



Murange (Suing as an Administrator of the Estate of Martha Anne Gathoni Murage) v Ng’ang’a & 2 others (Environment and Land Case E139 of 2025) [2026] KEELC 157 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEELC 157 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E139 OF 2025**

**CG MBOGO, J
JANUARY 26, 2026**

BETWEEN

JOSEPH NICHOLAS MURANGE (SUING AS AN ADMINISTRATOR OF THE ESTATE OF MARTHA ANNE GATHONI MURAGE) PLAINTIFF

AND

CATHERINE NG’ANG’A 1ST DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 2ND DEFENDANT

DIRECTOR OF SURVEY KENYA 3RD DEFENDANT

RULING

1. The plaintiff/applicant filed the notice of motion dated 27th March, 2025 expressed to be brought under Sections 1A,1B,3,3A, and 22 of the Civil Procedure Act, Order 16, Order 51 Rule 1 and Order 40 Rules 1 and 4 of the Civil Procedure Rules and Articles 40,47, 159(2) of the Constitution of Kenya seeking for the following orders:-
 1. Spent.
 2. Spent.
 3. Spent
 4. Spent
 5. Spent.
 6. That pending the hearing and final determination of the suit herein, the honourable court be pleased to issue an order restraining the 1st defendant/respondent, her tenant(s), agent(s), employees and/or anyone acting under her instruction and request, from carrying out any



further excavation, construction and/or development works on any section of the property registered as Land Reference Number 209/8336/48(or any other property under her charge, supervision, possession and/or control) that borders the plaintiff/ applicant's property Land Reference Number 209/8336/46.

7. That pending the hearing and final determination of the suit herein, the honourable court be pleased to issue an order for the suspension of all construction works on Land Reference Number 209/8336/48 along the property's shared boundary with LR 209/8336/46, being the plaintiff/applicant's property.
 8. That pending the hearing and final determination of the suit herein the honourable court be pleased to issue an order restraining the 1st defendant/respondent, her tenant(s), agent(s), employees and/or anyone acting under her instruction and request, from disturbing, trespassing, alienating claiming ownership and/or interfering with the plaintiff/applicant's quiet possession, peaceful enjoyment and/or ownership of the parcel of land known and registered as LR 209/8336/46 or any part thereof.
 9. That pending the hearing and final determination of the suit herein the honourable court be pleased to issue an order compelling the 2nd defendant/respondent, furnish to the court an official report on, copies of and the complete application submitted to them over any approvals granted to the registered proprietor of LR 209/8336/48 for the initial excavation of 8th March 2025, and the ongoing construction works on LR 209/8336/48, the report and documents to be filed in within seven(7) days of the orders herein having being granted.
 10. That pending the hearing and final determination of the suit herein, the Director of Surveys Kenya, the 3rd Defendant/Respondent, be ordered to deliver a ground report on the existing boundaries and placement of the existing fence currently located between LR 209/8336/48 and LR 209/8336/46, being the plaintiff/applicant's property.
 11. That the OCS Spring Valley Police Station ensures strict compliance with any Order granted by this Court.
 12. That the 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 Martha Anne Gathoni Murage(Deceased), is the registered owner of the suit properties herein, who took possession of the same in the year 1974, together with her husband, the plaintiff/applicant's father.
 3. The plaintiff/applicant deposed that on or about 8th March, 2025 the 1st defendant respondent excavated a massive hole along the boundary of the suit property and LR. 209/8336/48, causing the soil located on the suit property on higher ground to come loose. Later, on 10th March, 2025 he accused the 1st defendant/respondent of constructing a boundary wall on the same area, causing a 40 year old tree to fall because of the excavation loosening the soil. That the excavation is causing an imminent danger and harm to the suit property and residents of the area.
 4. He further deposed that the 1st defendant/respondent destroyed a portion of the boundary fence and caused the beam to be constructed beyond the original fence, thus trespassing into the suit property. That despite requesting the 1st defendant/respondent orally and through a demand letter to stop the works, the 1st defendant/respondent refused and further responded through a letter by their advocates that the said works are set to continue as she got approvals from the area chief, the Nairobi Water Company and the 2nd defendant/respondent.



