



REPUBLIC OF KENYA



**KENYA LAW**  
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**Zomo & another v Mutava & another (Environment and Land Case  
E019 of 2025) [2025] KEELC 8199 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8199 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT AND LAND CASE E019 OF 2025**

**EO OBAGA, J  
NOVEMBER 27, 2025**

**BETWEEN**

**RODAH KABINDU ZOMO ..... 1<sup>ST</sup> PLAINTIFF**

**NYILI MANG'EA KANGAU (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF MANG'EA KANGAU NYILI) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**COSMAS MUTINDA MUTAVA ..... 1<sup>ST</sup> DEFENDANT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 20<sup>th</sup> May, 2025 in which the Plaintiffs/Applicants seek the following orders:
  1. Spent
  2. Spent
  3. Spent
  4. That a temporary order of injunction be issued restraining the 1<sup>st</sup> Defendant, either by himself, his agents, servants, or any other person acting under his instructions, from selling, transferring, further charging, or in any way disposing of land parcel No. Makueni/Kako/xxxx pending the hearing and determination of the main suit herein.
  5. That a temporary order of injunction be issued restraining the 2<sup>nd</sup> Defendant, its agents, or assigns from exercising any statutory power of sale or any other interest over the portion of the suit property belonging to the Plaintiffs pending the hearing and determination of the main suit herein.



6. That a mandatory order be issued compelling the 1<sup>st</sup> Defendant to provide full disclosure on how the Plaintiff's share was included in his title and subsequently charged to the 2<sup>nd</sup> Defendant.
  7. That pending the hearing and determination of this application as well as the main suit herein, this honourable court be pleased to issue an order compelling the Land Registrar Makueni to register a restriction on the land parcel number Makueni/Kako/xxxx .
  8. That the costs of and incidental to this application be borne by the Defendants/Respondents.
2. The 1<sup>st</sup> Applicant is a sister in law to the 2<sup>nd</sup> Applicant. The 2<sup>nd</sup> Applicant and his brother Kimatu Mang'ea are sons of Mang'ea Kangau who has since died and her estate is being administered by the 2<sup>nd</sup> Applicant. The late Mang'ea Kang'au was the registered owner of LR No. Makueni/Kako/2xxx .
  3. The 2<sup>nd</sup> Applicant's brother Kimatu Mang'ea was entitled to 9 acres from his mother's land. Before the process of succession, Kimatu Mang'ea sold 3 acres to the 1<sup>st</sup> Applicant and 5 acres to the 1<sup>st</sup> Defendant/Respondent. When the 1<sup>st</sup> Respondent processed title, he processed one title which included his 5 acres, 3 acres for 1<sup>st</sup> Applicant and 1 acre which was due to Kimatu Mang'ea.
  4. The 1<sup>st</sup> Respondent then proceeded to charge his title which is Makueni/Kako xxxx to the Agricultural Finance Corporation. It is this charging of the title by the 1<sup>st</sup> Respondent which made the Applicants to file this suit and apply for injunctive orders.
  5. The 1<sup>st</sup> Respondent opposed the Applicants' application based on a replying affidavit sworn on 11<sup>th</sup> July, 2025. The 1<sup>st</sup> Respondent contends that the Applicants' suit and application are premature. He states that the 1<sup>st</sup> Applicant failed to raise money for subdivision of the late Mang'ea Kangau's land and that during the processing of his title, he include the 3 acres of the 1<sup>st</sup> Applicant for convenience sake as she prepared herself financially.
  6. The 1<sup>st</sup> Respondent stated that Kimatu Mang'ea gave him his remaining portion as he had already sold 5 acres to him and that through authority of Kimatu Mang'ea he registered title for 8 acres. The 1<sup>st</sup> Respondent states that he has approached the 1<sup>st</sup> Applicant severally to have her process subdivision and transfer but the 1<sup>st</sup> Applicant has been adamant to do so. He states that though he charged Makueni/Kako/xxxx (suit property) to the 2<sup>nd</sup> Respondent, the charge has been discharged.
  7. The 2<sup>nd</sup> Respondent opposed the Applicants' application based on a replying affidavit sworn on 1<sup>st</sup> July, 2025. The 2<sup>nd</sup> Respondent states that on 3<sup>rd</sup> December, 2021, the 1<sup>st</sup> Respondent was advanced a loan of Kshs.5,000,000/= which was to be repaid within 3 years. The 1<sup>st</sup> Respondent cleared the loan and the suit property was discharged. The 2<sup>nd</sup> Respondent stated that it accepted the title to the suit property after due diligence showed that the suit property was registered in the 1<sup>st</sup> Respondent's name. As the suit property has been discharged, the 2<sup>nd</sup> Respondent has no interest in the suit property.
  8. In a further affidavit sworn on 20<sup>th</sup> May, 2025, the Applicants state that as the 1<sup>st</sup> Respondent has admitted that he included her 3 acres in the title, there is need to grant the injunction. The Applicants state that the 1<sup>st</sup> Respondent has shown that he has taken a loan using the suit property as security and nothing will stop him from taking further loans or selling the property.
  9. Parties were directed to file written submission. The Applicants filed their submissions dated 8<sup>th</sup> August, 2025. The 1<sup>st</sup> Respondent filed his submissions dated 2<sup>nd</sup> October, 2025.



