



REPUBLIC OF KENYA



Kiliko & 2 others v Mtu Wa Paa Development Limited & another (Environment and Land Case E084 of 2025) [2026] KEELC 488 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E084 OF 2025
EK MAKORI, J
JANUARY 28, 2026**

BETWEEN

ABDALLA MWALIMU KILIKO 1ST PLAINTIFF

ALFAN SHABANI BOMA 2ND PLAINTIFF

MWANAHAMISI ABDALLA MWALIMU 3RD PLAINTIFF

AND

MTU WA PAA DEVELOPMENT LIMITED 1ST DEFENDANT

THE LAND REGISTRAR MOMBASA 2ND DEFENDANT

RULING

1. The Plaintiffs/Applicants' Notice of Motion, dated July 11, 2025, is brought under Sections 3A and 63(e) of the *Civil Procedure Act* and under Order 40, Rules 1, 2, and 10, and Order 1, Rule 8, of the Civil Procedure Rules.
2. They seek temporary injunctive orders restraining the 1st Defendant from further encroaching, constructing, selling, transferring, evicting, demolishing, harassing, or in any way interfering with the Applicants' occupation of Plot No. Original MN/III/164/3, now Plot No. MN/III/1446, situate in Mtwapa, Kilifi County, pending the hearing of the application and the main suit.
3. The application is premised on the grounds stated on its face, the Supporting Affidavit of Abdalla Mwalimu Kiliko, and other documents filed herein.
4. Arising from the materials and submissions placed before me, the issues that fall for the determination of this court are whether the Applicants have satisfied the conditions for the grant of a temporary injunction as set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and the attendant costs.



5. The principles governing the grant of interlocutory injunctions are now well established in the esteemed case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, (*supra*). The Court stated that the applicant must establish a *prima facie* case with a likelihood of success. The applicant must also demonstrate that they will suffer irreparable injury that an award of damages cannot adequately remedy. In instances of doubt, the Court shall decide based on a balance of convenience. These principles have been reaffirmed in numerous decisions, see, for example, *Nguruman Ltd v Jan Bonde Nielsen & Others* [2014] eKLR and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125.
6. A *prima facie* case is defined in *Mrao v First American Bank* (*supra*) as one in which “a right has been infringed and calls for rebuttal from the opposite party.”
7. In this matter, the Applicants assert that they have provided evidence supporting the following assertions: The property in question was originally owned by their late father, Mwalimu Kiliko Abdallah. Their father possessed and cultivated the land, planting fruit and palm trees. Following his paralysis in 1987 and subsequent death, the land was subdivided irregularly, and one subdivision, MN/III/1446, was registered in the name of the 1st Respondent through fraudulent practices. The land remains unoccupied, and the 1st Respondent’s claim of ownership is therefore questionable. Currently, the Applicants are engaged in farming activities on the property. Consequently, the Applicants have demonstrated a clear, arguable, and legally protectable interest in the land, raising significant questions about ownership and the legitimacy of the 1st Respondent’s title. They have further contended that they have established a *prima facie* case with a reasonable prospect of success.
8. They contend that they will suffer irreparable loss if no injunction is granted. The suit land measures approximately 45 acres, is family land, and is part of the estate of a deceased person.
9. Once alienated, transferred, sold, or permanently developed, the land cannot be recovered, and damages cannot fully compensate for the loss of ancestral property. They contend that the 1st Respondent is actively threatening to evict, interfere with, and continue trespassing on the property. The actions of the 1st Respondent risk permanently disinheriting the Applicants. Courts have held that the loss of land, especially ancestral or estate property, constitutes irreparable harm. Accordingly, they assert that the threshold for irreparable harm is met.
10. They further aver that the balance of convenience tilts in their favor because they have farming on the suit property. The land is largely vacant, so that preservation would cause no hardship to the Respondents. Allowing the Respondents to continue encroachment may lead to irreversible developments, defeating the purpose of the suit. The balance of convenience, therefore, lies in maintaining the status quo.
11. Applying the principle governing the issuance of an interlocutory injunction in this matter, as set out above, without delving into the merits of the main suit, the applicants have provided a history of deprivation of what they call ancestral land, which began back in 1987. They are in the process of reclaiming it. They allege that they are now in occupation of part of it and that the 1st respondent has threatened them with eviction.
12. Nothing was presented to this court *prima facie* to show that the land was fraudulently taken from their father. They have not demonstrated any actual threat of eviction, as they claim to be in possession of the land. To me, the threat alone at this stage, without evidence that an eviction is imminent, is not enough.
13. That is why, at this stage, I will not issue any injunctive relief, as it would serve no purpose. The issues raised herein can be addressed in the main suit.



14. Consequently, the Application dated 11th July 2025 is hereby dismissed with no order as to costs because it was not defended.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN NYERI ON THIS 28TH DAY OF JANUARY 2026, IN THE ABSENCE OF PARTIES WHO WERE AWARE OF TODAY'S RULING.

E. K. MAKORI

JUDGE

