



**Kyule v Katu & 4 others; Mutavi (Interested Party) (Environment and Land Case Civil Suit E106 of 2024) [2025] KEELC 7569 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7569 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE CIVIL SUIT E106 OF 2024  
AY KOROSS, J  
NOVEMBER 4, 2025**

**BETWEEN**

**JOHN NTHULI KYULE ..... PLAINTIFF**

**AND**

**LENAH WAVINYA KATU ..... 1<sup>ST</sup> DEFENDANT**

**JANE NJERI NDUNGU ..... 2<sup>ND</sup> DEFENDANT**

**MICHAEL NDUNGU MUGWANJA ..... 3<sup>RD</sup> DEFENDANT**

**MWEA FARMERS CO LTD ..... 4<sup>TH</sup> DEFENDANT**

**MACHAKOS COUNTY LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**DAVID NDOLO MUTAVI ..... INTERESTED PARTY**

**RULING**

1. This ruling considers two notices of motion: one filed by the plaintiff on 18/12/2024 and the other by the intended interested party (IP) on 17/01/2025. We will soon review a summary of these applications along with their respective responses.

**Motion dated 18/12/2024**

2. This motion is expressed to have been moved within the provisions of Sections 1A, 1B & 3A of the *Civil Procedure Act* and Orders 40, Rule 1, and 51(1), 3, 4 & 10(2) of the Civil Procedure Rules, and all other enabling provisions of the law. The plaintiff seeks the following reliefs from this court: -

- a. Spent.



- b. Spent.
  - c. That pending the hearing and determination of the main suit herein, this honourable court be pleased to issue a temporary injunction restraining the defendants, their agents, servants/workmen and any other person from disposing of, developing, subdividing or in any other manner whatsoever interfering with the land parcels nos. Ndithini Mananja Block 1/4068, 4069, 4070, 4071, 4072 and 4073 (the resultant subdivisions of Ndithini Mananja Block 1/171). Formerly plot provisionally numbered 161 on L.R. 11930/R.
  - d. That the costs of the motion be in the cause.
3. The motion is supported by the grounds outlined in the body thereof and the supporting affidavit of the plaintiff, sworn on the same date. In summary, he stated: a) that he is entitled to land parcels nos. Ndithini Mananja Block 1/4068, 4069, 4070, 4071, 4072, and 4073 (the resultant subdivisions of Ndithini Mananja Block 1/171), formerly plot provisionally numbered 161 on L.R. 11930/R (“suit properties”); b) by virtue of his purchase in approximately 1987 from the 4<sup>th</sup> defendant, for a consideration of kshs. 5,450/-, which he settled, an allotment letter was issued to him on 16/08/1994; c) that since 1987, he has been in actual possession and use of the suit property, where he commenced cultivating food crops, mango trees, and orange trees, and rearing livestock, awaiting survey and issuance of title deeds; d) he had maintained a quiet occupation until October 2024, when he began seeing strangers visiting the suit properties; upon inquiry, he discovered that they claimed purchasers’ interest; and
  4. E) He has since discovered that his plot no. 161 has been allocated the title no. Ndithini/Mananja Block 1/171 (“mother parcel”), and a title deed purportedly issued to the 1<sup>st</sup> defendant as the proprietor of the land; f) subsequently, the 1<sup>st</sup> defendant caused an illegal subdivision of the said mother parcel, thereby creating the suit properties; g) moreover, the 1<sup>st</sup> defendant unlawfully transferred some of the suit properties, namely Ndithini/Mananja Block 1/4072 and 4073, to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, respectively; h) recently, on 16/12/2024, the 3<sup>rd</sup> defendant, accompanied by the area sub-chief, police officers, and a group of other individuals, forcefully entered the suit properties and began beaconing them without his permission; i) lastly, he is concerned that unless the orders sought herein are granted, the defendants will dispose of the suit properties, rendering the suit nugatory, and he will suffer irreparable damage.
  5. The motion is opposed by the 1<sup>st</sup> defendant’s detailed replying affidavit, which she deposed to on 8/01/2025. Notably, she asserts that: (a) as evidenced in Machakos ELC 78 of 2018, the plaintiff was aware of the registration status of the suit properties as early as 25/03/2021; b) the mother parcel was issued to her deceased husband, Peter Masila Katu (“the deceased”), in 2008, having been purchased it from the 4<sup>th</sup> defendant on 5/08/1999 through a sale agreement; c) she has successfully administered the estate of the deceased by transferring the mother parcel into her name, subdividing it, creating the suit properties and transferring some of them; and, d) she explicitly states at paragraph 17 of her affidavit that:-

