

**REPUBLIC OF KENYA**

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

**ELC CASE NO. E002 OF 2025**

**JOHNSON MAINA MUIGAI ..... 1<sup>ST</sup>**

**PLAINTIFF**

**PETER KINGANGA MUTUGU ..... 2<sup>ND</sup> PLAINTIFF**

**SIMON SHAURI MBUGUA ..... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**WILLY KIHARA NJOKI .....**

**DEFENDANT**

**RULING**

1. This Court is tasked with determining the Notice of Motion application dated 9<sup>th</sup> January 2025 which seeks the following Orders:

1. *Spent...*

2. *THAT this Honourable Court be pleased to order the issuance of a temporary injunction restraining the Defendant by himself and/or his agents, servants or employees or anyone authorized by him or acting on his behalf or otherwise howsoever from entering into, trespassing, occupying, disposing off or in any other manner interfering with the First, Second and Third Plaintiff's access to, quiet possession, occupation, user and/or enjoyment of all those parcels of land known as L.R. No. 11261/13 and L.R. No. 11261/14 pending the hearing of this application interpartes.*

3. *THAT this Honourable Court be pleased to order the issuance of a temporary injunction restraining the Defendant by himself and/or his agents, servants or*

*employees or anyone authorized by him or acting on his behalf or otherwise howsoever from entering into, trespassing, occupying, disposing off or in any other manner interfering with the First, Second and Third Plaintiff's access to, quiet possession, occupation, user and/or enjoyment of all those parcels of land known as L.R. No. 11261/13 and L.R. No. 11261/14 pending the hearing of this suit.*

4. *THAT the costs of this application be provided for.*
2. The application is premised on the grounds on the face of it and the supporting affidavit of Johnson Maina Muigai and Peter Kinganga Mutugu sworn on even date.
3. The first plaintiff claims to be the registered proprietor of the parcel of land known as L.R. No. 11261/13 whereas the 2<sup>nd</sup> and 3<sup>rd</sup> applicants claim joint ownership of the parcel of land known as L.R. No. 11261/14.
4. The applicants essentially claim that the respondent has trespassed on their land known as L.R. No. 11261/13 and L.R. No. 11261/14 (hereinafter 'suit properties') and there is eminent danger that unless the injunctive orders are issued by this Honourable Court the unlawful trespass by the respondent will persist to the detriment of the applicants.
5. The applicants also claim that the suit properties are at a risk of being disposed of should the Court fail to issue the injunctive orders.
6. The application was vehemently opposed by the replying affidavit of Willy Kihara Njoki sworn on 10<sup>th</sup> February 2025 contending that there

was *inter alia* a misjoinder of causes of action and that the matter was an abuse of the court process.

7. Thereafter the applicants swore further affidavits on 28<sup>th</sup> March 2025 rebutting the respondent's contention of the application and provided more evidence to buttress their claim.
8. Pursuant to leave granted on 7<sup>th</sup> May 2025 the respondent addressed the applicant's claims via a supplementary affidavit sworn on 26<sup>th</sup> May 2025. The respondent reiterated the averments made in their affidavit sworn on 10<sup>th</sup> March 2025.
9. The respondent contends that the applications are fatally defective and ought to be struck off. He reiterated that Kangaita Coffee Estate Limited had no capable director to sell the suit properties on the date when the applicants allege to have purchased the suit properties.
10. The application was canvassed by way of written submissions which were duly filed by the respective parties.

### **Issues for Determination**

11. Having examined the application, the affidavits on record, the rival submissions, and the relevant authorities, the following issue emerges for determination: *Whether the Applicants have satisfied the requirements for the grant of an interlocutory injunction.*

### **Analysis and Determination**

12. The grant of an interlocutory injunction is an equitable and discretionary remedy, to be exercised judiciously and on the basis of the material placed before the Court. In determining whether the Applicants have satisfied the requirements for such relief, the Court must assess the facts as disclosed in the affidavits, consider the parties' rival positions, and apply the governing principles to the circumstances of the case.
13. Those governing principles are well settled in Kenyan law. In *Giella v Cassman Brown & Co Ltd* [1973] EA 358, the Court of Appeal set out the criteria for the grant of an interlocutory injunction, namely that an applicant must establish a *prima facie* case with a probability of success, demonstrate that he or she stands to suffer irreparable injury which would not be adequately compensated by an award of damages, and, where the Court is in doubt, show that the balance of convenience tilts in his or her favour.
14. These principles have been consistently applied and reaffirmed by Kenyan courts and guide the Court's determination of the present application.
15. The first question for determination is whether the Applicants have established a *prima facie* case with a probability of success. At this stage, the Court is not called upon to make final determinations on the merits. It suffices that the Applicants' claim discloses a serious issue to be tried.
16. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2005]eKLR defined *prima facie* as follows:

*“In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial.”*

17. The Applicants assert that they are the lawful owners of the suit properties, having purchased them from Kangaita Coffee Estate Limited, and have annexed the relevant certificates of title, sale agreements, and transfer documents.
18. The Respondent, however, challenges the authenticity of these documents, maintaining that he was gifted the suit properties by his late father one James Kanyotu (deceased), who he claims was the sole director of Kangaita Coffee Estate Limited, and that, being deceased, no one had authority to sell or transfer the properties on the dates alleged by the Applicants.
19. At this interlocutory stage, the Court is not required to resolve this factual dispute definitively. It is sufficient that the Applicants’ material discloses a real question fit for trial, and that a right capable of protection has been asserted. On this basis, the Court is satisfied that the Applicants have demonstrated a prima facie case warranting further consideration.
20. The second requirement for the grant of an interlocutory injunction is the risk of irreparable harm to the Applicant.

21. The Court notes that the suit properties are discrete, identifiable assets, the value and integrity of which cannot readily be compensated by an award of damages.
22. The Applicants contend that, absent an injunction, the Respondent may deal with, transfer, or otherwise encumber the properties, thereby frustrating their claim.
23. While the Respondent disputes the Applicants' ownership, the possibility that the properties may be transferred, encumbered, or otherwise disposed of raises a real risk that the Applicants' eventual entitlement could be rendered illusory.
24. Having regard to the nature of the suit properties and the factual dispute, the Court is satisfied that the Applicants have demonstrated a risk of irreparable harm should the injunction not be granted.
25. The balance of convenience requires the Court to consider which party would suffer the greater prejudice from the interlocutory order.
26. The Applicants face the tangible risk that the suit properties may be sold, transferred, or otherwise encumbered, undermining the very purpose of the action.
27. The Respondent, while asserting ownership, suffers no irreparable detriment from a temporary restraint pending trial, as his defence will be fully heard.

28. In my view, the scales tilt in favour of the applicants. Prudence and equity dictates that the injunction be granted until the dispute is conclusively determined.

29. Accordingly, the application dated 9<sup>th</sup> January 2025 is allowed. The costs shall be in the cause.

It is so Ordered.

**Dated, Signed and Delivered, at Thika this 29th day of January 2026**

.....  
**J. M. ONYANGO**  
**JUDGE**

**In the presence of:**

1. Mr. Opundo for the Plaintiffs/ Applicants
2. Mr Ruiru for the Defendants/ Respondents

Court Assistant: Hinga