 ALL ER 188 where the court had set out what has to be considered to be material non-disclosure.
14. On the second issue for determination, the Respondent's submission had been that the Applicant had failed to to Meet Statutory Requirements ([Land Registration Act, 2012](#)) as acquisition of a new title after subdivision was not automatic and required compliance with specific procedures. That the Applicant had provided no evidence of a formal application for the issuance of new title deeds for the specific parcel, as required by Section 30(1) of the [Land Registration Act](#), thus failing to demonstrate compliance with Regulation 30 of the Land Registration (General) Regulations.
15. In regard to the third issue for determination, the Respondent's submission had been that they had not breached any Statutory Duty as the Land Registrar operates strictly within the confines of the [Land Registration Act, 2012](#) and cannot act ultra vires (beyond their legal power). That it was incumbent of the Land Registrar to verify all documentation and could not therefore issue title deeds without the clear identification of the specific parcel, formal applications for title deeds, payment of requisite stamp duty and complete documentation establishing the Applicant's specific entitlement. That the burden of proof lay squarely on the Applicant to demonstrate their legal entitlement and completion of all statutory procedures, which she had failed to discharge.



16. Lastly that the applicant had failed to satisfy the requirements for Injunctive Orders as was established in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. That the suit was without merit, premature, and defective and ought to be dismissed with costs.
17. The Applicant filed Supplementary Submissions dated 21st August 2025 in a rejoinder to the Respondent's Written Submissions dated 8th August 2025 without leave of the court wherein the said Supplementary Submissions are herein struck out from the record of the court.

Determination.

18. I have considered the Applicants' application, its opposition, the submissions by parties, the law as well as the authorities therein cited.
19. Subsequently, the court has been moved under Certificate of Urgency, by the Applicant, for orders to compel the Respondent herein to issue her with the remaining Title Deed for Parcel of Land known as L.R. Kijabe/Kijabe/ Block 1/26417 which was a subdivision of Kijabe/Kijabe/Block 1/2601 situated within Mai Mahiu within the County of Nakuru. She has also sought for orders, injunctioning the Respondent from interfering whatsoever with the said parcels of land, as well as for costs of the Application.
20. The Respondent in response sought for the dismissal of the application for reason that it was procedurally misconceived, an abuse of court process as then Applicant had failed to disclose all material information of her failure to provide all necessary documentation and/or comply with all statutory requirements for issuance of the title. That the Applicant had not presented any evidence in support of her claim that she was the proprietor of the suit parcel of land wherein her request for the issuance of the certificate of title has been denied.
21. Accordingly, the issue that arises for determination herein is whether the Applicant's application should be allowed.
22. The celebrated case of *Giella vs Cassman Brown* (1973) EA 358 sets out conditions for the grant of an interlocutory injunction as follows: -
 - i. Is there a serious issue to be tried (*prima facie* case)?
 - ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
 - iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "*balance of convenience*").
23. Upon considering the arguments herein advanced and the annexures to the Applicant's sworn affidavits, it is not in dispute that Kijabe/Kijabe/Block 1/2601, which had been registered to Simon Kimani Kibarabara, Hannah Wambui Nganag and Jacinta Mukuhi Gatuku had been closed upon the subdivision of parcels No. L.R. Kijabe/Kijabe/Block 1/26415 to L.R. Kijabe/Kijabe/Block 1/26425. That pursuant to the subdivisions, the Applicant had been issued with all the Title Deeds for the subdivisions save for title to land parcel No. L.R. Kijabe/Kijabe/Block 1/26417. She annexed titles to land parcel No. L.R. Kijabe/Kijabe/Block 1/26416 and L.R. Kijabe/Kijabe/Block 1/26418 to confirm that the middle parcel of land No. L.R. Kijabe/Kijabe/Block 1/26417 which was part of the same subdivision transaction (Kijabe/Kijabe/Block 1/2601) was missing.
24. I find that the existence of these other titles from the same subdivision, which were duly issued by the Respondent, served as *prima facie* evidence of the Applicant's entitlement and ownership derived from the same sub-division process and therefore the issue of none disclosure as proposed by the Respondent



cannot arise. In fact the Applicant had specifically identified the missing title to parcel of land as L.R. Kijabe/Kijabe/Block 1/26417.

25. The Respondent is a statutory entity responsible for the process. The issuance of ten other titles from the same subdivision proved that the Respondent must have been satisfied that all necessary procedures and documentations—including the mutation form, LCB consent, stamp duty, and application requirements under the *Land Registration Act, 2012* (specifically Section 30(1) and Regulation 30)—were met for the entire subdivision. I find that there had been compliance wherein the Applicant had fulfilled all requirements that led to the issuance of the other ten (10) titles, hence the failure to issue the 11th title to the suit property points to an arbitrary or unjustified omission by the Respondent to issue the single remaining title, and therefore breach of this duty and not a lack of due process by the Applicant.
26. Applying the principles set out in the celebrated case of *Mrao vs First American Bank of Kenya Limited & 2 Others* (2003) KLR 125, where a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
27. I find that the Applicant has established a prima facie case as herein above explained.
28. On the second issue as to whether the Applicant will suffer irreparable harm if the injunction is not granted; I find that the Respondent having hoarded title to the suit parcel of land without justification, the Applicant has been exposed to constitutional and psychological harm on the loss of right to property, dignity, freedom from torture as envisaged under Articles 40, 28, 31 of *the Constitution* wherein the threat of losing the property is irreparable.
29. Lastly as to which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits; (Often called "balance of convenience"), I hold in favour of the Applicant wherein compelling the Land registrar to perform their duty is not an undue restraint but an enforcement of the law.
30. I find that the Respondents preliminary objection and argument unsubstantiated and designed to frustrate a legitimate claim. the Respondent breached its statutory and constitutional duties.
31. The Respondent shall within 14 days of this Ruling issue Title Deed for L.R. Kijabe/Kijabe/Block 1/26417 to the Applicant as prayed.
32. The Application dated the 19th June 2025 is herein allowed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 13TH DAY OF NOVEMBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE

