



**Magiri v Magiri & another (Environment and Land Appeal  
E008 of 2025) [2025] KEELC 7591 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7591 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E008 OF 2025**

**BM EBOSO, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**ELIZABETH NDURU MAGIRI ..... APPELLANT**

**AND**

**JAMES KARANI MAGIRI ..... 1<sup>ST</sup> RESPONDENT**

**ELIAS GITARI MAGIRI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Falling for determination in this ruling is the appellant's application dated 14/5/2025, through which she seeks an order restraining the respondents against evicting her from land parcel number Abogeta/U-Kithangari/1799 [the suit land], pending the hearing and determination of this appeal. The application is premised on the grounds outlined in the motion and in the applicant's affidavit dated 14/5/2025. It was canvassed through written submissions dated 31/7/2025, filed by M/s L. Kimathi Kiara & Co. Advocates.
2. In summary, the appellant's case is that, the respondents are her brothers. She sued them in the Senior Principal Magistrate Court at Nkubu seeking to compel them to transfer to her one (1) acre out of the suit land, which she contends is held by them in trust for her. The lower court dismissed her claim on the ground of lack of merit. Dissatisfied with the judgment of the lower court, she filed this appeal. She states that the appeal has high chances of success.
3. The appellant contends that she is in occupation of the suit land, adding that the respondents want to evict her out of the land and have been employing goons who have been harassing her and preventing her from working on the land.
4. The respondents opposed the application through a replying affidavit sworn on 17/8/2025 by Elias Gitari Magiri and written submissions dated 17/8/2025, filed through M/s Kuria Karatu & Co. Advocates. They contest the allegation that the appellant is in occupation of the suit land, contending



that the appellant occupies land parcel number Abogeta/Upper-Kithangari/1468 and Plot No. 1/468 Kionyo, both given to her by their late father. They state that they are the registered proprietors of the suit land and they have built permanent structures on the land. They add that during trial in the lower court, the appellant failed to establish the key elements of a trust.

5. The court has considered the application; the response to the application; and the parties' respective submissions. The single issue to be determined in this ruling is whether the application meets the criteria for granting an interlocutory injunction by a first appellate court under Order 42 rule 6(6) of the Civil Procedure Rules. I will be brief in my analysis and disposal of the issue.
6. The appellant moved this court under Order 40 rules 1 and 2 of the Civil Procedure Rules. The plea for an interlocutory injunction having been brought in an appeal in a first appellate court, clearly, invoking Order 40 rules 1 and 2 of the Civil Procedure Rules was a misdirection. The relevant jurisdiction is exercised under Order 42 rule 6(6) of the Civil Procedure Rules. That is not the only misdirection.
7. In his written submissions, counsel for the appellant cited rule 5(2) (b) of the Court of Appeal Rules. Again, this was another grave misdirection. This court does not exercise jurisdiction under the Court of Appeal Rules.
8. Order 42 rule 6(6) of the Civil Procedure Rules which is the applicable jurisdictional framework provides as follows:

“Notwithstanding anything contained in subrule (1) of this rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

9. Over the years, Kenya's superior courts have developed principles that guide the exercise of jurisdiction under Order 42 rule 6(6) of the Civil Procedure Rules (see (i) *Madhupaper International Limited Vs Kerr* [1985] KLR 840; (ii) *Venture Capital & Credit Limited Vs Consolidated Bank of Kenya Ltd*; Civil Application No. 349 of 2003 (174 of 2003 UR); and (iii) *Butt V Rent Restriction Tribunal* (1982) KLR 417.
10. First, the jurisdiction of a first appellate court to grant an interlocutory injunction under Order 42 Rule 6(6) of the Civil Procedure Rules is a discretionary and equitable one. Secondly, the discretion will not be exercised in favour of an applicant whose appeal is frivolous; the applicant must demonstrate that a reasonable argument can be put forward in support of his appeal. Thirdly, the discretion would be declined if grant of an injunction is likely to inflict greater hardship than it would prevent. Fourthly, the applicant must show that refusal to grant the injunction would render his appeal nugatory. Fifth, the court is to be guided by the principles in *Giella v Cassman Brown & Company Ltd* [1973] EA 358. Lastly, whenever disposing a plea for an interlocutory injunction, the court does not make definitive or conclusive pronouncements on the key issues in the dispute/appeal.
11. Has the applicant satisfied the above criteria? For a start, has the applicant demonstrated a reasonable argument in support of the appeal? In the trial court, the appellant sued for one (1) acre out of the suit land, which she claimed was held in trust for her. In the present application, she has done nothing in terms of demonstrating existence of a trust and in terms of demonstrating that the trial court erred in finding that she had failed to prove existence of a trust. Nothing is discernible from the grounds outlined in the motion; the supporting affidavit; and the submissions, in terms of demonstrating an arguable appeal.



12. On their part, the respondents tendered evidence to the effect that the suit land was purchased by their late father who subsequently shared various parcels of land to his children. They indicated that their late father gave the applicant two parcels of land, which the applicant presently occupies.
13. The applicant, similarly, failed to satisfy the requirements in *Giella v Cassman Brown*. Even after the respondents contested her allegation that she was in occupation of one (1) acre within the suit land, she did not bother to bring evidence of her alleged occupation of the one (1) acre.
14. Similarly, the balance of convenience does not favour uprooting registered proprietors who, in addition to tendering evidence of ownership, have demonstrated that they have permanent developments on the suit land and they have been and are in possession of the suit land.
15. For the above reasons, the court finds that the application dated 14/5/2025 has failed to meet the criteria for grant of an interlocutory injunction under Order 42 rule 6(6) of the Civil Procedure Rules. Consequently, the application dated 14/5/2025 is rejected and dismissed for lack of merit.
16. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF NOVEMBER, 2025.**

**B M EBOSO [MR]**

**JUDGE**