“That on the 8th October 2014, the District land Registrar of Machakos wrote to me vide a letter with reference number MKS/DLR/IV/Vol.21/180 informing me of a possible double issuance of Title Ndithini/Mananja Block 1/171 to Mr. Mutuku Kambo and my late husband. From the letter, it was apparent that the purported transfer to another person happened after the transfer had happened long ago to my late husband and after he had already died. In the letter, the District land registrar writes at paragraph 2 that, “Please



note that as per our records the above said land parcel 171 on 30th September 2008 was transferred by Mwea Farmers Company Ltd to Peter Masilu Katu (now deceased) and a title deed was issued to him.”

He continues to write at Paragraph 3 that, "On 19th April 2022 the said Mwea Farmers Company Ltd again executed another transfer in favour of Mutuku Kombo and a title deed was issued on 13th May 2011. However, the said title deed was recalled by my office when the same was noticed." Further, in the letter, in the last two paragraphs, the Registrar informed me that he did not have powers to revoke a title deed that was validly issued and that the issue should be resolved by Mwea Farmers Ltd and if not parties were free to seek redress from court.”

6. Regarding the 4<sup>th</sup> defendant, it opposed the motion by submitting a replying affidavit authored by its chairman, Mr. James Kilonzo, dated 8/01/2025. In this affidavit, he states that the plaintiff and 1<sup>st</sup> defendant are all strangers to it, as their records indicate that plot No. 161 was issued to one Mutuku Kambo, the IP’s father, and not to the plaintiff or 1<sup>st</sup> defendant.
7. Upon service and in brief rejoinder, the plaintiff filed a supplementary affidavit in which he states that there is an error in his assertions in Machakos ELC 78 of 2018, a suit that has since abated, and that the sale agreement of the 1<sup>st</sup> defendant lacks the signatures of the 4<sup>th</sup> defendant’s directors; in any case, the mother parcel was not available for sale.

#### **Motion dated 17/01/2025**

8. In this one, the IP seeks the following reliefs from this court: -
  - a. That this honourable court be pleased to join the applicant as an interested party in these proceedings.
  - b. That the costs of the motion be in the cause.
9. The motion is supported by the grounds outlined within the body of the motion and the IP’s supporting affidavit, which is sworn on the same date. To summarise, he states: a) that he is the son of Mutuku Kambo, who is now deceased; b) that Mutuku Kambo was the rightful owner of the suit property, now registered in the name of the 1<sup>st</sup> defendant; c) that the deceased was allocated the land by the 4<sup>th</sup> defendant herein; and d) that Machakos ELC Case 78 of 2018 by Mutuku Kambo against Lenah Wavinya Katu and Others, is pending before this court for hearing and determination, in which he has applied for substitution.
10. This motion is only challenged by the plaintiff’s replying affidavit, sworn on 26/02/2025, in which he reaffirms his earlier assertions. It is unnecessary to repeat them, but of particular interest is that he states Machakos ELC Case 78 of 2018 is abated and that the IP’s annexures all display his (plaintiff’s) name.
11. In quick reply, the IP filed a supplementary affidavit sworn on 5/03/2025 and reiterated his earlier assertions, arguing that his father has a proprietary interest in the said property and it is only fair and just that he be enjoined as an IP in these proceedings to defend and agitate for his interests. He also admitted that Machakos ELC Case 78 of 2018 has abated and that there is a pending application for its revival. It is noteworthy that he filed another affidavit dated 2/05/2025, which this court finds improperly on record and hereby strikes it out.
12. The motions are canvassed by written submissions. This court is incredibly grateful for the submissions filed by the law firms of Mss., Fred K. Musyimi & Associates for the plaintiff dated 2/05/2025, Asena



