



**Ngaruni (Suing as the legal representative of the Estate of Kirichu Ngaruni-Deceased) & 5 others v Tharimbu & 19 others (Environment and Land Appeal E060 of 2025) [2025] KEELC 8382 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8382 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E060 OF 2025  
JO MBOYA, J  
NOVEMBER 27, 2025**

**BETWEEN**

**JOSEPH KINYUA NGARUNI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KIRICHU NGARUNI-DECEASED) & 5 OTHERS & 5 OTHERS ..... APPELLANT**

**AND**

**JOSEPH THARIMBU & 19 OTHERS & 19 OTHERS & 19 OTHERS ..... RESPONDENT**

**RULING**

1. What is before me is the Notice of Motion Application [The Application] dated the 19<sup>th</sup> September 2025; brought pursuant to the provisions of Sections 1A, 1B, 3A of the *Civil Procedure Act*, Chapter 21 Laws of Kenya; Orders 40 Rule 1, 2, 3; and Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010 and wherein the Appellants/Applicants [hereinafter referred to as the Applicants] have sought the following reliefs;
  - i. This Application be certified urgent and heard Ex-parte in the first instance.
  - ii. Pending the hearing and determination of this application, this Honourable Court be pleased to issue an interim order maintaining the status quo in respect of land parcel Tigania West/Uringu II/1600 as at 2nd September, 2025.
  - iii. Pending the hearing and determination of the appeal herein, an order of injunction do issue restraining the Respondents, their agents, servants or any other persons claiming under them from sub-dividing, alienating, constructing, tampering, interfering, or in any way dealing with or interfering with the Appellants' possession, occupation, user and/or enjoyment of the said parcel of land.



- iv. Costs of this Application be in the cause.
2. The instant application is anchored on various grounds which have been enumerated in the body thereof. In particular, the Applicants have contended that same are the lawful and registered owners of plot number Uringu II/1600, which falls within Uringu II Adjudication Section-Tigania.
  3. Moreover, it has been contended that previously same [Applicants] had filed civil proceedings, namely; Tigania PMCC ELC No. 060 of 2022, but the suit was dismissed vide ruling rendered on the 2<sup>nd</sup> September 2025. Furthermore, it has been contended that the dismissal of the suit has denied and deprived the Applicants of the liberty to agitate their rights to and in respect of the suit property.
  4. The subject application is supported by the affidavit sworn by the 1<sup>st</sup> Applicant [Joseph Kinyua Ngaruni] sworn on the 19<sup>th</sup> of September 2025 and to which the deponent has annexed two documents, namely; copy of the ruling rendered on the 2<sup>nd</sup> September 2025 and the memorandum of appeal dated the 15<sup>th</sup> September 2025.
  5. The 1<sup>st</sup>, 5<sup>th</sup> to 13<sup>th</sup>; 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> Respondents filed a replying affidavit sworn on the 6<sup>th</sup> October 2025 and wherein the deponent of the replying affidavit [Josephat David Mwilaria] has contended that the application beforehand is not only misconceived, but also constitute[s] an abuse of the due process of the court. In particular, it has been contended that though the Applicants contend that same are the lawful owners of the suit property, the correct position is that the suit property belongs to and is registered in the name of Josephat David Mwilaria. To this end, the deponent has annexed a copy of the title deed issued on the 29<sup>th</sup> February 2016 and a copy of the confirmation of ownership issued by the land adjudication dated the 21<sup>st</sup> August 2015, respectively.
  6. Furthermore, the deponent of the replying affidavit has also averred that the Applicants herein have approached the court with unclean hands and thus same are not entitled to the equitable remedy of temporary injunction. In particular, it has been averred that save for the 1<sup>st</sup>, and 5<sup>th</sup> Applicants, the rest of the Applicants are long deceased and hence same were incapable of mounting the appeal and by extension the application.
  7. Additionally, it has been averred that the appeal and the application have also impleaded various Respondents who are long deceased. To this end, the deponent has referenced the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 14<sup>th</sup> and 17<sup>th</sup> Respondents as being deceased. Moreover, the deponent has annexed copies of burial permits/death certificate as annexure JDM-4 to the replying affidavit, as confirmation that the named Respondents are long deceased.
  8. The Applicants herein sought and obtained leave to file a supplementary affidavit in an endeavour to Respond to the averments/ deposition[s] at the foot of the replying affidavit. Furthermore, it is common ground, that a supplementary affidavit was indeed filed. Nevertheless, it suffices to state that an objection was taken as pertains to the competence of the supplementary affidavit which was sworn by learned counsel for the Applicants and the court was called upon to render a ruling. Notably, the court rendered a ruling dated the 23<sup>rd</sup> October 2025 and whereupon the supplementary affidavit was struck out and expunged from the record of the court.
  9. The subject application came up for directions on the 10<sup>th</sup> November 2025 whereupon the court directed that the parties do file and exchange written submissions. In addition, the court also circumscribed the timelines for the filing and exchange of the written submissions.
  10. The Applicants filed written submissions and wherein same have highlighted three key issues, namely; that the Applicants are the lawful owners of the suit property; that the Applicants suit in the



