



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mbiyu v Waiganjo (Land Case E133 of 2025)
[2025] KEELC 7599 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E133 OF 2025
CA OCHIENG, J
NOVEMBER 6, 2025**

BETWEEN

EDDAH WANJIRU MBIYU PLAINTIFF

AND

NANCY WAIRIMU WAIGANJO DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion dated 26th March 2025 where she seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of this suit, the Defendant/Respondent by herself, her agents, servants or anybody acting on her behalf be restrained by this court from leasing, tilling, entering or in any other way interfering with the Plaintiffs quiet occupation and ownership of the suit parcel of land LR 151 /9.
 - d. That the Defendant be compelled to remove all the persons she has brought onto the Plaintiff/Applicant's parcel of land.
 - e. That costs be provided for.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. She avers that she constitutes the 4th household of the estate of the late Mbiyu Koinange and that by virtue of a Judgement delivered by Justice Muchelule on 7th May 2020, the Estate of the Late Mbiyu Koinange was distributed to the beneficiaries and among the assets distributed is land parcel L.R 150/14 Ehothia Farm measuring 600 acres and out of it, she was allocated L.R 151/9, hereinafter referred to as 'suit land', measuring 4.6 acres. She annexed a survey and sub-division plan to that effect.



3. She claims that the Defendant is not a beneficiary of the estate of the late Mbiyu Koinange. Further, that the Defendant claimed to be a wife of one of the sons of Mbiyu Koinange but the said son, David Waiganjo (now deceased) denounced her and filed an affidavit in Court to dissociate himself from her in High Court P & A 527 OF 1981 In the matter of the Estate of Mbiyu Koinange.
4. It is her case that the Defendant entered her parcel of land and cut down all indigenous trees, which she sold to one Tumuti for Kshs. 400,000/= and thereafter leased the land to third parties and has been leasing it out and collecting rent since 2021.
5. She avers that on or about February 2025, she contracted the firm of Palm Golding Limited to assist her get a buyer for the suit land. Subsequently, the firm erected a signage on the suit land inviting buyers but the Defendant removed it and erected a signage indicating that the land is not for sale. She reiterates that unless the Defendant is stopped, she will continue to trespass on the suit land and deny her the use of her parcel.
6. The application is opposed by the Defendant who filed a replying affidavit. She avers that she is a legitimate beneficiary of the Koinange estate, being that she is a widow of David Waiganjo Koinange (deceased) son of Mbiyu Koinange (also deceased) and upon her husband's death, she filed Succession Cause No. 957 of 2020 at Milimani High Court. She claims that the suit land was allocated to her husband during his lifetime and that she has been farming it openly with the full knowledge of all relevant parties and beneficiaries and contends that the Plaintiff has not tabled evidence of her allegations and she has no ownership documents to the said suit land.
7. The Plaintiff filed further affidavit in reply to the Defendant's replying affidavit, she annexed a certificate of Confirmation of Grant in respect of the estate of Mbiyu Koinange (deceased) and avers that the survey and subdivision scheme of the Ehothia farm was done by surveyors appointed by administrators and that the approved subdivision for the land done on 21st March 2021, demarcates her parcel as B1 measuring 4.6 acres. Further, that after distribution of the Estate of Mbiyu Koinange, she was allocated 42.5 acres in Ehothia farm while Margaret Njeri was allocated (thirteen) 13 acres in Waehothia Farm. Subsequently, they exchanged an acreage with her, thus Margaret Njeri forfeited her acreage in Ehothia farm to her and she forfeited her acres in Waehothia Farm to her. She annexed a transfer for LR 159/9 Ehothia Farm from Estate of late Mbiyu Koinange to her and avers that the Defendant does not have Letters of Administration to the estate of David Waiganjo (deceased).
8. The application was canvassed by way of written submissions.

Submissions

9. The Plaintiff submits that she has established the threshold for grant of injunctions as set out in *Giella v. Cassman Brown & Co. Ltd* [1973] E.A. 358. She contends that she has a prima facie case, having established that she is the administrator and beneficiary of the Estate of the Late Mbiyu Koinange by virtue of a Certificate of Confirmation of Grant. Further, that the balance of convenience tilts in her favour since she is the legal proprietor of the suit land and her right to the land has been unlawfully interfered with by the Respondent who is currently in illegal and unlawful occupation.
10. She submits that this case calls for issuance of a mandatory injunction at the interlocutory stage since the Respondent is a stranger to the estate of the late Mbiyu Koinange and a trespasser in the suit land. To this end, she relies on the cases of *Kenya Breweries Limited & another v Washington O. Okeyo* [2002] eKLR and *Shariff Abdi Hassan v Nadhif Jama Adan* [2006] eKLR.
11. On her part, the Defendant submits that without the surveyor mandated by all the administrators, or the actual surveyor who made the purported subdivision of LR 150/14 Ehothia farm coming to Court



