

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CORAM: R. MWONGO, J.**  
**FAMILY APPEAL NO. E011 OF 2024**

**IRERI**

**GATUMU**

**MURUGA.....APPELLANT/APPLICANT**

**-VERSUS-**

**EVALINA WANJIRA GATUMU.....1<sup>ST</sup> RESPONDENT**

**MIRIAM WANJIRU GATUMU.....2<sup>ND</sup> RESPONDENT**

**TERESIA WAMBETI GATUMU.....3<sup>RD</sup> RESPONDENT**

**RULING**

**The Application**

1. The applicant filed this notice of motion dated 21<sup>st</sup> November 2024 seeking orders that:
  - a. Spent;
  - b. Spent; and
  - c. That pending hearing and determination of the Appeal the respondents be restrained by way of an injunction from further execution of the confirmed grant of 21<sup>st</sup> March 2023 and any other subsequent orders arising therefrom particularly evicting the appellant from L.R Gaturi/Githimu/7923 and its subdivisions.
2. The application is premised on the grounds set out on its face and in the supporting affidavit. It is the applicants claim that he has challenged the trial court's judgment through which he has been disinherited. He stated that the grant was issued and confirmed without his knowledge or consent. As a result of the judgment, the applicant is facing eviction from the named piece of land.

**Replying Affidavit**

3. The 3<sup>rd</sup> respondent filed a replying affidavit stating that her mother and step-mother petitioned for a grant in the estate of the deceased. The grant was issued and confirmed, giving the applicant and herself parcel number Gaturi/Githimu/7923 in equal shares. Since there was no order revoking the grant, the administrators proceeded to execute the certificate of confirmation of grant and the result included

subdivision of the said parcel number Gaturi/Githimu/7923 into 2 portions namely Gaturi/Githimu/14616 and 14617.

4. She deposed that she took possession of Gaturi/Githimu/14616 and sold it to a third party. The applicant ought to pursue registration of Gaturi/Githimu/14617 in his name. She stated that the applicant went on to petition for a grant in the estate of the deceased in another court. In the process, he forged most of the signatures of the beneficiaries. That case was eventually dismissed. She urged the court to dismiss the application which is a waste of the court's time as the applicant has not been disinherited in any way.

#### **Parties' Submissions on the application**

5. The court directed that the application be canvassed by way of written submissions. The applicant and the 3<sup>rd</sup> respondent complied.
6. In his submissions, the applicant stated that the land in question was subdivided without his involvement and his name was wrongly written in the succession proceedings. He further contended that the person purportedly bequeathed land was not him. He challenged the issuance of the grant and the fact that his ID number is missing from the documentation allocating land to him or a person purported to be him.
7. He relied on the cases of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR** and **Naomi Okul v Mark Okul [2014] KEHC 4140 (KLR)**. He urged the court to revoke the grant because his consent was not sought and obtained. On his prayer for injunction, he relied on the case of **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] KEELC 2424 (KLR)** and urged the court to grant the prayer since according to him, all the parameters have been met.
8. The 3<sup>rd</sup> respondent's submissions rehashed the averments made in the replying affidavit. She urged the court to dismiss the application and the appeal.

#### **Issue for Determination**

9. From a perusal of the application and submissions by the applicant, the core issue for determination is whether the application has merit.

#### **Analysis and Determination**

10. The main pillars of under which an injunction is granted are that the applicant must:  
**(a) establish a prima facie case,**

***(b) demonstrate irreparable injury if a temporary injunction is not granted, and***

***(c) if the court is in doubt as to (b), it will grant the injunction on a balance of convenience.***

This was the position held by the court in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2013] KECA 347 (KLR)**.

11. In the present case, the applicant filed the application out of fear that he will be evicted from parcel number Gaturi/Githimu/7923. According to him, he was disinherited by the administrators of the estate, and his name as indicated in the proceedings is not his true name. He stated that it is in fact a nickname. He said that he did not consent to any of the proceedings leading up to issuance and confirmation of the grant, which has led to distribution of the land he lives on.
12. The 3<sup>rd</sup> respondent produced a mutation form for land parcel number Gaturi/Githimu/7923 showing that the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are administrators of the estate of the deceased have applied for subdivision of the land into 2 equal portions. According to her, the applicant was meant to pursue registration of his portion of the land in his name. Instead, however, he went on to petition for a new grant for the same estate. The court dismissed his petition and that is the subject of the pending appeal. The 3<sup>rd</sup> respondent stated that the application is a waste of the court's time.
13. The applicant ought to demonstrate that he is bound to suffer greater harm than the respondents if the injunction is not ordered. That he is likely to be more inconvenienced. In the case of **Bryan Chebii Kipkoech v Barnabas Tuitoek Bargaroria & another [2019] eKLR** (as cited in the case of **Margaret Njambi Kamau v John Mwatha Kamau & another [2019] eKLR**) the court held;

***“The court should issue an injunction where the balance of convenience is in favor of the plaintiff and not where the balance is in favor of the opposite party. The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is***

*really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than [that] which is likely to arise from granting it....”*

14. Similarly, in the case of **Joel Kipkurui arap Koech v Alice Wambui Magandu & 3 others [2018] eKLR** the court stated:

*“In the case of Suleiman v Amboseli Resort Ltd (2004) KLR 589, Ojwang Ag. J (as he then was) stated thus: “Counsel for the Defendant urged that the shape of the Law governing the grant of injunctive relief was long ago, in Giella – v- Cassman Brown, in 1973 cast in stone and no new element may be added to that position. I am not, with respect, in agreement with counsel in that point, for the law has always kept growing to greater levels of refinement, as it expands to cover new situations not exactly foreseen before. ....Traditionally, on the basis of the well accepted principles set out by the Court of Appeal in Giella –v- Cassman Brown, the court has to consider the following questions before granting injunctive relief:*

*i) Is there a prima facie case.....*

*ii) Does the applicant stand to suffer irreparable harm....*

*iii) On which side does the balance of convenience lie.....*

*Even as those must remain the basic tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The court in responding to prayers for interlocutory injunctive relief should always opt [for] the lower rather than the higher risk of injustice... if granting the applicant’s prayers will support the motion towards full hearing, then should grant those prayers...”*

15. Under Order 40 Rule 1 of the Civil Procedure Rules, it is clear that injunctions are granted at the discretion of the court. The Order provides as follows:

**“Where in any suit it is proved by affidavit or otherwise—**

*(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*

*(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”*

16. In the present case, it appears that there is an issue concerning the identity of the person entitled to inherit a part of the property Gaturi/Githimu/7923 which has since mutated into 2 portions namely Gaturi/Githimu/14616 and 14617. This issue of identity of the applicant is one of the grounds of appeal according to the Memorandum of Appeal dated 21<sup>st</sup> November 2025.
17. Indeed, in grounds 1 and 5 of the Memorandum of Appeal, the challenge is made that Ileri Gatumu Muruga (Appellant/Applicant) is not Stephen Ileri Gatumu; and that the beneficiary named in the lower Court as Stephen Ileri Gatumu was not him.
18. In the circumstances, and without getting into the merits of the appeal, it is important that the appeal be canvassed without the risk of the property being interfered with.

### **Disposition**

19. Accordingly, I find that the application has merit. Prayer (c) of the application is therefore granted as prayed.
20. Orders accordingly.

**Delivered electronically, dated and signed at Embu High Court this 3<sup>RD</sup> DAY OF DECEMBER, 2025, pursuant to notices issued on 24<sup>th</sup> and 26<sup>th</sup> November 2025, as to electronic delivery.**

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**R. MWONGO  
JUDGE**