



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC NO E020 OF 2025

GAICHANJIRU ESTATE LIMITED.....1ST PLAINTIFF
MARY NJERI WAINAINA2ND PLAINTIFF
KINIU NDUNG'U.....3RD PLAINTIFF
CHARLES NDUNG'U NGUGI.....4TH PLAINTIFF

VERSUS

DANSON MAINA NJUGUNA1ST DEFENDANT
JACKSON KUNG'U NDUNG'U2ND DEFENDANT
NG'ANG'A MUITA.....3RD DEFENDANT
MISCHECK GICHUHI MWAI.....4TH DEFENDANT
MARGARET WAIRIMU MUTURI.....5TH DEFENDANT
JABALI CONSTRUCTION KENYA LIMITED.6TH DEFENDANT
EQUITY BANK(K) LIMITED..7TH DEFENDANT
REGISTRAR OF TITLES, MURANG'A COUNTY.....8TH DEFENDANT
COUNTY SURVEYOR, MURANG'A COUNTY.9TH DEFENDANT
ATTORNEY GENERAL..10TH DEFENDANT

RULING

1) This ruling is on the notice of motion dated 24-4-2025. The motion which is brought under **Sections 1A, 1B and 3A** of the **Civil Procedure Act** and **Orders 40 rules 1-3** and **51 rule 1** of the **Civil Procedure Rules** seeks the following residual orders.

4. Pending the hearing and determination of this suit, the 6th and 7th Defendants whether by themselves, their servants and/or agents be restrained from selling, charging, transferring or otherwise dealing with L.R. No. Kakuzi/Kirimiri/Block 10/703, suit land.

5. Pending the hearing and determination of this suit, the 1st to 5th, 8th and 9th Defendants whether by themselves, their servants and/or agents be restrained from selling, charging, subdividing, transferring or otherwise dealing with any subdivision arising from the original L.R. No. 4743 Kakuzi, L.R. No. Kakuzi/Kirimiri/Block 10/536 and 622.

6. That costs of this application be provided for.

- 2) The motion is based on eleven (11) grounds and is supported by an affidavit sworn by the 4th Plaintiff dated 24-4-2025. The gist of the motion is as follows. One, the 2nd to 4th Plaintiffs were at all the material times the valid and lawful directors of the 1st Plaintiff which is the owner of the suit land. Two, the 2nd and 4th Defendants had lawfully subdivided the original suit land L.R. No. 4743 Kakuzi into four(4) major portions which included Kakuzi/Kirimiri/Block 10/536 and 622. Three, in the year 2008, the 1st to 5th Defendants unlawfully and without having been elected unlawfully and illegally took over the management of the 1st Plaintiff. They also fraudulently and illegally leased the 109 acre coffee portion in Kakuzi/Kirimiri/Block 10/536 to one Alex Maina at a consideration of Kshs. 1 Million per year. Around the year 2015, the same Defendants caused amalgamations and subdivisions of the initial parcels Kakuzi/Kirimiri/Block 10/536 and 622 resulting to among others L.R. Nos. Kakuzi/Kirimiri/Block 10/703 (40.58 Ha) and 701 (2 Ha) which they allegedly set aside for school though in the name of Danson Maina. Four, on 1-7-2016 the 1st to 5th Defendants fraudulently and illegally sold L.R. No. Kakuzi/Kirimiri/Block 10/703 to Jabali Construction Kenya Limited the 6th Defendant. On 13-7-2016, the 6th Defendant fraudulently charged the title to L.R. No. 703 to Equity Bank the 7th Defendant to secure a sum of Kshs. 90 Million. The same Defendants have caused further and illegal subdivision of the original title L.R. No. 4743 Kakuzi. Five, through this suit, the Plaintiffs seek for an order that the 8th and 9th Defendants herein to cancel all the titles for and the subdivisions made on the original L.R. No. 4743 from the year 2007 and revert to the initial subdivisions being Kakuzi/Kirimiri/Block 10/536, 622 and 464 and all the plots previously allocated to the members before 2007. Six, the Plaintiffs were in the process of issuing title deed to the 630 members of the 1st Plaintiff when they were violently removed and chased from office by the 1st to 5th Defendants yet the said Defendants were not elected and had no mandate of the shareholders. In the company records, it is the 2nd to 4th Plaintiffs who are recognized as the *bona fide* directors of the 1st Plaintiff. Finally, the 1st to 5th Defendants are involved in fraudulent activities and the court should allow the prayers as per the notice of motion.
- 3) The motion is opposed by the 1st to 5th Defendants and the 1st Defendant has sworn a replying affidavit dated 30-6-2025 in which he responds as follows. Firstly, the 2nd and 4th Plaintiffs

