



Gachanja & another (Suing for and as Administrators of the Estate of the Late Peter Gachanja Kuria) v Kimani & 2 others (Environment and Land Case E083 of 2025) [2026] KEELC 561 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E083 OF 2025
JA MOGENI, J
FEBRUARY 5, 2026**

BETWEEN

MARK KURIA GACHANJA 1ST PLAINTIFF

JOSEPH KAMATA GACHANJA 2ND PLAINTIFF

**SUING FOR AND AS ADMINISTRATORS OF THE ESTATE OF THE LATE
PETER GACHANJA KURIA**

AND

CHARLES MAINA KIMANI 1ST DEFENDANT

SUSAN WAMBUI KIMANI 2ND DEFENDANT

MANGU INVESTMENTS LIMITED 3RD DEFENDANT

RULING

1. Vide a Notice of Motion application dated 16/05/2025, the Applicants who are also the Plaintiffs in this suit are seeking the following orders;
 1. Spent
 2. That this Honorable Court do issue an order of injunction restraining the Defendants either by themselves or through their family members, employees, agents, servants, or through anybody else whatsoever from entering the suit plot of land, farming on the same, erecting any structure(s) thereon, leasing or letting it out, mortgaging or charging the same, selling or transferring it to anybody else or any other institution whatsoever or dealing with the said plot of land in any other manner whatsoever pending hearing of the application hereof inter-partes



3. That this Honorable Court do issue an order of injunction restraining the Defendants either by themselves or through their family members, employees, agents, servants or through anybody else whatsoever from entering the suit plot of land, farming on the same, erecting any structure(s) thereon, leasing or letting it out, mortgaging or charging the same, selling or transferring it to anybody else or any other institution whatsoever or dealing with the said plot of land in any other manner whatsoever pending hearing of the case hereof.
 4. That the Officer Commanding Thika Police Station through Ngoingwa Police Post do ensure that the orders hereof are strictly observed and complied with.
 5. That the Defendants be ordered to meet the costs of the application hereof.
2. The application is based on grounds apparent on the face of the said application supported by the Affidavit of Joseph Kamata Gachanja, 2nd Applicant herein sworn on even date.
 3. In his Supporting Affidavit, he stated that he is the 2nd Plaintiff/Applicant hereof being a son of the late Peter Gachanja Kuria and also one of the administrators of the Estate of the late Peter Gachanja Kuria through Nairobi High Court Succession Cause No. 1046 of 2012 and that he has authority of the other administrator who is his elder brother Mark Kuria Gachanja to swear the Supporting Affidavit on his behalf in support of their application.
 4. He averred that his father purchased the suit plot together with 250 ordinary shares of Mangu Investments Limited on 29/07/1991 from one Stephen Kangethe Gachui in the sum of Kshs. 5,000 which was paid in full to the said vendor as evidenced by annexure marked as “JKG 1” which are copies of the Letters of Administration in respect of the Estate of Peter Gachanja Kuria and the sale documents that were executed.
 5. It is the Applicants’ contention that their father showed them alongside the father’s brother one Paul Kibe Kuria the suit plot on the ground and some other plots purchased from the 3rd Defendant’s Company and so they know the location of the suit property they lay claim to.
 6. According to the Applicants, their younger brother James Ngiraini Gachanja in the year 2008 upon the death of their father informed the 3rd Defendant/Respondent about the demise of their father also requested them to process the title deeds relating to the plots purchased from the Respondent’s Company and the officers promised to process the same upon payment of the requisite amounts of money.
 7. That the Applicants also processed Letters of Administration in 2012 which were granted through Nairobi High Court Succession Cause No. 1046 of 2012. Since the 3rd Respondent had not responded to the request of processing of title the Applicants instructed K. Mberia and Partner Advocates who vide the letter dated 24/02/2015 inquired about the title to the suit property which elicited no response.
 8. It is the Applicants’ case that their Advocate obtained a Court Order and also wrote to them other reminders and served the 3rd Defendant/Respondent as per annexure marked ‘J.K.G. 2’ copies of the said documents. That as the administrators of the Estate of the late Peter Gachanja, they had also sent the 3rd Respondent a letter dated 7/7/2015 through their Advocates enquiring about the late Peter Gachanja Kuria’s plots emanating from the two Share Certificates Nos. 4133 and 4144 but they never responded to the same. Copies of these are also attached as annexures and marked ‘J.K.G. 3’ which are a copy of the said letter and the annexed Share Certificates.



