



**Menge (Suing as legal representative of the Estate of Joseph Otundo Menge)
v County Government of Kisii & another (Environment and Land Petition
E002 of 2025) [2025] KEELC 7691 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7691 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND PETITION E002 OF 2025**

M SILA, J

NOVEMBER 5, 2025

BETWEEN

**AGNES KERUBO MENGE (SUING AS LEGAL REPRESENTATIVE OF THE
ESTATE OF JOSEPH OTUNDO MENGE) PETITIONER**

AND

**THE COUNTY GOVERNMENT OF KISII 1ST RESPONDENT
KISII COUNTY CHIEF EXECUTIVE COMMITTEE MEMBER OF
INFRASTRUCTURE, ENERGY AND PUBLIC WORKS 2ND RESPONDENT**

RULING

1. This suit was commenced through a constitutional petition filed on 22 September 2025. The petitioner sues on behalf of the estate of Joseph Menge Otundo under whose name the land parcel Kisii Town/Block II/136 is registered. The petitioner has respectively sued the County Government of Kisii and its County Executive Committee Member of Infrastructure, Energy and Public Works as the 1st and 2nd respondents. It is her pleading that the deceased was issued with a Certificate of Lease on 18 February 1981 and that he established a home on it where the family has been living since then. It is pleaded that on 18 September 2025, the respondents stormed the suit property and embarked on destruction of the developments therein claiming that it was a road reserve. It is further pleaded that on 19 September 2025, the agents of the respondents went back to the suit premises claiming that there was no way an individual could own such property within town and as such it belonged to the 1st respondent. On the same day, it is alleged that the respondent through their agents, invited passersby to present themselves and receive portions of the suit land on the basis that the 1st respondent has made a decision to redistribute it. It is pleaded that on 20 September 2025, the respondents through their goons camped on the suit property declaring it the respondents' property and that the petitioner and her children should be evicted. It is further pleaded that on 22 September 2025, the respondents through



people claiming to be their employees, again stormed the suit property and that they plan to evict the respondent and her children from it. The petitioner contends that these acts violated her constitutional rights inter alia the right to property under Article 40. In the petition, she seeks orders of a declaration that the suit property is owned by the estate of Joseph Menge Otundo; that the respondents acted unconstitutionally; a permanent injunction against the respondents; compensation for the damage; damages for violation of her constitutional rights; interest and costs.

2. Together with the petition, the petitioner filed an application seeking orders to restrain the respondents inter alia from further invading the suit land or interfering with the petitioner's quiet possession. In her supporting affidavit she has more or less reiterated what I have already set out above. To her affidavit, she has annexed a copy of the grant of letters of administration, a copy of the certificate of lease in name of Joseph Menge Otundo, and some photographs said to be of the premises.
3. The application is opposed by the affidavit of Raymond K. Mugambi, the Director Roads, of the 1st respondent. He has deposed that the respondents are not undertaking any activities and that the activities are being undertaken by Kenya National Highway Authority (KENHA) who are reclaiming the road reserve to construct drainage channels. He has deposed that the respondent does not engage hirelings or goons and put the petitioner to strict proof. He has contended that the respondents are improperly joined to the suit.
4. The petitioner filed a supplementary affidavit. She deposed that even after filing the application, agents of the respondents have continued to come to the suit property to cause chaos and she has reported to the police. She deposes that the suit property is located in Kisii where the 1st respondent is in charge; that all investments were licenced by the 1st respondent; that the 1st respondent collects revenue from the remainder of her investments; that there is threat to subdivide the property and share it to business people within the area. She deposes that the respondents have not sent anyone to the suit property to declare that they are not the ones causing damage. She has annexed copies of licences, an OB report, and a survey report.
5. I directed the application to be urged through written submissions and I have taken note of the submissions filed.
6. What is before me is more or less an application for injunction and I stand guided by the principles laid down in the case of Giella vs Cassman Brown (1973) EA 358 where it was held that one needs to demonstrate a prima facie case with a probability of success; show that he/she stands to suffer irreparable loss if the injunction is not granted; and where the court is in doubt it will decide the case on a balance of convenience.
7. I have considered all material filed.
8. It is of course the petitioner's contention that it is the respondents who descended on her property and caused damage. The respondents aver that the entity responsible is KENHA and not themselves. Save for mere allegation that the respondents are the ones who descended on the suit property using goons and hirelings, there is actually nothing before me to suggest that it is the respondents who are responsible. There is no photograph taken of the persons who allegedly did the damage, no deposition identifying any person as an agent of the respondent, and no document from the respondents that would lay credence to the allegation that the activities are those of the respondents. The respondents have said that it is KENHA which is responsible as they are clearing the roads to make repairs to drainages. I do not think the respondents would point a finger at KENHA if there was no substance in that allegation. But importantly I have actually nothing that supports the allegation of the petitioner that the activities complained of are activities of the respondents.



9. One can only seek and obtain an order of injunction if he/she demonstrates that the person he/she has sued is responsible for the actions complained of. In this instance, based on what is before me at the moment, I am not convinced that the petitioner has demonstrated that it is the respondents who are responsible. If the petitioner still insists that the respondents are responsible, she will have a chance to prove her case at the hearing of the petition.
10. For the foregoing reasons, I am not persuaded that a prima facie case has been made out against the respondents. I have no option but to proceed and dismiss this application with costs to the respondents.
11. Orders accordingly.

DATED AND DELIVERED THIS 5TH DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of:

Mr. Abidha for the petitioner/applicant

Mr. Awiti for the respondents

Court Assistant – Michael Oyuko.