lack *locus standi* to bring this suit because none of them is a director of the 1st Plaintiff. The 2nd and 3rd Defendants were removed as directors of the 1st Plaintiff on 20-9-2008 and the 3rd Plaintiff is no longer a shareholder of the 1st Plaintiff having sold his shares to the 6th Defendant in the year 2015. Secondly, the 1st to 5th Defendants were confirmed by the minutes of the extraordinary AGM held on 24-1-2009 and reconfirmed on 26-2-2011. They were mandated by the members to oversee the management and control of the 1st Plaintiff's assets and this included selling, leasing or selling a portion of the estate including Block 10/703. Finally, the 1st Plaintiff is in the process of winding up since there are no assets and liabilities left in the name of the Company.

4) In addition to the replying affidavit, the 1st to 5th Defendants have filed a notice of preliminary objection dated 23-6-2025 which is based on two grounds.

1. That the 2nd – 4th Plaintiffs lack the *locus standi* to present this suit together with the application since they are not directors of the 1st Plaintiff and that the legal and known directors have not authorized them to institute the suit on their behalf.

2. That the 4th Plaintiff is a stranger and not an agent or official of the Company hence cannot purport to have the authority of the company to swear the affidavit and institute the suit on its behalf.

5) The only submissions filed within the timeline of 15-10-2025 are those by the counsel for the 6th Defendant. No other submissions are on record at the time of writing this ruling in late October (21-10-2025). Counsel for the 6th Defendant has correctly submitted that since the reliefs sought are injunctive, the only issue for determination is whether the Plaintiffs have attained the threshold for the grant of an order of injunction. Secondly, I am expected to decide on the preliminary objection raised by the 1st to 5th Defendants.

6) Starting with the preliminary objection, I find that it is not well anchored on sufficient material to warrant the striking out of the entire suit. At the heart of the dispute is who between the 2nd to 4th Plaintiffs and the 1st to 5th Defendants are the legitimate directors of the 1st Plaintiff. Each side claims to be the legitimate office holders. At this preliminary stage it is

not possible to decide who the legitimate office holders are. This is because the Defendants have not filed

sufficient evidence before the Court. In the case of **Oraro vs Mbaya[2005]** it was held that

“a preliminary objection must be on a pure point of law raised on the assumption that the facts pleaded by the opposing party are correct. It cannot be used where there is a need to investigate facts, or where the objection is founded on disputed facts that require evidence. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point. Anything that purports to be a preliminary objection but in fact deals with contested facts, or seeks evidence for its support, is not a true preliminary objection as a matter of legal principle”.

In this case, evidence is required to determine which of the two factions is the legitimate office holder. Such evidence will have to be adduced at the trial because it is not obvious to me as to who are the legitimate office holders of the 1st Plaintiff.

- 7) Coming back to the injunction, I find that the Court should consider the principles laid down in the case of **Giella vs. Cassman Brown 1973 EA 358**. The first principle is a prima facie case with a probability of success. I find that the Plaintiffs have established this because of the dispute over the leadership of the Company. Both sides claim to be the legitimate directors. If it turns out that the Plaintiffs are the legitimate directors and the Defendants continue dealing with the land before this case is resolved then this will be prejudicial to the Plaintiffs. Secondly, the Plaintiffs stand to suffer irreparable loss if the suit land is alienated while the case is pending determination. Finally, the balance of convenience tilts in favour of maintaining the status quo so that the substratum of the suit is preserved pending the final outcome of the suit.
- 8) Consequently and for the reasons already given, I am inclined to allow the notice of motion dated 24-4-2025 which I hereby do in terms of prayers 4 and 5.

Costs in the cause.

Dated, Signed and Delivered virtually at Murang'a this 11th day of November, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -
Court Assistant – Mwangi Njonjo
Plaintiff’s Counsel – Mr. Gacheru
1st to 5th Defendants’ Counsel – Miss Mwangi
8th to 10th Defendants’ Counsel – Miss Ngira
Miss Chege for the 6th Defendant