

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC CASE NO. E019 OF 2023**

**FRANCIS NJENGA MUKUA ..... 1<sup>ST</sup>**

**PLAINTIFF**

**WANDATI LAWRENCE ..... 2<sup>ND</sup> PLAINTIFF**

**EDWIN MURIITHI MWANGI ..... 3<sup>RD</sup>**

**PLAINTIFF**

**WANJIKU WANJENGA KARANJA ..... 4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**FRANCIS MAINA NDUNGU ALIAS**

**FRANCIS MAINA NJONJO ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, RUIRU ..... 2<sup>ND</sup> DEFENDANT**

**TERESIAH NJERI MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**GITHUNGURI CONSTITUENCY RANCHING**

**COMPANY LTD ..... 4<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. What is before me for determination is the Plaintiff/Applicant's Notice of Motion date d 12<sup>th</sup> June 2024 seeking the following orders:

a) *Spent*

b) *An injunction restraining the 1<sup>st</sup> Defendant /Respondent, his servants, agents and/or anyone acting through him from interfering with and/or dealing in any manner with the suit properties herein.*

c) *An order inhibiting the registration of any dealings with the eight (8) parcels of land registration numbers*

*RUIRU/KIU BLOCK 2 GITHUNGURI/26171-26178 until the main suit herein is heard and determined.*

*d) The Officer commanding Gatong'ora Police Station and/or equivalent officer be directed to enforce and ensure compliance with the orders granted herein.*

*e) The costs of this application be provided for.*

*f) Any order that the Honourable court deems fit to make to meet the ends of justice.*

2. The application is anchored on the grounds set out on the face of the application and the supporting affidavit.
3. The application was resisted by the 1<sup>st</sup> Defendant through his Replying affidavit sworn on 3<sup>rd</sup> July 2024. In the said affidavit he deponed that the registered owner of the previously denoted land parcel number RUIRU/KIU BLOCK 2/4746 which does not exist anymore having been sub-divided into eight plots. He purchased the same from Stephen Mwangi Maina, a former director of Githunguri Ranching Constituency Company Ltd.
4. He deponed that land parcel number RUIRU/KIU BLOCK 2/4546 is a sub-division of land parcel number RUIRU/KIU BLOCK 2/3610 which initially measured 4.5Ha and on 13.7.2002 land parcel number 3610 was sub-divided into 11 parcels each measuring 0.405 Ha being L.R No. 4542-4552 which were balloted under ballots number GK1-GK11. The suit property being parcel number RUIRU/KIU BLOCK 2/4546 was balloted by Stephen Mwangi Maina under ballot number GK5.

5. Having confirmed that Stephen Mwangi Maina was a director and shareholder of Githunguri Constituency Ranching Company Ltd, he entered into a sale agreement with him for the purchase of the suit property. However, Stephen Mwangi Maina died in 2009 before transferring the suit property to him.
6. It is his further deposition that after Stephen's death Teresiah Njeri took out a Grant of Letters of Administration in respect of the estate of Stephen Mwangi Maina and had the suit property transferred to him in 2016.
7. He adds that it was only after he took possession of the suit property in 2016 that some people started claiming that they owned a piece of the suit property. He then filed a case at Milimani Court against Peter Mwangi and his wife Margaret together with the other people who were claiming a portion of the suit property. The case was determined in his favour in January 2021 and the defendants were ordered to vacate the suit property and demolish their structures. However, Peter Mwangi and his wife Margaret opted to buy the portion they were occupying rather than have it demolished.
8. He deposes that he thereafter took possession of the remaining parcels being RUIRU/KIU BLOCK 2/ GITHUNGURI/26171-26178. He subsequently entered into agreements with Joseph Mugo over parcel number 26174, Peter Mwangi and Margaret Mwangi over parcels number 26171 and 26172 and Godfrey Njenga Mwangi over

parcel 26175 and their claims in respect of the said parcels have since been settled.

9. He adds that save for the aforesaid parcels, he has no intention of selling the remaining parcels.
10. He is therefore of the view that the application is driven by mala fides as the Applicants seek to restrict dealings on plots owned by their former co-defendants in the Milimani case.
11. The application was canvassed by way of written submissions and both parties filed their submissions.

#### **ANALYSIS AND DETERMINATION**

12. I have carefully considered the pleadings, application and rival submissions and the singular issue for determination is whether the plaintiffs should be granted a temporary injunction.
13. The principles that govern the grant of interlocutory injunctions are now well settled as laid out in the case of **Giella v Cassman Brown & Company Ltd ( 1973) E.A 358**. The Applicant must establish a prima facie case with a probability of success. Additionally ,he must demonstrate that he will suffer irreparable loss which cannot be adequately compensated by damages, if the order of injunction is not granted and finally if the court is in doubt, it shall decide the application on a balance of convenience.
14. In the case of **Mrao v First American Bank of Kenya Limited (2003) eKLR** Bosire JA (as he then was) stated as follows:

*“A prima facie case is one which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been apparently infringed”*

15. The first question I must determine is whether the Applicants have a prima facie case with a probability of success.
16. The Applicants are not the registered owners of the suit property. What they have produced are copies of ballot cards to prove that they balloted for plots in the mother title being RUIRU/KIU BLOCK 2/4546. The said mother title has since been sub-divided and portions claimed by the Plaintiffs are registered in the 1<sup>st</sup> Defendant's name. As was stated in the case of **Nguruman Ltd v Jan Bonde Nielsen & 2 Others (2014) eKLR:**

*“The Applicant need not establish title, it is enough if can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on balance or as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the Applicant's case is more likely than not to ultimately succeed.”*

17. Since it is not in dispute that the Applicants are in occupation of some of the portions registered in the 1<sup>st</sup> Respondent's name, they have demonstrated that they have a prima facie case.
18. On the question of irreparable loss, the Applicants are apprehensive that if the 1<sup>st</sup> Respondent sells the portions of land that they are occupying they will suffer irreparable loss. However, the 1<sup>st</sup>

Respondent has stated that apart from the occupants of the suit property who have entered into negotiations with him and purchased the portions they are occupying after Milimani ELC Case No. 1391 was determined, he has no intention of selling the other portions.

19. Although the Applicants have not placed before the court any cogent evidence to show that the 1<sup>st</sup> Respondent intends to dispose of the suit property, their fears are not far-fetched. There is no doubt that if the suit property is sold before the case is heard and determined, they will suffer irreparable loss.
20. In the circumstances, it is necessary to preserve the suit property pending the hearing and determination of the suit. I must however point out that that the Applicants are only entitled to orders in respect of the specific portions they occupy.
21. Consequently, the application has merit and I grant it and make the following orders:

***a) The status quo prevailing as at the time of this ruling with regard to the occupation and use of land parcels number RUIRU/KIU BLOCK 2 /GITHUNGURI/26173, 26176, 26177 and 26178 shall be maintained .***

***b) An order of inhibition is hereby issued inhibiting the registration of any dealings on land parcels number RUIRU/KIU BLOCK 2/GITHUNGURI/26173,26176, 26177 and 26178 until the main suit is heard and determined.***

***c) The costs of this application shall be in the cause.***

**Dated, signed and delivered virtually at Thika this 2nd day of December 2025.**

.....

**J. M ONYANGO  
JUDGE**

**In the presence of:**

1. Mr Kungu for the Plaintiffs/ Applicants
2. Ms Akoth for Mr. Oyunge for the 5th, 6th and 7th Defendants
3. Mr Kanyi for the 4th Defendant

Court Assistant: Hinga