

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

LAND DIVISION

ELC SUIT NO. E047 OF 2025

BETWEEN

KAKUZI PLC.....PLAINTIFF/APPLICANT

VERSUS

MICHAEL NDETO.....1ST DEFENDANT/RESPONDENT
AMOS KAMAU MBURU.....2ND DEFENDANT/RESPONDENT
VICTORIA NDUMI.....3RD DEFENDANT/RESPONDENT
KANGETHE WAITITU.....4TH DEFENDANT/RESPONDENT
ANDREW THUO WOKABI.....5TH DEFENDANT/RESPONDENT
TERESIA NGOTE.....6TH DEFENDANT/RESPONDENT
ESTHER NYIHA NGUGI.....7TH DEFENDANT/RESPONDENT
AGNES NZULA.....8TH DEFENDANT/RESPONDENT
DANIEL WAITHAKA.....9TH DEFENDANT/RESPONDENT
WINNIE WAIRIMU.....10TH DEFENDANT/RESPONDENT
JANE WAITHERA.....11TH DEFENDANT/RESPONDENT
MARY WANJIRU MURIGI.....12TH DEFENDANT/RESPONDENT
GEORGE ONYANGO.....13TH DEFENDANT/RESPONDENT
LUCY MUKONYO NZIOKI.....14TH DEFENDANT/RESPONDENT
ALICE WAIRIMU KAMANDE.....15TH DEFENDANT/RESPONDENT
KINYANJUI NGANGA.....16TH DEFENDANT/RESPONDENT
CLINA KATINI.....17TH DEFENDANT/RESPONDENT
ELIZABETH AKINYI.....18TH DEFENDANT/RESPONDENT
JOSPHAT KAMANDE.....19TH DEFENDANT/RESPONDENT
JOHN MURIITHI NJOGU.....20TH DEFENDANT/RESPONDENT
JOHN MWANGI.....21ST DEFENDANT/RESPONDENT

JOHN MUTAVUTA.....22ND DEFENDANT/RESPONDENT
STEPHEN NYOIKE.....23RD DEFENDANT/RESPONDENT
KYALO KAVEVO.....24TH DEFENDANT/RESPONDENT
CLEMENT KARIUKI.....25TH DEFENDANT/RESPONDENT
INSPECTOR GENERAL
KENYA NATIONAL POLICE SERVICE.....26TH DEFENDANT/RESPONDENT

RULING

[1] This ruling is on the Notice of Motion dated 28-7-2025. The motion which is by the plaintiff is brought under Articles 10(2)(a) and (c) and 40(1) of the Constitution of Kenya, Section 1A, 1B and 3A of the Civil Procedure Act, Orders 40 Rules 1, 2, and 4(1) and 51 Rule 1 of the Civil Procedure Rules, Sections 13(7)(a) of the Environment and Land Court Act, 24 and 25(1) of the Land Registration Act, 3(1) of the Trespass Act and all other enabling provisions of the law.

[2] The motion seeks the following residual prayers;

- 5. That pending the hearing and determination of this suit, an injunction do issue restraining the 1st to 25th defendants, their representatives, servants and/or agents, and or assigns and any other trespassers from entering, constructing any structures, farming, using, occupying, developing or in any manner whatsoever interfering with the parcel of land known as L.R 11674, Suit land.**
- 6. That pending the hearing of the suit, an injunction be issued compelling the 1st to 24th defendants whether by themselves, servants and or agents and/or assigns or otherwise to forthwith vacate and/or deliver up possession and/or grant immediate vacant possession to the plaintiff, in respect of L.R No. 11674.**
- 7. That pending the hearing and determination of this suit, an injunction do issue compelling the 26th defendant, particularly the OCDP of Makuyu to forthwith remove from the suit land all the trespassers, 1st to 25th defendants, their servants, representatives and/or agents and/or assigns, and their structures erected on the suit land.**
- 8. That the costs of this application be awarded to the plaintiff.**

