



Kibue v Kibue (Sued as the Legal Guardian and Manager of the Estate of Annunciata Waithera Kibue) (Environment and Land Case E298 of 2025) [2026] KEELC 174 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEELC 174 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E298 OF 2025
CG MBOGO, J
JANUARY 27, 2026**

BETWEEN

PAUL KIMARI KIBUE PLAINTIFF

AND

SUSAN NJERI KIBUE (SUED AS THE LEGAL GUARDIAN AND MANAGER OF THE ESTATE OF ANNUNCIATA WAIHERA KIBUE) DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 16th July, 2025 filed by the plaintiff/applicant and it is expressed to be brought under the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act* in addition to Order 40 Rule 2, and Order 51 Rule 1 of the Civil Procedure Rules. It seeks the issuance of the following orders:-
 1. Spent.
 2. Spent.
 3. That pending hearing and determination of the main suit, this honourable court be pleased to issue an order of temporary injunction to restrain the defendant/respondent, her servants, workmen, licensees, agents or any other persons acting on her behalf or instructed by the defendant/respondent from harassing, alienating, dealing, evicting and interfering whatsoever with the property referred to as LR No. 5989/16.
 4. That this honourable court be pleased to direct the Officer Commanding Station (OCS) Runda Police Station to oversee the execution of the orders issued herein.
 5. That this honourable court be pleased to issue any further orders that it may deem fit and just.
 6. That costs of this application be provided for.



2. The application is premised on the grounds on its face. It is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the defendant/respondent is his sibling. Further, that he has been residing on a portion of the suit property known as LR No. 5989/16 together with his family for over thirty years.
3. The plaintiff/applicant deposed that the suit property was bequeathed to his mother, Annunciata Waithera Kibue, following the death of his father, James Aram Kibue, vide Succession Cause No. 2358 of 1996. He deposed that his parents also gave consent to his other siblings to deal with, operate and live on various portions of the suit property.
4. The plaintiff/applicant further deposed that the defendant/ respondent was appointed as the legal guardian of the estate of their mother on grounds of mental incapacity vide the judgment delivered in Nairobi HCFMISC E227/2021. Further, that on the strength of the judgment, the defendant/respondent has issued him with a notice to vacate the suit property and to demolish all constructions thereon including his home. He deposed that unless restrained by this court, the defendant/respondent shall evict him from the suit property occasioning grave harm and prejudice unto him.
5. In opposition to the application, the defendant/respondent filed the replying affidavit sworn by herself on 27th October, 2025. She deposed that the plaintiff/ applicant had falsely deposed that he built the house within the suit property when it was actually their father, James Aram Kibue, who built it and that it was where the plaintiff/applicant grew up.
6. The defendant/respondent deposed that the plaintiff/applicant who runs a garbage collection business, parks the smelly garbage collection lorries in their mother's compound causing great nuisance to their elderly mother. Further, that the plaintiff/applicant has built his own house on land Parcel No. 5989/131 which he has refused to occupy because he intends to keep taking advantage of their mother.
7. The defendant/respondent deposed that the plaintiff/applicant has grabbed their mother's farm LR No. 5989/16, the suit property, which he uses for his own benefit by selling livestock produce for his own selfish gain which has frustrated her responsibilities as the legal guardian of their ill mother. She further deposed that as per the confirmed grant, the suit property was distributed to their mother by the court and not the plaintiff/applicant. The defendant/respondent insisted that the plaintiff/applicant has no right to remain on the suit property given the fact that his stay is affecting her responsibilities as the legal guardian of their mother's estate. She urged the court to dismiss the application with costs for want of merit.
8. The plaintiff/applicant filed the further affidavit sworn on 23rd January, 2026. The plaintiff/applicant reiterated the contents of his supporting affidavit and denied the allegations raised in the defendant's/respondent's replying affidavit.
9. This court directed that the application be canvassed through written submissions. None of the parties filed their written submissions. Be that as it may, I have considered the application, and the replies thereof. The issue for determination is whether the orders of temporary injunction should issue pending the hearing and determination of the main suit.
10. The prerequisite conditions for a grant of injunctive orders under Order 40 Rule 1(a) of the Civil Procedure Rules were determined in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] 1 EA 358 at 360 (CAK) as follows:-

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant



might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (E.A. Industries v. Trufoods, [1972] E.A. 420.)”

11. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR the Court of Appeal defined a prima facie case in the following terms: -

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

12. A perusal of the Exhibit “PKK2” annexed to the instant application reveals that the suit property, land parcel no. 5989/16, devolved to Annunciata Waithera Kibue following the issuance of a certificate of confirmation of grant in respect of the estate of James Aran Njau Kibue (deceased) on 16th November, 2005. The plaintiff/applicant duly acknowledged at paragraph 5 of his supporting affidavit that the proprietary rights to the suit property are vested in his mother. It is the plaintiff/applicant’s case that he has been living in the suit property with the consent of his parents for over thirty years.
13. In response to the application, the defendant/respondent contended that she is the duly appointed legal guardian of the estate of their mother Annunciata Waithera Kibue having been so appointed by the court in Nairobi HCFMISC E227/2021. She produced a copy of the decree issued on 18th July, 2024 as Exhibit “SNK1”. It was her case that the plaintiff/applicant has adamantly refused to vacate the suit property where he grew up despite the fact that he has erected his own maisonette on land Parcel No. 5989/131. She decried the plaintiff/ applicant’s gross conduct which entails parking smelly garbage trucks in their mother’s compound in addition to selling livestock produce from the suit property for selfish purposes. The defendant/respondent contended that the plaintiff/applicant’s continued stay is frustrating her responsibilities as the legal guardian of their mother’s estate in addition to being a nuisance.
14. The plaintiff/applicant did not controvert the defendant/respondent’s evidence that he has no proprietary rights in the suit property and that he has his own separate land where he has constructed a maisonette. Accordingly, the plaintiff/applicant has not satisfied this court that he has a prima facie case with a probability of success against the defendant/respondent in order to justify issuance of an interlocutory injunction.
15. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR opined as follows:-

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”



16. Seeing that the plaintiff/applicant did not surmount the first hurdle of proving a prima facie case for the grant of the interlocutory relief sought, it is not worthwhile to consider the other two limbs as the Court of Appeal aptly observed in *Nguruman Limited* (supra). A conclusive determination of the entire claims by the parties herein can only be determined at a full hearing of the case.

17. In *Julius Kuria Nganga v Wambui Kigamba* [2017] eKLR, the Court held as follows: -

“Further, the court will also take into account that at this stage the court is not called upon to determine the very issues with finality but only to find out if the applicant has established that he deserved the orders sought basing it on the laid down criteria. See the case of *Edwin Kamau Muniu vs Barclays Bank of Kenya Ltd Nairobi (Milimani)* High Court, Civil Case No.1118 of 2002, where the court held that:

“in an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at that stage is whether the applicant is entitled to an injunction sought on the usual criteria.”

18. The upshot of the foregoing is that the notice of motion dated 16th July, 2025 is devoid of merit, and the same is hereby dismissed with costs to the defendant/respondent.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 27TH DAY OF JANUARY, 2026.

HON. MBOGO C.G.

JUDGE

27/01/2026.

In the presence of:

Ms. Vena Aron - Court assistant

Mr. Rukwaro holding brief for Mr. Kimani for the Plaintiff/Applicant

Ms. Mulama holding brief for Mr. Ng'ang'a for the Defendant/Respondent

