



REPUBLIC OF KENYA



**In re Estate of Charles Mumbuchi Gichoge (Deceased) (Succession Cause 133 of 2006) [2025] KEHC 17780 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17780 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 133 OF 2006  
MA ODERO, J  
NOVEMBER 28, 2025  
IN THE MATTER OF THE ESTATE OF C M G**

**RULING**

1. Before this Court is the Summons dated 30<sup>th</sup> November 2022 by which the Applicant Jane Waruguru Mumbuche seeks the following orders:-
  - “(a) Spent.....
  - (b) Spent.
  - (c) That the court be pleased to issue an order of temporary injunction restraining the Respondents their agents from any dealing with the parcel of land known as Iriani/chehe/1244 in a manner detrimental to the interest of the Applicant and other beneficiaries pending the hearing and determination of the application and the summons for revocation of grant dated 17/03/2022.
  - (d) That the Honorable court be pleased to direct the OCS Othaya police station to ensure enforcement of the orders of the honourable court.
  - (e) That costs of the Appeal be in the cause.”
2. The application was supported by the Affidavit of even date sworn by the Applicant.
3. The 1<sup>st</sup> Respondent Joseph Maina Mumbuci opposed the application through the Replying Affidavit dated 13<sup>th</sup> December 2022.
4. The application was canvassed by way of written submissions. The applicant filed the written submissions dated 12<sup>th</sup> February 2023 whilst the 1<sup>st</sup> Respondent relied upon the written submissions dated 22<sup>nd</sup> September 2023.



## Background

5. This succession cause relates to the estate of the late Charles Mumbuche Gichonge (hereinafter ‘the Deceased’) who passed away on 16<sup>th</sup> October 1995. A copy of the Death Certificate Serial No. 798327 was filed in court on 17<sup>th</sup> February 2004. Following the demise of the Deceased Grant of letters of Administration Intestate were issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 25<sup>th</sup> August, 2004. The Grant was duly confirmed on 21<sup>st</sup> May 2015. The Administrators then proceeded to distribute the estate in terms of the confirmed grant.
6. The Applicant filed a summons for revocation of Grant dated 17<sup>th</sup> March 2022, which summons is yet to be determined. The Applicant alleges that notwithstanding the pendency of the summons for revocation of Grant, the Respondent proceeded to transmit the estate property into their own names. The Applicant seeks orders to prevent any further dealings with the parcel of land known as IRIANI/CHEHE/1244 (hereinafter ‘the suit land’)

## Analysis And Determination

7. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
8. It is common ground that the suit property forms part of the estate of the Deceased. The names and identities of the beneficiaries to the estate are also not in dispute.
9. The Applicant herein seeks injunctive orders to prevent any dealings with the suit land pending the hearing and determination of the summons for revocation of Grant dated 17<sup>th</sup> March 2022.
10. The principles guiding the issuance of injunctive orders were set out in the celebrated case of *Giella -vs- Casman Brown & CO. LTD* [1973] EA as follows:-
  - (i) The Applicant must first establish a prima facie case with a probability of success.
  - (ii) The Applicant must demonstrate that he stands to suffer irreparable harm that cannot be adequately compensated by way of damages.
  - (iii) Where there is any doubt on the above then the Applicant must show that the balance of convenience tilts in his favour.
11. The ruling in the *Giella* case was reinforced in the case of *Nguruman Limited -vs- Jan Bonde Nielson & 2 Other* [2004] eKLR in which the Court of Appeal held as follows;-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

  - a. establish his case only at a prima facie level,
  - b. demonstrate irreparable injury if a temporary injunction is not granted, and
  - c. allay any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct, and logical hurdles that the applicant is expected to surmount sequentially.”
12. The Applicant alleges that despite his having filed a summons for revocation of Grant the Respondents in defiance thereof have proceeded to sub-divide and transmit the suit land. The Applicant has annexed



to his supporting affidavit dated 30<sup>th</sup> November 2022 copies of official search in respect to the suit land (Annexures CMN 2, CMN 3 and CMN 4) which show that the suit land is now registered in the names of the Respondents.

13. In order to determine whether the Applicant has a prima facie case it is necessary to delve into the history of this matter.
14. The Grant in respect of this estate was issued to the Respondents on 25<sup>th</sup> August 2004. The said Grant was thereafter confirmed on 21<sup>st</sup> May 2015 and on 1<sup>st</sup> February 2022 the Respondents proceeded to initiate the process of transmission of the estate in accordance with the certificate of confirmed Grant.
15. On 17<sup>th</sup> March 2022 that the Applicant filed a summons seeking revocation of the Grant. This was seven (7) years after the Grant had been confirmed. The Respondents upon securing the confirmed Grant had a statutory duty to proceed with the administration of the estate. The Applicant could not have expected the Administrators to put on hold their statutory obligations on the off-chance that somebody would seek to have the grant revoked.
16. The Applicant has acted too late in the day. He has at all times been aware of the existence of this succession cause. He cannot wait until the transmission process has been initiated then file a summons to revoke the grant.
17. The fact of the matter is that the transmission process kicked off on 8<sup>th</sup> June 2021, when Hon. Lady Justice Mshilla issued a ruling authorising the Hon. Deputy Registrar to execute the transmission documents and directed that the land Registrar dispense with the production of the Requisite documents.
18. Even after this ruling the Applicant still sat pretty until March 2022 when he filed the summons for revocation of grant.
19. From the time lines stated above it is not true to allege that the Respondent in full knowledge of the existence of the summons dated 17<sup>th</sup> March 2022 proceeded to effect transmission of the estate. The transmission of the estate occurred way before the Applicants filed his summons.
20. The purpose of an interlocutory injunction is to preserve the subject matter of a suit pending determination of an application. In this case the suit land has already been transmitted. There exists nothing to preserve. Courts will not make orders in vain. In the circumstances I find that the Applicant has failed to establish a prima facie case.
21. Finally I find no merit in this application. The same is dismissed in its entirety. Costs will be met by the Applicant.

**DATED IN NYERI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