[3] The motion is based on ten (10) grounds which can be summarized as follows. Firstly, the plaintiff is the registered owner of the said land. The activities undertaken on the land include production of avocados, macadamia nuts, blueberries, farm produce and livestock. The plaintiff has a workforce of 3000 employees and contributes significantly to the Kenyan economy through the export of its products to Europe, Far East and United States. Secondly, Hon. Mary Wamaua Njoroge who is the area Member of Parliament on 24-7-2025 led a group of demonstrators to the plaintiff's head office protesting that the plaintiff had not allocated land to 25 families on part of the suit land. The defendants' surveyor one Clement Kariuki of Wambaa Surveys Ltd proceeded to trespass onto the suit land in a bid to survey the land. The 1st to 25th defendants burnt the grass and cleared the bushes on a portion of the land. On the following day, the 1st to 24th defendants constructed 11 housing structures with the intention of settling on a portion of the suit land. This invasion of the plaintiff's property was reported to the OCPD Makuyu police station who has not assisted the plaintiff. Thirdly, the current trespass is not related to the explained Memorandum of Understanding dated 11-5-2020 as the area now invaded is outside of the area marked 'A' as detailed in annexure A of the said MOU. This MOU and yet another one are the subject of **Thika CMCC 308 of 2018 Kakuzi PLC Vs Benedetti Nzilani, Eric Ndungu** (Office bearers of Gachagi Self Help Group). Finally, there is an imminent and continuing threat that unless the 1st to 25th defendants are restrained as prayed, the plaintiff will suffer irreparable loss by deprivation of the use and enjoyment of a portion of the suit property. The other risk is that the entire property may be overrun by the unlawful invaders resulting in substantial losses, disruption of business operations, loss of employment and a complete paralysis of the plaintiff's operations.

[4] The motion by the plaintiff is opposed by the 1st to 25th respondents and 1st, 5th and 12th defendants have sworn replying affidavits dated 1-9-2025. The gist of the three affidavits is as follows; One, in an MOU dated 11-5-2025, the plaintiff has acknowledged that the members of Gachagi Self-help Group have lived on the suit land for many years and there was an arrangement to allocate some land to the defendants. Secondly, out of the 35 families expected to be allocated land, only ten (10) got land and twenty five (25) remain unsettled. The non settlement of these 25 households came about because some masqueraders came forward claiming to be genuine Gachagi Self-help Group members when they were not. This

slowed down the process on identifying the genuine allottees. Finally, there was never any invasion and the defendants have been on the suit land for long. For the above and other reasons, the defendants pray for the dismissal of the motion dated 28-7-2025.

- [5] Counsel for the parties filed written submissions dated 22-9-2025 and 25-9-2025 respectively. Both sides are agreed that since the orders sought are injunctive, then the principles in **Giella Vs Cassman Brown and Co. Ltd (1973) EA 358** apply to this case.

I have carefully considered the motion in its entirety including the affidavits, grounds, written submission and the law cited therein. I find that the injunctive orders sought are mandatory in nature. This is because prayer 6 requires the defendants to “forthwith vacate and/or deliver up possession or grant immediate vacant possession to the plaintiff”.

The orders sought by the plaintiff require the defendants to do a specific act rather than refrain from doing specific acts. The mere fact that the plaintiff seeks an order for the defendants to vacate, acknowledges that they are already in occupation.

- [6] For the court to issue an order of mandatory injunction, there must be special circumstances proved by the applicant. In the case of **Kenya Breweries Ltd and another Vs Washington O. Okeyo (Court of Appeal 2002)** the court stated as follows, inter alia,

“A mandatory injunction can be granted on an interlocutory application but, in the absence of special circumstances, it will not normally be granted.”

- [7] In this case, I find two reasons why the orders sought should not be granted. Firstly, the defendants claim to be in possession of the suit land and they further claim that the entry into the land was with the consent of the plaintiff and that they have an overriding interest within the meaning of Section 28 of the Land Registration. If that is the case, then there are no special circumstances established by the plaintiff. Eviction is such a drastic and brutal act that it should only be granted at the interlocutory in the clearest of cases and this is not a clear case.

The second reason why the motion dated 28-7-2025 should not be allowed at this stage is that if it were allowed now, the defendants will be evicted from land that they are in occupation of, without due process. They will not have been heard. Yet Article 50(1) of the

Constitution provides that a dispute that can be resolved through the application of the law be so resolved by giving the parties a fair hearing. A fair hearing will not have been attained in this case if the final orders sought in the plaint are granted at this interlocutory stage. For the above stated reasons, I find no merit in the motion dated 28-7-2025 which I dismiss. Cost in the cause.

It is so ordered.

Ruling dated, signed and delivered this 25th day of November, 2025

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M. N. GICHERU

JUDGE

In the presence of:

Plaintiff's Counsel-Mrs Opiyo

Respondent's Counsel- Miss Magugu holding brief.

Mohamed Dabar-Court assistant