

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ELC SUIT NO. E002 OF 2025

JENIFFER KAVINDU MACHARIA AND
PETER MACHARIA GITUTU (legal representatives
of the Estate of Monica Kavithe Mutisya –
alias Monica Macharia.....
.....APPLICANT

-VERSUS-

KANKO LEPENRESPONDENT

RULING

*(In respect of the Notice of Motion Application dated 21st October 2025
seeking a temporary injunction pending hearing and determination of this
suit)*

Introduction

1. The matter before this Honourable Court is the Notice of Motion Application dated 21st October 2025, brought pursuant to ***Article 40 of the Constitution, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act.***
2. The Application is supported by the Affidavit of the 1st Applicant, JENIFFER KAVINDU MACHARIA, sworn on the 21st October 2025, together with the annexures marked "JKM.1" through to "JKM.6". The Applicants seek

injunctive relief to preserve the estate's proprietary rights in the suit land pending the hearing and determination of the main suit.

3. In the said Application, the Applicants pray for the following orders:

1) Spent.

2) Spent

3) THAT pending inter partes hearing and determination of this suit the respondent by himself his officers, servants, agents or otherwise whatsoever be restrained from disposing off, alienating, transferring and/or otherwise howsoever interfering with the applicants' interest in land parcel number Kajiado/ Kaputiei- Central/2038.

4) THAT costs of this application be provided for.

4. The Application is premised on the grounds in the Supporting Affidavit sworn by the 1st Applicant, JENIFFER KAVINDU MACHARIA, on the 21st October 2025. The Applicants bring this claim in their capacities as the legal representatives of the estate of the late Monica Kavithe Mutisya (alias Monica Macharia).

5. The Applicants aver that their late mother entered into a sale agreement with the Respondent on 7th April 1995 for the purchase of 20 acres of land, which was initially part of land parcel number Kajiado/Kaputiei-Central/727. It is deposed that the deceased paid the full

purchase price through various installments but the Respondent refused to effect the transfer of ownership. The family has however, been in actual possession and occupation of the said 20 acres since 1995, utilizing it as their home.

6. Due to the Respondent's refusal to transfer the land, the deceased had previously sought legal redress. During the course of that trial, the Respondent proposed an out-of-court settlement. The terms were that the deceased would remove a restriction he had placed on the parent title (Parcel 727) to facilitate subdivision, and in return, the Respondent would excise and transfer the 20 acres to her. This consent was recorded in court.
7. The Applicants state that their late mother complied with the court orders and removed the restriction. Subsequently, the Respondent subdivided the parent title (Parcel 727) into two portions: **Kajiado/Kaputiei-Central/2038 (Measuring approximately 11.26 Ha)** and **Kajiado/Kaputiei-Central/2039 (Measuring approximately 20.64 Ha)**.
8. The Applicants contend that in a "shocking turn of events," the Respondent refused to transfer the agreed 20 acres to the deceased or her estate. Instead, the Respondent has already sold and transferred one of the resultant subdivisions (Parcel 2039) to a third party, Hilltop Engineering and Technical Services Ltd.

9. The Applicants' claim lies within the remaining subdivision, **Kajiado/Kaputiei-Central/2038**, which still stands registered in the name of the Respondent.
10. The Applicants depose that there is a real and imminent danger of alienation of this suit property based on what they have recently observed; "strangers accompanied by the respondent visiting and surveying the land" they occupy. They have received information that the Respondent is scouting for buyers for the parcel. The title deed is currently in the Respondent's name, leaving the estate exposed to the risk of sale to unsuspecting third parties. The Applicants argue that unless the orders sought are granted, the Respondent will dispossess them of the land they have known as home for over three decades, causing irreparable loss to the estate.

Analysis and Determination

11. I have considered the Application, the Supporting Affidavit, and the annexures thereto. The primary issue for determination is whether the Applicants have satisfied the criteria for the grant of a temporary injunction pending the hearing and determination of the main suit.
12. The power of this Court to grant an interlocutory injunction is equitable and discretionary. The leading authority on the principles guiding this discretion

is the celebrated case of *Giella vs. Cassman Brown & Co. Ltd [1973] EA 358.*

The Applicants must demonstrate:

- a) A prima facie case with a probability of success.
- b) That they will suffer irreparable injury which cannot be adequately compensated in damages unless the interlocutory injunction is granted, and
- c) If the court is in doubt, the application will be decided on the balance of convenience.

13. The fundamental objective of a temporary injunction is to preserve the status quo and ensure that the subject matter of the suit is not wasted, damaged, or alienated before the rights of the parties are determined with finality. If the subject matter—in this case, the land—is disposed of, any eventual judgment in favor of the Applicants would be rendered nugatory.

14. This principle was clearly articulated by the Court of Appeal in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR*, where the Court held as follows:

"In an interlocutory injunction application, the applicant has to establish that he has a prima facie case with a probability of success. Secondly, that he suffers irreparable injury which cannot be compensated in damages. Thirdly, if the court is in doubt, it will

decide the case on the balance of convenience... The purpose of an interlocutory injunction is to preserve the status quo pending the hearing and determination of the suit."

15. The Applicants have presented material evidence, including a sale agreement from 1995, proof of installment payments, and evidence of a previous court settlement where the Respondent agreed to transfer the 20 acres. The fact that the Applicants have been in possession for over 30 years further strengthens their claim to an equitable interest in the land.
16. The subject matter is land, which is unique in character. The Applicants reside on this land. The Respondent has already subdivided the parent title and sold one portion (Parcel 2039) to a third party. There is a well-founded apprehension that the remaining portion, which the Applicants occupy, is also at imminent risk of alienation. Should the land be sold to an innocent third party, the Applicants would face eviction and the permanent loss of their home, a harm that damages alone cannot adequately remedy.
17. The balance tilts in favor of the Applicants, who are currently in actual occupation. The Respondent will suffer no prejudice if the land is preserved until the dispute is resolved, whereas the Applicants risk losing their home entirely if the injunction is denied.

18. Consequently, I find that the Applicants have met the threshold for the grant of the orders sought.

19. IT IS HEREBY ORDERED:

- I. **THAT** the Application dated 21st October 2025 is allowed.
- II. **THAT** pending the hearing and determination of this suit, the Respondent by himself, his officers, servants, agents or otherwise whatsoever is hereby restrained from disposing of, alienating, transferring, and/or otherwise howsoever interfering with the Applicants' interest in land parcel number Kajiado/ Kaputiei- Central/ 2038.
- III. **THAT** the costs of this Application shall be in the cause.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 11th Day of December 2025.

M.D. MWANGI
JUDGE

In the virtual presence of:

N/A by the Parties

Court Assistant: Mpoye

M.D. MWANGI
JUDGE

ORIGINAL FILE COPY