



**In re Estate of Kiura Gichege (Deceased) (Succession Cause
2 of 2003) [2026] KEHC 1675 (KLR) (18 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 2 OF 2003
RM MWONGO, J
FEBRUARY 18, 2026
IN THE MATTER OF THE ESTATE OF KIURA GICHEGE (DECEASED)**

BETWEEN

JOHN NGARI NJIRU APPLICANT

AND

ALFRED NGIRI MARANGI RESPONDENT

RULING

The Application

1. Through the summons dated 30th July 2025, the applicant is seeking orders that:
 1. That the Honourable Court be pleased to issue interim orders of injunction restraining the alleged beneficiaries of the Estate of Kiura Gichege, their agents and/or persons under instructions from distributing, transferring, leasing and/or in any way interfering with land parcel numbers Embu/Ngangara/3210, Embu/Ngangara/3211, Embu/Ngangara/3212, Embu/Ngangara/3213, Embu/Ngangara/3214, Embu/Ngangara/3617, Embu/Ngangara/3618, Embu/Ngangara/3619, Embu/Ngangara/3620, Embu/Ngangara/4904, Embu/Ngangara/4905, Embu/Ngangara/4906, Embu/Ngangara/4907 and Embu/Ngangara/4908 which are all resultant subdivisions of the deceased's land parcel number Embu/Ngangara/308 pending hearing and determination of this Application;
 2. That the Honourable Court be pleased to issue interim orders of injunction restraining the alleged beneficiaries of the Estate of Kiura Gichege, their agents and/or persons under instructions from distributing, transferring, leasing and/or in any way interfering with land parcel numbers Embu/Ngangara/3210, Embu/Ngangara/3211, Embu/Ngangara/3212, Embu/Ngangara/3213, Embu/Ngangara/3214, Embu/Ngangara/3617, Embu/Ngangara/3618, Embu/Ngangara/3619, Embu/Ngangara/3620, Embu/



Ngangara/4904, Embu/Ngangara/4905, Embu/Ngangara/4906, Embu/Ngangara/4907 and Embu/Ngangara/4908 which are all resultant subdivisions of the deceased land parcel number Embu/Ngangara/308 pending hearing and determination of the summons for revocation of grant of letters of administration;

3. That the Honourable court be pleased to issue an order of inhibition inhibiting the Land Registrar Kerugoya Lands Registry from dealing, interfering or in any way transacting on land parcel numbers Embu/Ngangara/3210, Embu/Ngangara/3211, Embu/Ngangara/3212, Embu/Ngangara/3213, Embu/Ngangara/3214, Embu/Ngangara/3617, Embu/Ngangara/3618, Embu/Ngangara/3619, Embu/Ngangara/3620, Embu/Ngangara/4904, Embu/Ngangara/4905, Embu/Ngangara/4906, Embu/Ngangara/4907 and Embu/Ngangara/4908 pending hearing and determination of this application and the summons for revocation of grant filed contemporaneously with this application; and
4. Costs of the application be borne by the Administrator.
2. The application is premised on the grounds set out on its face and in the applicant's supporting affidavit. He contended that the administrator obtained the grant fraudulently and by concealing to the court the identities of all the beneficiaries of the estate. That he himself is not related to the deceased in any way but he told the court that he was the deceased's nephew and a beneficiary. On this basis, the respondent hoodwinked the court into issuing a grant in his name. The applicant learned of this falsehood after the grant had already been issued and so he moved the court for its revocation. He pointed out many defects in the proceedings to obtain the grant and stated that if the injunctive orders sought are not granted, the estate of the deceased will be wasted in the hands of strangers.
3. The applicant deposed that he is a nephew of the deceased herein. That the grant was issued in the estate of the deceased to the respondent on 20th April 2003 on the basis of falsehoods and the deceased's brothers were never involved. It followed that after issuance of the grant, the estate of the deceased was subdivided and distributed to people who are not bona fide beneficiaries. The distribution was based on the information provided in the Chief's introductory letter which contained false information for use by the court. This is why the injunctive orders are necessary.

