



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS E009 OF 2025

DICKSON KIBURI KAMENJU.....APPLICANT
=VERSUS=
LOICE WANJIRU IRUNGU(Sued in as Legal Representative of estate of
HUMPREY IRUNGU MWANGI(Deceased).....RESPONDENT

RULING

(1)This ruling is on the notice of motion dated 27-3-2025. The motion which is brought under **Order 42 Rules 1 and 2 of the Civil Procedure Rules** and all other enabling provisions of the law seeks the following residual orders.

- (ii) **The Respondent, her agents, servants and/or anybody claiming through or under her be restrained by way of interim injunction from disposing, selling, offering for sale and, or alienating the suit land in any manner that will extinguish the purchaser's interest pending the hearing and determination of this suit.**
- (iii) **The Court do issue an inhibition preventing any dealing in the suit land pending the hearing and determination of this suit.**
- (iv) **That the costs of this application be borne by the Respondent.**

(2)The motion is based on six(6) grounds and it is supported by the affidavit of the Applicant dated 27-3-2025. In summary, the Applicant's case is as follows. One, on 6-1-2007, the Applicant entered into a sale agreement with the Respondent's husband for the purchase of the suit land. The total purchase price was Kshs. 450,000/=. The Applicant has paid a total of Kshs 420,000/= leaving a balance of Kshs 30,000/=. Two, the Respondent's husband died before completing the transaction and it is the Respondent who succeeded her husband and got registered as the owner of the land. She is reluctant to transfer the suit land to the Applicant. Three, the Applicant has been in occupation of the suit land since the date of purchase and he

has developed it by planting food crops. Finally, unless the orders sought are allowed the suit land may be alienated by the Respondent. It is for the above and other reasons that she seeks the above orders.

(3)The motion is opposed by the Respondent who has sworn a replying affidavit dated 30-4-2025 in which she replies as follows. Firstly, the Respondent is not a legal representatives of her deceased husband as she is the registered owner of the suit land. Secondly, the Respondent is only aware that Kshs. 150,000/= was paid to her husband on 6-1-2007 and nothing more. Thirdly, the Applicant did not occupy the suit land because he was to do so after the boundaries were established and this has never happened. Fourthly, a caution that the Applicant placed against the land was removed on the Respondent's application to the registrar. Finally, the Applicant's application falls short of the test set in case law for the grant of injunctive orders and it should be dismissed with costs to the Respondents.

(4)I have carefully considered the motion in its entirety including the affidavits , the grounds, the written submissions and the law cited therein. I find that the counsel for the parties have correctly identified the issue for determination which is whether the injunctive order sought meets the threshold in the case of **Giella vs. Cassman Brown [1973] EA. 358**. The ratio *decidendi* in the case is that the Applicant who seeks an order of injunction must establish a prima facie with a probability of success. Secondly, he must prove that unless the order is granted, he stands to suffer loss that is irreparable and which cannot be adequately compensated with an award of damages. Finally, if the Court is not sure of the above two conditions, it looks at the balance of convenience.

(5)Regarding, the fast ground, I find that the Applicant has established a prima facie case with a probability of success. It is admitted by the Respondent that her husband received some part payment of the purchase price. There is no evidence of refund of the said amount. It is also probable that the Respondent's husband received more purchase price from the Applicant without the knowledge of the Respondent. The Respondent cannot authoritatively deny receipt of the purchase price by her husband.

(6) Secondly, if the suit land were to be alienated by way of sale, the Applicant would suffer immense loss because the land which he claims could be sold to a third party and he may be unable to recover it. It is therefore, fair and just to order that the suit land be preserved pending the conclusion of this case. Finally, the balance of convenience tilts in favour of maintaining the status quo rather than leaving disputed land at the risk of disposal by one of the parties as the dispute pend.

(7) For the above stated reasons, I find merit in the motion dated 27-3-2025 which I **allow** in terms of prayers 2 and 3. Costs in the cause.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 1st day of December, 2025.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Mwangi Njonjo.
Applicant's Counsel – T.M. Njoroge
Respondent's Counsel – Mr Mwangi