

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC APPEAL NO. E033 OF 2024

DAVID MUSAU MULANDI.....1ST PLAINTIFF
JOSEPH MUTUA ZAKAYO..... 2ND PLAINTIFF

-VERSUS-

MAURINE MBETE NGALA.....1ST
DEFENDANT
PETER NTULI NDUULU.....2ND DEFENDANT
DISTRICT LAND ADJUDICATION & SETTLEMENT
OFFICER (KIBWEZI)..... 3RD
DEFENDANT
LAND REGISTRAR (MAKUENI)..... 4TH DEFENDANT
DIRECTOR LAND ADJUDICATION & SETTLEMENT
(NAIROBI).....5TH DEFENDANT
THE ATTORNEY GENERAL..... 6TH
DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 18th October, 2024 in which the Plaintiffs/Applicants are seeking the following orders:
 - 1) Spent
 - 2) Spent
 - 3) That this honourable court be pleased to grant a temporary injunction orders against the Defendants/Respondents, their servants, employees, agents and/or whom whatsoever from entering, trespassing, constructing, cultivating, selling, disposing off, transferring and/or dealing in any manner with land parcel No. Makueni/Kiboko “B”/491 situated within Kiboko “B” Settlement Scheme in Makindu Sub-county within Makueni County pending the hearing and determination of this suit.
 - 4) That the Officer Commanding Police station at Makindu police station to enforce compliance of this order.

5) That cost of this application be borne by the Defendants/Applicants herein.

2. The 1st Plaintiff/Applicant contends that on 30th June, 1999, he was offered plot No. 491 at Kiboko “B” Settlement Scheme. He accepted that offer and a charge was created over the plot upon payment of the requisite amount. On 22nd August, 2008 he sold the plot to the 2nd Plaintiff/Applicant who took possession and started undertaking farming activities on the land.
3. In the month of August, 2024 the 2nd Applicant informed him that he had visited the lands office at Makueni where he found out that plot 491 had been re-allocated to the 1st Defendant/Respondent who proceeded to transfer it to the 2nd Defendant/Respondent who now had a title for the same being Makueni/Kiboko “B”/491 (suit property).
4. The 1st Applicant contends that the reallocation was done without his knowledge. The 2nd Applicant annexed a copy of sale agreement between him and the 1st Applicant, copy of search and evidence of a caution which he registered over the suit property.
5. In a supplementary affidavit sworn on 16th May, 2025, the 1st Applicant annexed a copy of receipt which was issued to him on 25th September, 2002. He denied receiving any of the letters which led to the reallocation of the suit property to the 1st Respondent.
6. The 2nd Respondent opposed the Applicants’ application based on a replying affidavit sworn on 19th February, 2025. He contends that he is the registered owner of the suit property which he purchased from the 1st Respondent. The 1st Applicant had been allotted the suit property but he failed to meet the conditions attached to the allocation. The 1st Applicant was asked to remedy the breach but he failed. The suit property was reallocated to the 1st Respondent who proceeded to sell it to him.

7. The 2nd Respondent states that he was put in possession and continued to use the suit property until the 2nd Applicant started to interfere with it hence the filing of this suit.
8. The parties were directed to file written submissions. The Applicants filed submissions dated 16th May, 2025. The 1st and 2nd Respondents filed their submissions dated 22nd May, 2025.
9. The Applicants submitted that they had met the threshold set in the case of **Giella –vs- Cassan Brown & Co. Limited (1973) EA 358** where it was held as follows:

“Firstly, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”.
10. The 1st and 2nd Respondents submitted that the Applicants have not demonstrated that they have a prima facie case or will suffer irreparable injury as provided for in the Giella case (Supra). The Respondents submitted that if an injunction order is issued it will amount to an eviction order. They further submit that the balance of convenience tilts in favour of the 2nd Respondent who is in possession.
11. I have carefully considered the materials placed before me vis –a- vis the rival contentions by the parties. The Applicants contend that it is the 2nd Applicant who is in possession. On the other hand, the Respondents contend that it is the 2nd Respondent who is in possession.
12. If it is true that it is the 2nd Applicant who is in possession, one would wonder why he needs police assistance to remain in possession or enforce compliance. There is an issue of reallocation of the suit property which has

arisen. Whether that was done properly or not is not a question for determination in this application.

13. The 2nd Applicant claims to have purchased the property in 2008. He alleges to have only gone to the lands office after 16 years from the date of purchase. The 2nd Respondent is said to be in possession and considering the manner in which he came to process title, I do not see what prima facie case the Applicants have to warrant of issuance of injunctive orders.

14. Even if the court was to entertain doubts in the manner reallocation was done, the balance of convenience tilts in favour of the 2nd Respondent who has title to the suit property and is in possession of the suit property. I will therefore decline to grant any injunctive orders and proceed to dismiss the Applicants' application with costs to the 1st and 2nd Respondent.

It is so ordered.

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Hon. E. O. Obaga

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 13TH DAY OF NOVEMBER, 2025.**

IN THE PRESENCE OF:

Ms. Isika for 1st and 2nd Defendants.

Mr. Mutua for Mr. Onyancha for Plaintiffs/Applicants.

Court assistant – Steve Musyoki