Grounds of Opposition

4. The respondent filed grounds of opposition challenging the court's jurisdiction to entertain the application, and arguing that the orders sought can only be issued by the Environment and Land Court (ELC). He stated that if the orders are granted, irreparable loss will result as the 14 land owners who benefited from the distribution will be disenfranchised. That this will go against the rules of natural justice and the only forum where their ownership can be determined is before the ELC. He expressed his intention to move the court for orders that the body of the deceased be exhumed for purposes of DNA test to verify his relationship with the deceased.

Replying Affidavit

5. Through his replying affidavit, the respondent challenged the application herein, terming it as incompetent, hopeless, irredeemably faulty and an abuse of the court process. He deposed that the applicant has not proved that he is related to the deceased herein before filing the summons for revocation. That he does not deserve to be granted the orders sought for and he is a stranger to the estate as well. He stated that the applicant's father simply settled in the area where the deceased lived and was assimilated into the clan through customary rites but they were never related.



6. That the land has already been sub-divided into 14 portions and given to third parties as gift, purchases for value and through transmission to beneficiaries and these beneficiaries will suffer if the injunctive orders are made. He stated that some of the applicant's witnesses have recanted their statements fearing that they were going to perjure themselves. That the balance of convenience does not lie in favour of the applicant such that the orders sought should be made. He accused the applicant of being a known fraudster whose intention was to defraud land owners of their land rightly acquired.

Parties' Submissions

7. The court directed that the application be canvassed by way of written submissions.
8. In his submissions, the applicant relied on the case of *Giella v Cassman Brown & Co Ltd* (1973) E.A 358 and highlighted the elements to be considered before issuing an injunction. He also relied on the sentiments of the Court of Appeal in the cases of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) and *Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints* [2016] KECA 73 (KLR).
9. He urged the court to apply Sections 1A, 1B and 3A of the *Civil Procedure Act* and invoke its inherent powers to make the orders prayed for in the interest of justice and expediency. He urged the court to balance the rights of all parties as was stated in the case of *Equity Bank Limited v West Link MBO Limited* [2013] KECA 320 (KLR).
10. The respondent relied on Article 165(2)(b) of *the Constitution*, Section 13 of the *Environment and Land Court Act*, the *Law of Succession Act* and the Probate and Administration Rules. He argued that the court lacks jurisdiction to entertain the application and it relied on the cases of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KECA 48 (KLR), *In re Estate of Kinogu Mukiria (Deceased)* [2022] KEHC 2144 (KLR), *In the Estate of Stone Kakhuli Muinde (deceased)* [2016] eKLR and *In re Estate of Solomon Mwangi Waweru (Deceased)* [2019] KEHC 6215 (KLR).
11. It was his argument that the applicant must demonstrate locus standi to bring the application and he relied on the cases of *Law Society of Kenya v Commissioner of Lands & 2 others* [2001] KEHC 831 (KLR) and *John Otieno Ogama v Khadija Jedda Oluoch* [2016] KEHC 654 (KLR). He argued that the application does not meet the threshold set in *Giella v Cassman Brown & Co Ltd* (supra) and stated that the application ought to be dismissed on this basis.

Issue for Determination

12. From a perusal of the application and submissions by the applicant, the issue for determination is whether the application has merit.

Analysis and Determination

13. The pre-requisites for granting of injunctions are that the applicant must:
 - (a) establish a prima facie case;
 - (b) demonstrate irreparable injury if a temporary injunction is not granted; and
 - (c) if the court is in doubt as to (b), grant the injunction on a balance of convenience.

This was the position taken by the court in the cases of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR) and *Giella v Cassman Brown & Co Ltd* (supra).