subordinate court was dismissed without the Applicants being afforded due opportunity to be heard on merit; and that the Applicants have established a basis to warrant the grant of the orders of temporary injunction.

11. The 1<sup>st</sup>, 5<sup>th</sup> to 13<sup>th</sup>; 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> Respondents filed written submissions and wherein same have highlighted three [3] key issues. The key issues highlighted by the named Respondents are; the appeal and the application constitute an abuse of the due process of the court; the Applicants are not deserving of the equitable remedy of injunction; and that the Applicant have neither established nor satisfied the requisite conditions to warrant the grant of the orders of temporary injunction or at all.
12. I have reviewed the Notice of Motion Application, the Supporting Affidavit and the Response thereto. Similarly, I have also taken into account the written submissions filed by/on behalf of the respective parties and I come to the conclusion that the determination of the subject application turns on two key issues, namely: whether the Applicants have established or satisfied the requisite conditions to warrant the grant of orders of temporary injunction or otherwise; and whether it is in the interest of justice to grant the orders sought by the Applicants [if at all].
13. Regarding the first issue, it is common ground that any Applicant, the Applicants herein not excepted, who desires to procure and obtain an order of temporary injunction pending the hearing and determination of an appeal is obliged to establish the same conditions just as an Applicant seeking to procure the orders of injunction pending the hearing and determination of a civil suit. In this regard, there is no gainsaying that it behoves the Applicants herein to meet and satisfy the conditions set in *Giella v Cassman Brown Ltd* [1973] EA 123.
14. The position of the law, which highlights the need to establish and satisfy the conditions in *Giella v Cassman Brown Ltd* [supra] in an endeavour to procure orders of temporary injunction pending appeal was elucidated in the case of *Patricia Njeri & 3 Others v National Museum Of Kenya* [2004] KEHC 1614 (KLR), where the court stated thus;

In the *Venture Capital* case the Court of Appeal said that an order for injunction pending appeal is a discretionary matter. The discretion must, however, be “exercised judicially and not in whimsical or arbitrary fashion.” This discretion is guided by certain principles some of which are as follows:

- a. The discretion will be exercised against an Applicant whose appeal is frivolous (See *Madhupaper International Limited v Kerr* (1985) KLR 840 (cited in *Venture Capital* ). The Applicant must state that a reasonable argument can be put forward in support of his appeal (*J. K. Industries v KCB* (1982 – 88) KLR 1088 (also cited in *Venture Capital* )
  - b. The discretion should be refused where it would inflict greater hardship than it would avoid (See *Madhupaper supra*).
  - c. The Applicant must show that to refuse the injunction would render his appeal nugatory (See *Butt v Rent Restriction Tribunal* (1982) KLR 417 (cited also in *Venture Capital* ).
  - (d) The Court should also be guided by the principles in *Giella v Cassman Brown & Company Ltd* (1973) EA 358 as set out in the case of *Shitukha Mwamodo & Others* (1986) KLR 445 (also cited in *Venture Capital* ).
15. Have the Applicants established and or satisfied the requisite conditions? To start with, it is not lost on me that the Applicants’ suit in the subordinate court was dismissed for non-compliance with various orders of the court. Instructively, the subordinate court had granted the Applicants various opportunities and indulgence[s] to undertake substitution of the deceased parties, including some of the Plaintiffs and Defendants. Despite the indulgence, the Applicants herein did not comply with the



directions of the court and the court thereafter ran out of mercy and sympathy. For good measure, the ruling of the court is elaborate as pertains to the scope and extent of accommodation that was granted to the Applicants.