- together with filing a Surveyors' report on the process it adhered to, in arriving at the alleged Plaintiff's parcel/title LR 151/9, the Plaintiff's allegations and documents are speculative and they have not been proven to the standards required in the *Evidence Act*, thus she is not deserving of the orders sought.
12. She also submits that she is a legitimate beneficiary in occupation of the suit land in stark contrast to the Plaintiff's speculative documents. Further, that she has been in open, continuous, and exclusive occupation of the suit land, allocated to her late husband for over twenty (20) years.
 13. The Defendant also submits that the plaintiff has not demonstrated irreparable harm as her allegations of tree cutting and interference with a potential sale are quantifiable and can be assessed in the unlikely event that her case prevails. In contrast, she submits that she risks being rendered landless, which outweighs any speculative commercial inconvenience to the Plaintiff.
 14. It is also her submission that granting the mandatory orders sought herein would have a catastrophic effect on her and her family would be violently uprooted from their home. She urges the Court to issue an order of status quo that has existed for over twenty (20) years. To buttress her averments, she relied on the following decisions: Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 Others [2016] eKLR; Gobe v Bora (Environment and Land Appeal E005 of 2023) [2025] KEELC 3267 (KLR) (7 April 2025) (Judgment); Caroline Awinja Ochieng & another v Jane Anne Mbithe Gitau & 2 others [2015] eKLR and James Muniu Mucheru v National Bank of Kenya Limited [2019] eKLR.

Analysis and Determination

15. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the following are the issues for determination: Whether the Defendant should be restrained from interfering with the Plaintiff's quiet occupation and ownership of L.R 151 /9. Whether the Defendant should be compelled to remove all the persons she has brought onto the suit parcel.
16. The Plaintiff claims that she was allocated L.R 151/9 which was part of L.R 150/14 (Ehothia farm), being a beneficiary of the Estate of Mbiyu Koinange (deceased) and that the Defendant has trespassed thereon.
17. On her part, the Defendant claims that she is entitled to the suit land by virtue of being a widow of David Waiganjo Koinange (deceased), son of Mbiyu Koinange (also deceased) and that she has been on the suit parcel for over twenty (20) years, her husband having been allocated the said land in his life time.
18. In applying the principles established in the case of Giella Vs Cassman Brown (1973) EA 358 as well as the definition of a prima facie case as stated in the case of Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) KLR 125, I will proceed to analyze whether the Plaintiff has established a prima facie case to warrant the orders of temporary injunction as sought.
19. Looking at the documents presented which include the Certificate of Confirmation of Grant, I note the Plaintiff is indeed a beneficiary of the Estate of Mbiyu Koinange (deceased) and has furnished Court with a Transfer Form and Deed Plan for the suit land. There is further no indication that the Defendant is representing the estate of the said David Waiganjo, however there is a pending succession cause being Milimani High Court Succession Cause No. 957 of 2020, which was filed before the Certificate of Confirmation of Grant in respect to estate of Mbiyu Koinange was rectified on the 9th May, 2023, in Succession Cause no. 527 of 1981. Further, I note both the Plaintiff and David Waiganjo (deceased) were allocated equal portions of land being 42.5 acres in the said succession cause.
20. The Plaintiff has not furnished Court with the Certificate of title for the land she claims the Defendant has trespassed on. The Defendant on the other hand insists that she is occupying a portion of land that



belonged to the late David Waiganjo as his widow which the Plaintiff disputes. However, since this is a dispute relating to a succession cause over the estate of the late Mbiyu Koinange (deceased), noting that the late David Waiganjo was one of the beneficiaries. Further, noting that the Defendant claims to be a widow and beneficiary of the late David Waiganjo and there is a pending succession cause in respect to the said estate being Milimani High Court Succession Cause No. 957 of 2020, to my mind, these are issues which cannot be determined at this interlocutory stage.

21. In the foregoing, I find that the Plaintiff has not established a prima facie case to warrant the orders of interlocutory injunction as sought and will decline to grant it. In further associating myself with the decision of Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR where the Court of Appeal held that in instances where a party fails to establish a prima facie case, the Court need not proceed to make a determination of the other two limbs on injunction, I will hence decline to deal the said other two limbs.
22. On the prayer for a mandatory injunction, I will highlight the principles established in the case of Nation Media Group & 2 Others v John Harun Mwau (2014) eKLR, which stated thus:

“It is trite law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance. A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated as we have stated a temporary injunction can only be granted in exceptional and in the clearest of cases.”
23. From the facts before Court, it is my considered view that since a mandatory injunction normally culminates in conclusion of issues in a suit at an interlocutory stage, it was incumbent upon the Plaintiff to fully demonstrate the exceptional circumstances to warrant its issuance. However, from the facts before Court, noting that there is no Certificate of Title and there is a pending Succession Cause, at this juncture I find that the exceptional circumstances have not been demonstrated and will decline to grant it.
24. In the foregoing, I find that instant Notice of Motion unmerited and will disallow it. Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Nyambura for Plaintiff

Kimani Horeria for Defendant

Court Assistant: Joan