14. The estate of the deceased herein comprises of land parcel number Embu/Ngangara/308 which has since been subdivided into 14 portions following succession. A grant of letters of administration was issued to the respondent who went on to administer the estate. Through the present application, the applicant is seeking injunctive orders concerning the land pending hearing and determination of the summons for revocation.
15. The applicant claimed that the respondent is not related to the deceased and that he hoodwinked the court into issuing a grant of letters of administration to him in the estate. The respondent has also argued that the applicant is not related to the deceased and that he has no locus standi in the matter. Further, the respondent has challenged the jurisdiction of the court to determine the application. The applicant is apprehensive that if the properties are not preserved through an injunction, they will be wasted in the hands of strangers and to the detriment of the bona fide beneficiaries.
16. The question of jurisdiction comes first. In *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (supra), the court stated:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.....a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court...”
17. In addition to the unlimited original jurisdiction of the High Court established under Article 165(3) (a) of *the Constitution*, the High Court is also a succession court – and is also endowed with jurisdiction to make any orders towards the ends of justice. Section 47 of the *Law of Succession Act* Provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”
18. Therefore, this court has relevant jurisdiction to entertain an application which does not fall within the purview of the ELC if the subject matter is succession. The injunctive orders sought emanate from distribution of the estate of the deceased and not from conventional land transactions that raise issues under the jurisdiction of the ELC. The applicant is asking the Court to stop and, potentially, reverse an action of land succession under the *Law of Succession Act*.
19. To that end, the applicant ought to demonstrate that he is bound to suffer greater harm than the respondent if the injunction is not ordered. That he is likely to be more inconvenienced. In the case of *Bryan Chebii Kipkoech v Barnabas Tuitoek Bargoria & another* [2019] KEELC 3435 (KLR) (as cited in the case of *Margaret Njambi Kamau v John Mwatha Kamau & another* [2019] KEELC 313 (KLR)) the court held;

“The court should issue an injunction where the balance of convenience is in favor of the plaintiff and not where the balance is in favor of the opposite party. The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the



balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it....”

20. Similarly, in the case of Joel Kipkurui arap Koech v Alice Wambui Magandu & 3 others [2018] eKLR the court stated:

“In the case of Suleiman v Amboseli Resort Ltd (2004) KLR 589, Ojwang Ag. J (as he then was) stated thus:

“Counsel for the Defendant urged that the shape of the Law governing the grant of injunctive relief was long ago, in *Giella v Cassman Brown*, in 1973 cast in stone and no new element may be added to that position. I am not, with respect, in agreement with counsel in that point, for the law has always kept growing to greater levels of refinement, as it expands to cover new situations not exactly foreseen before. Traditionally, on the basis of the well accepted principles set out by the Court of Appeal in *Giella v Cassman Brown*, the court has to consider the following questions before granting injunctive relief:

- i) Is there a prima facie case.....
- ii) Does the applicant stand to suffer irreparable harm....
- iii) On which side does the balance of convenience lie.....

Even as those must remain the basic tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The court in responding to prayers for interlocutory injunctive relief should always opt for the lower rather than the higher risk of injustice... if granting the applicant’s prayers will support the motion towards full hearing, then should grant those prayers...”

21. Rule 63(1) of the Probate and Administration Rules provides for application of certain provisions of the Civil Procedure Rules in succession matters as follows:

“(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16,19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.”

22. Accordingly, under Order 40 Rule 1 of the Civil Procedure Rules, it is clear that injunctions are granted at the discretion of the court. That order provides:

“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.”

23. In this case, it appears that there is an underlying issue of the identity of the beneficiaries of the estate and the legitimacy of the administrator. These issues will be canvassed through the summons for revocation. Until then, it is proper that the estate be preserved to allow for determination of the issues raised in the summons for revocation. As to whether the orders sought do infringe upon the rules of natural justice, the present owners of the properties still have an opportunity to join the proceedings as interested parties if they wish to do so. There is no amount of prejudice that they might suffer that has no recourse, so far.

Disposition

24. In light of the foregoing, I find merit in the application and would allow it. Accordingly, I grant Prayers 2 and 3 of the application as prayed. I make no order as to costs.
25. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 18TH DAY OF FEBRUARY, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:

Gachoki for Respondent

Musyoka for Applicant

Francis Munyao - Court Assistant