& Asena Advocates for the 1<sup>st</sup> defendant dated 23/04/2025, Kwew Advocates LLP for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants dated 23/04/2025, and those by DM Mutinda, Mwendwa & Co. Advocates for the IP dated 2/05/2025. Therefore, after identifying and considering the issues for determination, this ruling shall, later in its analysis and decision, consider the arguments contained in the rival submissions regarding the particular issue and also take into account the law and judicial precedents.

13. Accordingly, having reviewed the motions, their grounds, affidavits, annexures, as well as the opposing submissions, the ensuing issues, which will be addressed concurrently, that emerge for resolution are:
  - a. Whether the intended IP should be joined as a party to these proceedings.
  - b. Whether the plaintiff has met the threshold to warrant the grant of injunctive relief.And they shall soon be addressed in this court's analysis and determination.

**a. Whether the intended IP should be joined as a party to these proceedings.**

14. Order 1 Rule 10(2) of the Civil Procedure Rules (CPR) has predominantly been construed to mean that the party who ought to be joined or added to civil proceedings-whether as a defendant, plaintiff, or interested party, whose presence in the proceedings would be essential to assist the court in determining the matter effectively and comprehensively should be incorporated into the proceedings. This proviso, which has been relied upon by the IP states as follows: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

15. The Black's Law Dictionary, 11<sup>th</sup> Edn, page 1351, defines an interested party in the following terms:

“A party who has a recognizable stake (and therefore standing) in a matter.”

16. The meaning of this definition was reiterated in the Supreme Court of Kenya's decision in *Trusted Society of Human Rights Alliance v Matemo & 5 others* [2014] KESC 32 (KLR), as follows:

“3. An interested party was one who had a stake in the proceedings, though they were not initially a party to the cause. Such a person felt that their interest would not be well articulated unless they personally appeared in the proceedings, and championed their cause.”

17. When considering a motion for joinder, the court exercises prudent discretion rooted in law and reason. Therefore, this court adopts the guiding principles established in *Murutetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae)* [2016] KESC 12 (KLR), thus: -

“37. From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis



of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

18. In this case, the plaintiff and the IP party are in opposition, with the former asserting that the motion has not satisfied the required threshold, whereas the latter claims that it has. Therefore, it calls upon this court to exercise its discretion and consider whether the intended IP has met the established threshold and to conclude either way.
19. With regard to the IP’s supporting documents, he failed to submit any documents to substantiate his claims, as the papers he presented to this court all endorsed the plaintiff’s case rather than his own. At this stage of the proceedings, it remains uncertain whether these documents were erroneous; however, it is notable that the parties concurred that, in Machakos ELC Case No. 78 of 2018, albeit abated, the IP had instituted proceedings against some of the parties herein, and the subject matter was similar to the matter before this court. Furthermore, paragraph 17 of the 1<sup>st</sup> respondent’s affidavit, which was previously highlighted, demonstrates that the IP has an interest in the suit properties. Based on this observation, this court disagrees with the counsels opposing the joinder and concludes that the IP has a stake in the matter. Additionally, this court finds that the IP should be joined as a legal administrator of Mutuku Kambo’s estate and as a substantive party.

