

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC CASE NO E088 OF 2025

GITERE KAHURA INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

CHARLES MWANGI MUTERO.....DEFENDANT

RULING

1. Before me for determination is the Plaintiff's Notice of Motion dated 29th May 2025 seeking an order of temporary injunction restraining the Defendant from proceeding with the intended sub-division, sale and transfer of the property known as L.R 4872/1 situate in North West Ruiru Township (herein suit property) pending the hearing and determination of the main suit.
2. The application is premised on the grounds on its face and the Supporting Affidavit of Kenneth Kimari Gitere sworn on even date. In the said affidavit he deposes that the Plaintiff company is the registered proprietor of the suit property and that he and the Defendant have a beneficial interest in the suit property although it has liabilities have to be cleared and it has therefore never been distributed. He adds that there have been several suits in respect of the suit property including ELC CASE NO. 1060 OF 2016, NAIROBI HCCOMMMISC E780 of 2022 and Kiambu HCCOMM E013 of 2025.

3. It is his deposition that Defendant cannot get a clean title over the suit property unless the same is sold and transferred procedurally after all the liabilities have been settled. He fears that the Defendant will sell the suit property before obtaining a clean title, a fact which would complicate the distribution of the properties belonging to the company.
4. He prays that the Respondent be ordered to furnish him with all documents pertaining to the sale transaction and that he be restrained from disposing of the suit property.
5. The application was met with resistance by the Respondent who filed an undated Replying Affidavits sworn by Antony Tumuti Gitere, one of the shareholders of the Plaintiff and a beneficiary of the estate of Gitere Kahur (Deceased) In the said affidavit he deponed that the application is a non-starter as the shares in Gitere Kahura Investment limited were distributed in equal shares among the beneficiaries of the estate of their late father vide a Certificate of Confirmation of Grant dated 20.9.2018.
6. He further depones that the shareholding in the company was further enhanced through a ruling delivered on 6.8.2020 which directed that the orders of the Succession court be complied with failing which the Grant would be revoked.
7. It is Antony's contention that the suit is incompetent as the directors of Gitere Investments Limited have not consented to the

filing of the instant suit and in the absence of a company resolution, the suit should be struck out for being incompetent.

8. Antony explains that upon distribution of the shares of the company among the beneficiaries, he got a share of the suit property measuring 18.29 acres. The title of the suit property was surrendered and the land was sub-divided giving rise to the Defendant's property delineated in the Deed Plan as L.R No. 4872/6/7 and L.R No. 4872/12 . He then sold 10 acres to Kenneth Kimari Gitere and 7.29 acres to Garissa Auto Tune Limited.
9. It is Antony's assertion that Kenneth is not the administrator of the estate of Gitere Kahura and he not the only director of Gitere Investment Limited and therefore he has no capacity to institute the instant proceedings.
10. He denies that there is any sub-division taking place as the land was surveyed at the time of distributing the estate.
11. In response to the Replying Affidavit, the Plaintiff filed a Further Affidavit refuting the allegations the Replying Affidavit.
12. The application was canvassed through written submissions and both parties complied by filing their respective submissions which I have considered.

Analysis and Determination

13. Having examined the application the Replying Affidavits together with the annexures, and the rival submission as well as the relevant

authorities, the sole issue for determination is whether the Applicant has established sufficient cause to merit the grant of a temporary injunction.

14. The principles governing the grant of interlocutory injunctions are well settled. The Applicant must establish a *prima facie* case with a probability of success, demonstrate that he stands to suffer irreparable harm which cannot be compensated by damages, and, where the court is in doubt, the Application is to be determined on a balance of convenience. This position was crystallized in **Giella vs Cassman Brown (1973) EA 358** and reaffirmed in **Nguruman Ltd vs Jan Bonde Nielsen & Others [2014] eKLR**, where the Court of Appeal emphasized that the three limbs are sequential and not conjunctive.

Whether the Applicant has established a prima facie case

15. A *prima facie* case was defined in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as a case in which, on the material presented, a tribunal properly directing itself might conclude that there exists a right which has apparently been infringed.
16. The Plaintiff/Applicant's claim is anchored on the fact that he is a beneficiary of the estate of Gitere Kahura (Deceased) . Among the assets owned by the deceased was the Gitere Investment Limited. It is apparent that the estate of the deceased has since been

distributed following the Certificate of Confirmation of Grant issued on 18.9.2018.

17. According to the said Grant, the shares in the Plaintiff company were to be shared equally among the deceased's 12 beneficiaries. The Defendant alleges that the suit property has been sub-divided and even though it is not clear how many acres Kenneth got, the Defendant who is his brother got 18.29 acres out of which he sold Kenneth 10 acres and 7.29 acres to Garissa Auto Tune Limited.
18. The ruling in Succession Cause No. 265 of 2009 together with the Deed plan annexed to the Defendant's Replying Affidavit attest to the fact that the suit property is no longer
19. The conflicting accounts by the Plaintiff and the Antony Tumuti Gitere both of whom are directors of the Plaintiff make it clear that there is a dispute among the directors of the Plaintiff company regarding the suit property which can only be resolved at a full hearing. It is therefore in the interest of justice that the suit property be preserved pending the hearing and determination of the main suit.
20. I am therefore not persuaded that the application has merit and I grant it in terms of prayers 3 and 5 of the Notice of Motion.
21. The costs of the application shall be in the cause.

Dated, signed and delivered virtually at Thika this 3rd day of February 2026.

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J. M ONYANGO
JUDGE

In the presence of:

Ms Mweke for the Applicant

Ms Mwangi for Mr Kamau for the Respondent

Court Assistant: Hinga

ORIGINAL