

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MAKUENI**  
**ELC NO. E004 OF 2025**

**KAMWELI PETROLEUM OIL KENYA LIMITED.. .....**  
**.....PLAINTIFF**

**-VERSUS-**

**MUENI MWANIA MULI.....1<sup>ST</sup>**  
**DEFENDANT**

**MULI MWANIA..... 2<sup>ND</sup>**  
**DEFENDANT**

**BENSON MWANIA..... 3<sup>RD</sup> DEFENDANT**

**SAMMY MULI.....4<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. This is a ruling in respect of a notice of motion dated 3<sup>rd</sup> March, 2025 in which the Plaintiff/Applicant seeks the following orders:

- 1) Spent
- 2) That an order of injunction be granted restraining the Defendants, their servants, relatives, agents, employees or any other person acting on behalf of the Defendants from entering, remaining, wasting, transacting, developing or in any manner dealing with the property known as LR No. MAKUENI/UNOA/67 pending the hearing and determination of this suit.
- 3) That cost of this application be in cause.

**Background**

2. The subject matter of this application is LR. No. Makueni/Unoa/67 (suit property) measuring 17.0 hectares. The suit property has been subject of litigation since 1996. In 1996 one Kamweli Mwangangi Kituku brought a suit against the 4<sup>th</sup> Defendant/Respondent including his mother Nzisa Muli. This suit was fully heard and in a judgment delivered on 19<sup>th</sup> July, 2001, the 4<sup>th</sup> Respondent in this matter including his mother were ordered to be evicted from the suit property.

3. The 4<sup>th</sup> Respondent's mother preferred an appeal to the Court of Appeal at Nairobi but the appeal abated owing to her death and failure to substitute the deceased. The 4<sup>th</sup> Respondent and his siblings filed a case before Machakos Environment and Land Court which case was transferred to Makueni but it also abated after the death of Kimwele Mwangangi Kituku.
4. The suit property was registered in the name of Kamweli Mwangangi Kituku on 6<sup>th</sup> August, 1993. The Applicant herein became registered owner of the suit property on 5<sup>th</sup> September, 2018. In 2025, the Applicant filed a suit against the Respondents for a declaration that it was the registered owner of the suit property and for eviction orders.

#### **Applicant's contention**

5. The Applicant contends that the Respondents trespassed into the suit property in 2015 and that they have since remained thereon and have prevented it from developing the land. The Applicant states that the Respondents have put up several semi-permanent structures on the suit property.
6. The Applicant states further that the Respondents have continued with their activities despite a judgment delivered on 18<sup>th</sup> July, 2001 in Machakos HCCC No. 256 of 1996 which restrained them and their servants from remaining or occupying the suit property. The Applicant further states that efforts to have them vacate the suit property have failed.

#### **Respondents' contention**

7. The Respondents opposed the Applicant's application based on a replying affidavit sworn on 30<sup>th</sup> April, 2025. The Respondents contend that the Applicant claims that they entered into the suit property in 2015 when there existed a suit in 1996 which was seeking their eviction. They state that a

caution against the suit property was irregularly removed paving the way for transfer of the suit property to the Applicant.

8. The Respondents contend that if the Applicant's application was to be granted, they will be evicted from land they have known as home for 70 years.
9. In a further affidavit by the Applicant sworn on 23<sup>rd</sup> June, 2025, the Applicant states that the issue of ownership was conclusively settled via Machakos HCCC No. 256 of 1996 where the allegations of fraud were addressed and cannot be reopened in this case.

### **Submissions by the Parties**

10. The parties were directed to file written submissions. The Applicant filed submissions dated 30<sup>th</sup> June, 2025. The Respondents filed their submissions dated 13<sup>th</sup> July, 2025.
11. The Applicant submitted that it had met the conditions set out in the case of **Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358**.
12. The Respondents submitted that the suit property was ancestral land which should not have been sold without spousal consent. The Respondent relied on the case of **Mugo Murwa Investment Ltd –vs- EWB & SB** where it was held that a property registered in the name of the husband is for the benefit of his wife and children.

### **Analysis and Determination**

13. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. The only issue for determination is whether the Applicant has met the threshold for grant of a temporary injunction.
14. The principles for grant of a temporary injunction were set out in the case of **Giella (Supra)**. An Applicant has to show that he has a prima facie case

with probability of success. An Applicant has also to show that he will suffer irreparable injury which will not be compensated in damages. If the court is in doubt, it will decide the application on a balance of convenience.

15. In the instant case the dispute over the suit property was determined on 18<sup>th</sup> July, 2001. An eviction was given the Defendants in that case were ordered to vacate within 90 days. For more than 24 years the decree in that suit was not executed. The decree in that case is stale and cannot be executed. In considering whether the Applicant has a prima facie case the issue of execution by filing a fresh suit comes into issue. With this in mind I do not see what prima facie case the Applicant has to warrant issuance of a temporary injunction.

### **Disposition**

16. The Applicant has not demonstrated that it will suffer injury which will not be compensated in damages. Even if the court was to be in doubt, the balance of convenience tilts in favour of the Respondents who have been in possession. I therefore find no merit in this application which is dismissed with costs to the Respondents.

It is so ordered.

.....  
**Hon. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT  
TEAMS THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

### **IN THE PRESENCE OF:**

Mr. Osoro for Respondents.

Ms. Kwoma for Mr. Mulwa for Applicants.

Court assistant – Steve Musyoki