16. It is important to highlight that the dismissal of the Appellants suit was therefore based on exercise of discretion. It is the exercise of the said discretion that has now birthed the subject appeal. The court will be obligated to interrogate whether or not the subordinate court judiciously and properly exercised its discretion. However, there is no gainsaying that the scope and the jurisdiction of this court to interfere with the discretion is circumscribed and limited. [See *Mbogo v Shah* [1968] EA 23].
17. In my humble view, though the Applicants have raised the appeal; but what comes to the fore is a question of Applicants who were afforded various accommodation and indulgence[s] by the court but failed to appropriate the indulgence. There is a serious question revolving round the meaning, implication[s] and tenor of Section 1B of the *Civil Procedure Act*, Chapter 21, Laws of Kenya; and Article 159[2][b] of *the Constitution*, 2010. Without interrogating the import of the said provision[s] and making a precipitate finding, there appears to be aspects of abuse of court process which may [I say may] negate the argueability of the appeal.
18. Secondly, it is also important to underscore that though the Applicants herein pretend that the suit property belongs to and is registered in the name of the Appellants, the truth of the matter is that the suit property is shown to belong to and is registered in the name of Josphat David Mwilaria. [See the copy of certificate of title and letter of confirmation of ownership which have been annexed to the replying affidavit].
19. What becomes apparent is that the Applicants herein are seeking to procure and obtain an order of temporary injunction against inter-alia the registered owner of the suit property. The question that does arise is whether such an order can issue as against the registered owner of the property and whether the issuance of such an order would be tantamount to extinguishing the rights of the registered owner?
20. I am afraid that an order of temporary injunction, cannot without proof of peculiar and exceptional circumstance[s] be issued against a registered owner. In this regard, I am fortified by the holding of the Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielse* [2014]eKLR, where the court stated thus;

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.
21. With the foregoing in mind, I am not satisfied that the Applicants herein have established and proven a prima facie appeal with probability of success. On the contrary, and taking into account that the appeal touches on and concerns exercise of discretion, there is no semblance of any prima facie case [appeal] established.
22. In the absence of a prima facie appeal, there is no gainsaying that the Applicants have not met the threshold [foundational] question to warrant pursuit of an order of temporary injunction.
23. It is important to highlight that proof of a prima facie appeal with probability of success is the pathway or better still, the key that opens the door to enable an Applicant to prove the critical issue of irreparable lose. It then means that until and unless the door is opened vide proof of a prima facie appeal, the Applicants herein cannot move forward in an endeavour to surmount the critical hurdle, namely: irreparable lose.
24. Simply put, once an Applicant fails to prove a prima facie appeal, which is the first hurdle in the race, the application for temporary injunction, must of necessity fail. Suffice to highlight that the condition[s]



- underpinning the grant of an Order of Temporary Injunction are sequential in nature, and same must therefore be proven sequentially. [See the holding in the case of Kenya Commercial Finance Limited versus Afraha Education Society [2001] EA]
25. Before concluding on the issue of a prima facie case [appeal], it suffices to reference the holding in the case of Mrao Ltd v First American Bank of Kenya Ltd [2003]eKLR, where the Court of Appeal supplied the definition of what constitutes a prima facie case.
  26. For coherence, the court stated thus;
    4. A prima facie case in a civil application included but was not confined to a genuine and arguable case. It was a case which, on the material presented to the court, a tribunal properly directing itself would conclude that there existed a right which had apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
  27. Moving on to the aspect of irreparable loss; it is important to underscore that where an Applicant establishes a prima facie case [which has not been done] such an Applicant must then move forward and establish a likelihood of irreparable loss. Notably, irreparable loss is the cornerstone [fulcrum] upon which an order of temporary injunction is anchored.
  28. What constitutes irreparable loss has also been the subject of various courts decisions. In the case of Nguruman Ltd v Jan Bonde Nielsen [2014]eKLR, the Court of Appeal highlighted the nuance[s] of irreparable loss in the following manner;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
  29. Have the Applicants even endeavoured to place before the court any iota, or scintilla of evidence to show a likelihood of irreparable loss arising, if the orders sought are not granted? The Applicants have relied on the supporting affidavit sworn on the 19<sup>th</sup> September 2025 and wherein there is no mention/reference of any loss [remote or otherwise] which same are disposed to suffer. It is instructive to highlight that irreparable loss must be deponed to in the supporting affidavit and thereafter substantiated. Moreover, there is no gainsaying that irreparable loss cannot be inferred and/or implied.
  30. It is irrespective of whichever divide one looks at the subject application; the bottom line is that the Applicants have adopted a perfunctory [casual] approach in their endeavour. It is appropriate to posit that an Applicant desirous to obtain an equitable order of temporary injunction must stand up to be counted by placing before the court plausible, concrete and credible evidence to demonstrate the critical ingredients underpinning an application for temporary injunction.
  31. However, in respect of the instant matter the Applicants have not done so.
  32. Turning to the second issue, namely; whether it is in the interest of justice to grant the subject application or otherwise? Two key issues arise. Firstly, it is worth recalling that the Applicants herein