5. The plaintiff/applicant deposed that it is urgent that the said works are stopped to prevent any further damage or injury to the suit property and the residents thereof and to prevent further trespass by the 1st defendant/respondent.
6. The 1st defendant/respondent filed the replying affidavit sworn on 11th July, 2025. She deposed that the instant application has controverted Order 40 Rule 4(3) of the Civil Procedure Rules because the same was not served upon her within 3 days from the date of issue on 10th April, 2025 but that the plaintiff/applicant served her property manager. Thus, she contends that the said injunction lapsed as per the law. Further, that the application has been overtaken by events for the reason that as at 14th April, 2025 the wall which she states needed some alignments, was already completed.
7. The 1st defendant/respondent's deposed that the plaintiff/applicant cannot be stopped from constructing on their own property, adding that there was never a proper demarcation between the two parcels of land, being the applicant's property LR. 209/8336/46 and her property LR. 209/8336/48.
8. With regards to the reason for constructing the said boundary wall, the 1st defendant/respondent deposed that the plaintiff/applicant uses his property as a dog/veterinary clinic, and the wall was necessary to create a secure boundary between the dogs and the tenants within their family property. That prior thereto, the director of Nairobi Water Company had requested him to dig and expose the water pipe that is on the boundary of the 2 properties. She deposed that they did so after obtaining the approvals for the same and a proper survey being done. Referring to the old tree that fell, she deposed that this was caused by the heavy downpour that occurred in March 2025, and that the tree fell under its own weight.
9. The 1st defendant/respondent deposed that the said tree and the plaintiff/applicant's ablution block had been established by the surveyor to have encroached onto her property. Thus, she denies trespassing into the plaintiff/applicant's property.
10. The application was further opposed by the replying affidavit of Wilfred Masinde, the acting Deputy Director-Planning, Compliance and Enforcement of the 2nd defendant/respondent, sworn on 24th June, 2025. The 2nd defendant/respondent confirmed that the proprietor of LR. 209/8336/48 submitted an application for the construction of a boundary wall dated 19th November, 2024 which was duly approved. The 2nd defendant/ respondent deposed that in case of any damage by the developer, the plaintiff/applicant can report to the police or the relevant authorities for action and urged the court to dismiss the instant application.
11. In response thereto, the plaintiff/applicant filed a further affidavit sworn on 4th August, 2025. He deposed that the replying affidavits are fatally defective, bad in law and fraudulent for offending Section 5 of the *Oaths and Statutory Declarations Act* for not being sworn before a Commissioner for Oaths.
12. In response to the 2nd defendant/respondent's affidavit, he deposed that no permits have been produced granting permission to construct a boundary wall on LR. 209/8336/48, which query his advocates were told to direct the same to Nairobi County Executive Member for Green Nairobi. With regards to the 1st defendant/respondent, the plaintiff/applicant deposed that she was served with the pleadings to this suit including the court order on the 15th of April, 2025 as per affidavit of service dated 29th April, 2025. He denied that there were heavy rains that purportedly caused the tree to fall.
13. The plaintiff/applicant's view is that it is in the interest of justice that the orders sought be granted, to prevent any further irregular actions of the 1st defendant/respondent.



14. The application was canvassed through written submissions. The plaintiff/applicant filed his written submissions dated 24th October, 2025. The 1st respondent filed her written submissions dated 25th November, 2025. The 2nd defendant/respondent filed its written submissions dated 1st December, 2025.
15. The plaintiff/applicant has prayed for, among other orders, an order of injunction against the defendants/respondents, restraining them from continuing to excavate and construct on the boundary between LR 209/8336/48, the 1st defendant/respondent's property and LR 209/8336/46, being the property that the plaintiff/applicant is the administrator, stating that the said construction has caused damage to his land.
16. Order 40 Rule 1(a) of the Civil Procedure Rules encompasses the provision for temporary injunctions and provides as follows:-

“Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

17. The conditions set for consideration in granting an injunction are well settled in the case of *Giella vs Cassman Brown & Company Limited* (1973) E A 358, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction: -

“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.”

18. Therefore, the first criteria for grant of an injunction, is that one must be able to show that they have prima facie case with a probability of success. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR) that was cited by counsel for the plaintiff/applicant, defined a prima facie case as follows:-

“So what is a prima facie case? I would say that in civil cases it 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 as 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. That is clearly a standard, which is higher than an arguable case.” We adopt that definition save to add the following conditions



by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

19. The plaintiff/applicant has annexed to his supporting affidavit a grant of letters of administration intestate, granting him administration over the estate of Martha Ann Njoroge Murage(Deceased), the confirmation of grant that was issued on 14th December, 2007 granting him joint ownership of LR 209/8336/46 together with Bernadette Wambui Murage. The plaintiff/ applicant has therefore established a prima facie right that exists, but proof of infringement or irreparable damage is yet to be established as we are in the interlocutory stage of the suit.
20. The 1st defendant/respondent has stated that the instant application has been overtaken by events as the construction of the said boundary wall is now complete. Issuing an order of injunction would thus be in vain as the 1st defendant/respondent is no longer constructing the wall.
21. Mativo J(as he then was) stated in the case of Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) & 3 others v County Government of Nairobi (Judicial Review 441 of 2018) [2019] KEHC 2059 (KLR) (Judicial Review) (25 November 2019) (Judgment)as follows:-

“No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use.”

22. Whether or not the 1st defendant/respondent trespassed into the plaintiff/applicant’s land is a matter that can be heard and determined at the full hearing of this suit. At this juncture, and as it stands, issuing an order of injunction would amount to the court issuing orders in vain as construction has already ceased.
23. The court also notes that the replying affidavit sworn by Wilfred Masinde, the acting Deputy Director-Planning, Compliance and Enforcement of the 2nd defendant/respondent was not executed and signed by a Commissioner of Oaths, who he was supposed to appear before to swear the affidavit as required by Section 5 of the Oaths and Statutory Declaration Act Cap 15. This is a fatal omission and the court thus strikes the same out and it is hereby expunged from the record.
24. The Court thus declines to allow the application dated 27th March 2025 and dismisses the same.
25. The costs shall be in the cause

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY, 2026.

HON. MBOGO C.G.

JUDGE

26/01/2026.



In the presence of:

Ms. Vena Aron - Court assistant

Ms. Nyaguthie for the 1st Defendant/Respondent

Mr. Irungu for the Plaintiff/Applicant

Ms. Komo for the 2nd Defendant /Respondent