10. The Applicants submitted that they had established a prima facie case with probability of success and that they had met the other conditions as set out in the case of *Giella –vs- Cassman Brown & Co. Ltd* (1973) EA 358.
11. The Applicants further submitted that the court has power under Section 68 (1) of the [Land Registration Act](#) to order the Land Registrar to register a restriction against the title. They relied on the case of *Wambui Njoroge –vs- Simon Mwaura* (2020) eKLR where the court held that where the property is at risk of fraudulent sale and competing claims exist, a retraction ought to be entered to preserve the substratum of the dispute.
12. The 1<sup>st</sup> Respondent submitted that he is a wrong party to be sued. He states that the person who ought to have been sued is the estate of Kimatu Mang’ea. The 1<sup>st</sup> Respondent therefore submits that the Applicants have no prima facie case to warrant issuance of an injunctive order. The 1<sup>st</sup> Respondent relied on the case of *Giella (Supra) and Nguruman Ltd –vs- Jan Bonde Nielsen & 2 Others* (2014) eKLR.
13. The 1<sup>st</sup> Respondent further submits that as there has been a discharge of the charge registered against the title, the orders sought have been rendered moot.
14. I have considered the Applicants’ application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. There are two issues which emerge for determination. The first is whether the Applicants have met the threshold for grant of an injunction. The second is whether a restriction ought to be ordered against the title.
15. The principles for grant of an injunction were set out in the *Giella* case (supra). First an Applicant has to demonstrate a prima facie with probability of success. Second, an Applicant has to demonstrate that he/she is likely to suffer damage which will not be compensated in damages. Third if the court is in doubt, it will decide the application on a balance of convenience.
16. In the instant case, Kimatu Mang’ea sold 3 acres to the 1<sup>st</sup> Applicant and 5 acres to the 1<sup>st</sup> Respondent. The Applicants stated that Kimatu Mang’ea was entitled to 9 acres. This position was not refuted. The 1<sup>st</sup> Respondent admitted that when he was processing title, he included the portion of the 1<sup>st</sup> Applicant and that he intended to transfer the land back when the 1<sup>st</sup> Applicant had the finances to do so.
17. It is apparent that Kimatu Mang’ea had not received his share through succession. The land was still in the name of Mang’ea Kangau. The 1<sup>st</sup> Respondent has deponed that his 5 acres and the 1<sup>st</sup> Applicant’s share was to be 8 acres and that is what he processed title for. A copy of search carried out by the Applicants shows that the suit property is 3.66 hectares which is equivalent to 9.44 acres. It is therefore clear that apart from the 8 acres which is inclusive of the 1<sup>st</sup> Respondent’s 5 acres and the 1<sup>st</sup> Applicant’s share, there is an additional 1 acre which is over and above the 8 acres. This one acre belongs to the estate of Mang’ea Kangau. It is therefore clear that the Applicants have demonstrated that they have a prima facie case with probability of success.
18. The 1<sup>st</sup> Applicant has built her house on the suit property. If the 1<sup>st</sup> Respondent was to sell the land, the matrimonial home of the 1<sup>st</sup> Applicant will go and this may not be compensated in damages. I am in no doubt that the Applicants have demonstrated a prima facie case and I need not consider the application on a balance of convenience. In any case, the Applicants are in possession of the portion claimed and the balance of convenience tilts in their favour.
19. The suit property has already been discharged by the 2<sup>nd</sup> Respondent. Though the discharge came after this application had been filed, the application against the 2<sup>nd</sup> Respondent has been overtaken by events.



20. On the second issue, it is clear that the Applicants are asking the court to compel the Land Registrar to register a restriction against the title. Where there is need for registration of a restriction such an application has to be made to the Land Registrar or the Land Registrar can do it on his own motion to prevent improper dealings. The court is granted powers to make an order of inhibition under Section 68 of the *Land Registration Act*. As it has been demonstrated that the 1<sup>st</sup> Respondent has in the past taken a loan using the title to the suit property as security, there is need to inhibit the suit property.

21. I therefore find that the Applicants are entitled to the following orders:

- a. An injunction order is hereby issued restraining the 1<sup>st</sup> Defendant, either by himself, his agents, servants, or any other person acting under his instructions from selling, transferring, further charging or in any way disposing land parcel No. Makueni/Kako/xxxx pending the hearing and determination of the main suit herein.
- b. An order is hereby given inhibiting any dealings relating to disposal or charging of LR No. Makueni/Kako/xxxx until this suit is heard and determined.
- c. The costs of this application shall be borne by the 1<sup>st</sup> Respondent.
- d. This application is dismissed as against the 2<sup>nd</sup> Respondent with costs to be borne by the Applicants.

It is so ordered.

.....

**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**IN THE PRESENCE OF:**

Mr. Munyasya for 1<sup>st</sup> Defendant/Respondent.

Mr. Nyingi for Plaintiffs/Applicants.

Ms. Muturia for 2<sup>nd</sup> Defendant/Applicant.

Court assistant – Steve Musyoki

