



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA E043 OF 2024

JOHN NJOROGEA WACHIRA1ST APPELLANT/APPLICANT
PETER JOSEPH KIMANI NGANGA2ND APPELLANT/APPLICANT
PETER NGUGI WAINAINA3RD APPELLANT/APPLICANT

VERSUS

THE LAND REGISTRAR MURANG'A.....1ST RESPONDENT
THE COUNTY SURVEYOR MURANG'A.....2ND RESPONDENT
THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

FAITH WAMBUI WAHINYA.....1ST INTERESTED PARTY
GATHIRO NDEGWA.....2ND INTERESTED PARTY

RULING

(1) This ruling is on the notice of motion dated 27-10-2025. The motion which is brought under **Articles 40 and 159** of the Constitution of Kenya, **Sections 1A, 1B and 3A** of the **Civil Procedure Act, Order 40 rule 1** of the Civil Procedure Rules and all enabling provisions of law seeks two residual orders.

(b) An order of injunction restraining the Respondents by themselves, agents, servants and or any other person acting on their behalf from entering, invading, cultivating, occupying, constructing, fencing or interfering with the Appellants' quiet and peaceful possession, ownership, occupation and use of land parcel Nos. Makuyu/Kimorori/IV/1912, 1913, 282, 2319 and 2318.

(c) The costs of this application be borne by the Defendant.

(2) The motion is based on Seven (7) grounds and is supported by an affidavit sworn by the Appellants dated 27-10-2025 the gist of which is as follows. Firstly, the Applicants are the registered owners of the suit parcels. Secondly, the Respondents have interfered with the suit

parcels without justifiable cause by committing acts of trespass and wanton waste and destruction of the Applicant's property. Thirdly, the Respondents herein had visited the CID Makuyu and reported the dispute. The CID found in favour of the Appellants. Fourthly, the Respondents created a new plot measuring 3 acres between Plot Nos 281 and 282. Finally, on 24-10-2025 the Respondents visited the suit land with the intention of fixing the boundaries. In the process, they cut down trees and destroyed the Appellants' fences. It is for the above stated reasons that the Appellants seek the orders in the motion dated 27-10-2025.

- (3) The motion though served upon the Respondents' Counsel is unopposed.
- (4) This being an application for injunction, the Appellants must establish a prima facie case with a probability of success. They must also prove that they stand to suffer irreparable loss that cannot be adequately compensated by an award of damages. If the Court is not sure of the above, it should consider the balance of convenience. This is as per the ratio *decidendi* in the case of **Giella vs Cassman Brown [1973] EA 358.**
- (5) Looking at the first prerequisite to the grant of an order of injunction, I find that the Appellants have not made out a prima facie with a probability of success for the following reasons. Firstly, this dispute touches on the boundary to registered land. Such a dispute is within the purview of the Land Registrar pursuant to **Section 18 (2)** of the Land Registration Act which provides as follows.

“The Court shall not entertain any action or other proceedings relating to a dispute as to boundaries of registered land unless the boundaries have been determined in accordance with this section.”

Since this is not an appeal against the decision of the Land Registrar but against the implementation of the determination of a boundary dispute, then the issue of jurisdiction could arise. Secondly, the dispute has previously been handled by the registrar as per paragraph 6 of the supporting affidavit. This was on 24-10-2025. The outcome of the visit is not known. Neither is the reason why the CID Makuyu had to deal with a boundary dispute when such jurisdiction is vested in the Land Registrar.

Having found that the Appellants have not made a prima facie with a probability of success, I need not look at the other prerequisites. For the above stated reasons, I find **no merit** in the motion dated 27-10-2025 which I dismiss. Costs in the cause.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 26th day of January, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicants' Counsel – Mr Njoroge

2nd Respondent's Counsel – Mr Mburu