- were the Plaintiffs in the subordinate court. Same sought and obtained various accommodation and indulgence[s] to enable same to procure grant of letters of administration ad litem and thereafter to substitute various deceased persons.
33. It is important to underscore that despite the various indulgence[s], the Applicants failed to appropriate the opportunity granted and indeed no substitutions were ever undertaken in respect of various Plaintiff and Defendants. For good measure, the failure and neglect is said to have run into many months; and year[s].
  34. To the extent that no substitution[s] were undertaken, the suit in the subordinate court on behalf of various Plaintiff[s] abated. Similarly, suits against various Defendants in the subordinate court also abated.
  35. Be that as it may, the critical point which I beg to highlight, touches on and concerns a deliberate failure by a party and in this case the Applicants, to comply with the directions of the court. It suffices to state that courts are clothed with jurisdiction and authority to mete out sanctions against parties who disregard court orders. [See the holding in the case *Tana Teachers Cooperative Society Sacco Ltd v Adrian Muchiri* [2018]eKLR]. [See also the provisions of Section 1A; and 1B of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya].
  36. It is important to reiterate and emphasize that an order of temporary injunction is discretionary in nature. Being discretionary in nature, an Applicant desirous to partake of such an order must approach the seat of justice with clean hands. Instructively, whosoever seeks equity must do equity. The Applicants herein have demonstrated by their antecedent conduct that same are not prepared to pursue justice with clean hands.
  37. Pertinently, the conduct of the Applicants is a critical player is the exercise of the Courts discretion.
  38. The second aspect that does arise relate[s] to the lack of candour; and honesty on the part of the Applicants. To start with, there is the mischief by the Applicants herein who purports to be approaching the court as though all of them are alive. However, in the course of the proceedings, it turned out that only the 1<sup>st</sup> and 5<sup>th</sup> Applicants are alive. The rest of the Applicants died long before the filing of the appeal.
  39. Notwithstanding the foregoing, the deponent of the supporting affidavit is brave and has deponed at paragraph 1 thereof that same is the legal representatives of [sic] the Appellants have been authorized to plead on their behalf and therefore competent to swear the affidavit. The question that does arise is how on earth can the deponent be acting and pleading on behalf of dead people?
  40. Other than the foregoing, there is also the dishonesty propagated by the Applicants to the effect that the suit property lawfully belongs to them. At ground 1 of the application; the Applicants have posited that same are the legal owners of the suit property, yet no document has been exhibited. On the contrary, evidence abound that the suit property is actually registered in the name of the 8<sup>th</sup> Respondent [Josphat David Mwilaria].
  41. In my humble view, the Applicants herein appear to have been keen to procure an order of temporary injunction on the basis of concealment and non-disclosure of material facts. Courts of law must remain vigilant to avert scenarios where parties seek to procure equitable remedies on the basis of misrepresentations; manipulation[s] and falsehood[s].
  42. I hasten to state that even if the Applicants herein had established and proven the existence of a prima facie appeal and irreparable loss [which is not the case] I would still not be inclined to grant the equitable remedies of temporary injunction on the face of the conduct of the Applicants.



43. Quite clearly, an Equitable Order/ remedy cannot be issued to dignify inequity.

**Final Disposition.**

44. Flowing from the analysis adverted to in the body of the ruling, it must have become abundantly clear that the Applicants herein, [who are devoid of candour], have not established the conditions to warrant the issuance of orders of temporary injunction.

45. In the upshot, and for the reason[s] alluded to; the final orders that commend themselves to the court are as hereunder;

- i. The Application dated the 19<sup>th</sup> September 2025 be and is hereby dismissed.
- ii. Costs of the Application be and are hereby awarded to the 1<sup>st</sup>, 5<sup>th</sup> to 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> Respondents.
- iii. The costs shall be borne by the 1<sup>st</sup> and 5<sup>th</sup> Applicants [who are the only living Applicants].
- iv. The Costs shall be agreed upon and in default be taxed in the conventional manner.

46. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**OGUTTU MBOYA, FCI Arb, CPM [MTI].**

**JUDGE.**

In the presence of:

Hussein – Court Assistants

Mr. Muriithi for the Applicants

Ms. Mugo H/B for Mr. Carlpeters Mbabu for the 1<sup>st</sup>, 5<sup>th</sup> to 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> Respondents.

Ms. Miranda [Senior Litigation Counsel] for the 19<sup>th</sup> and 20<sup>th</sup> Respondents