**b. Whether the plaintiff has met the threshold to warrant the grant of injunctive relief.**

20. The plaintiff’s motion is filed in accordance with Order 40, Rule 1 of the Civil Procedure Rules (CPR), which governs this court’s handling of applications of this nature. This statutory provision states: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

21. The principles for this court’s consideration in exercising its unfettered discretion to grant a temporary injunction are now well established through authoritative pronouncements. The three requirements are that an applicant, in this case the plaintiff, must: (a) establish his case at a prima facie level; (b) demonstrate irreparable injury if a temporary injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience is in his favour. See *Giella v. Cassman Brown & Co. Ltd*



[1973] EA 358 and reiterated in the Court of Appeal decision of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR). In the latter decision, the court stated: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

22. Consequently, the plaintiff must initially establish a prima facie case. In this case, the plaintiff asserts that he has satisfied the first criterion and relies upon the Court of Appeal decision of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), which held:-

“So what is a prima facie case? I would say that in civil cases it is a case in 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.”

23. Although the 1<sup>st</sup> respondent also relies on Mrao Ltd (Supra), she submits that the court should exercise caution and be guided by the decision of Nguruman Ltd case (Supra), which clarified that the court should refrain from conducting a mini-trial and must not scrutinise the merits of the case in detail. However, despite such caution, which this court affirms, counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents could not contain themselves and urged the court to consider the merits of the plaintiff's case, which this court declines.

24. After a thorough review of all the supporting documents in the motion, the plaintiff, who has the burden of proving a prima facie case, has shown a clear and undeniable right to protection that is directly at risk from the act being restrained. Moreover, all the court needs to establish is that, on the face of it, the person seeking an injunction has a right that has been or is at risk of being infringed. The plaintiff has adequately demonstrated this by presenting an alleged allotment letter from the 4<sup>th</sup> defendant for plot 61 dated 16/08/1994, along with various receipts from it that were allegedly issued to him in 1987. As a result, this court finds that the plaintiff has met the first threshold.

25. As held in Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] Vol. 1 EA 86, even if the applicant establishes a prima facie case, that alone is insufficient to warrant the grant of an interlocutory injunction. Accordingly, this court has to test if the plaintiff has met the other tests. Reverting to the 2<sup>nd</sup> test, of irreparable injury, the 1<sup>st</sup> respondent, in arguing the plaintiff had not met this test, urged the court to consider Nguruman Ltd case (Supra) which stated: -

“The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

26. In the present case, the plaintiff submitted several photographs purportedly evidencing possession and occupation. An examination of these photographs reveals mature fruit trees, other types of trees, and



various crops allegedly on the suit properties. The defendants did not contest the assertion by the plaintiff that he was in possession; consequently, this court determines that he has satisfied the second threshold by demonstrating that no alternative remedy exists to protect him from potential harm if the orders are not granted. Regarding the final criterion, this court finds that the balance of convenience favours the plaintiff.

27. Finally, this court finds the notices of motion respectively dated 18/12/2024 and 17/01/2025 merited, and since it is well established that costs follow the event, costs shall be in the cause. Having made this determination, this court hereby issues the following disposal orders: -

- a. That the intended interested party be joined to these proceedings in his capacity as the legal representative of Mutuku Kambo as a defendant.
- b. The plaintiff is directed to serve all pleadings on the intended defendant within 14 days hereof.
- c. That upon being served, the intended defendant shall file responses to the pleadings within 21 days of service, and he shall serve his filings on all the parties hereto.
- d. That pending the hearing and determination of the main suit herein, a temporary injunction is hereby issued restraining the defendants, including the intended defendant, their agents, servants/workmen and any other person from disposing of, developing, subdividing or in any other manner whatsoever interfering with the land parcels nos. Ndithini Mananja Block 1/4068, 4069, 4070, 4071, 4072 and 4073 (the resultant subdivisions of Ndithini Mananja Block 1/171).
- e. That parties are directed to comply with Order 11 of the Civil Procedure Rules within 60 days hereof.
- f. That, from now henceforth, no other or further applications shall be entertained by the court unless with leave.
- g. That a mention date shall be given for purposes of pretrial directions.
- h. Costs shall be in the cause.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**04.11.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Musyimi for plaintiff.

Miss Asena for 1<sup>st</sup> respondent.



Miss Sibika holding brief for Mr. Kelvin Musyimi for intended interested party.

Mr. Simiyu holding brief for Mr. Wabuge for 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