9. That despite all the letters sent to the 3rd Defendant/Respondent they never responded to any as per annexure marked as 'J.K.G'. Further according to the Applicants, they noticed that the suit plot had a gate erected to it to which they inquired about ownership and they asked those in occupation to contact the Applicants after leaving their telephone number on the erected gate with a message where they threatened to bring down that gate if they were not contacted by the person responsible but soon thereafter, they noted that a stone wall was erected.
10. That despite the Applicants contacting the 3rd Defendant seeking to know the person responsible for erecting the said gate and stone wall, the officers at the 3rd Defendant's office declined to assist the Applicants with the necessary contact. That since they got no response for a number of months, their uncle proceeded and had the said wall brought down. This led to the 1st Defendant/Respondent to report the incident at Ngoingwa Police Post and the incident is documented through O.B Number O.B.12/01/12/025.
11. That the police sought the Applicants' uncle and this led to the Applicants getting to know the 1st Defendant and that they later purchased a Green Card in respect of the suit plot from which they came to know about the 1st and 2nd Defendants as the purported owners of the suit plot. The Applicants attribute the ownership to fraud and this led to them making a report at Ngoingwa Police Post through O.B. No. 23/02/05/2025 but according to them no action has been taken by the police. Annexure marked as 'J.K.G. 5' is a copy of the said Green Card and the Applicants O.B. number in respect of my said report.
12. According to the Applicants, the 1st and 2nd Defendant, are threatening to go ahead and erect their house or home on the suit plot and this may render the suit hereof nugatory and the Plaintiffs and the Estate of the late Peter Gachanja Kuria may suffer irreparable damages, unless the orders sought hereof are granted.
13. By way of a response, the 1st Defendant on behalf of himself and the 2nd Defendant swore a Replying Affidavit on 8/07/2025 where he averred that they were the legal proprietors of the parcel of land known as Thika Municipality Bloc, 19/829 and attached a copy of the title deed marked as 'CMK-01'.
14. He deponed that he acquired the suit property in 2010 and a transfer was effected as evidenced by Entry No. 2 on the Green Card and a title deed was issued after due process was followed and he annexed a copy of the Green Card and agreement for sale as 'CMK-02'.
15. It is the contention of the Respondents that in the year 2019 the 1st Respondent had the property referred to in paragraph 14 jointly registered between himself and the 2nd Defendant which changes are reflected in Entry No. 5 in the Green Card and the title deed issued.
16. According to the Respondents they have been in open, notorious and peaceful possession of the property since the year 2010 and that they have erected a semi-permanent structure and a perimeter wall on the suit property. Additionally, they pay their rates to County of Kiambu as evidenced by copies of land rate receipts marked as 'CMK-03'.
17. The Respondents averred that they were threatened and harassed by the Applicants who wrote on their gate leading to their reporting the matter as per annexure 'CMK-04' which is the OB entry for 1/12/2024.
18. Further their perimeter wall was also demolished in May 2025 exposing the Respondents to actual harm and this too was reported as per annexure 'CMK-05' which is a copy if the OB, photographs and certificate of electronic evidence and also annexure 'CMK-06' a copy of the Valuation Report for the damage of the property.



19. According to the Respondents the Plaintiff's father never bought the suit property but only shares and that is the transaction that they have presented and which makes no reference to Plot number 568. Thus, the transfer of shares is not disputed by the transfer according to the Respondents did not include the transfer of Plot number 568.
20. It is the Respondents' contention that Section 26 of the [Land Registration Act](#) that a party who claims ownership over a parcel of land shall produce a title document as prima facie evidence of ownership but the Applicants have not produced any title.
21. That the Plaintiffs produced a Share Certificate purposed was for transfer of 250 ordinary shares which is not a valid document for ownership of land under the provisions of Section 26 of the [Land Registration Act](#).
22. That whereas the Plaintiffs had sought to have a restriction placed on the suit property vide the letter dated 24/02/2015, the 3rd Respondent's response vide a letter dated 20/06/2015 clarified that the property did not belong to their deceased father who was allotted plot number 1243 as per annexure 'CMK-07'. Also, the Plaintiffs it is contested by the Respondents that they did not present any Sale Agreements to the 3rd Respondents to support their claim to the suit property and neither have they produced a Sale Agreement before the Court.
23. According to the Respondents, Share Certificate No. 4133 and 4144 do not make reference to Plot number 568 which the Plaintiffs claim that the 3rd Respondent transferred to their late father. This being the case the Applicants/Plaintiffs are not entitled to enjoy interim orders since the allegations of transfer have not been substantiated.
24. To the Respondents, the Plaintiffs' actions are an infringement to the Constitutional right envisioned under Article 40 of the [Constitution](#) and so they urge the Court to safeguard their interests as the legal proprietors of the suit property.
25. The 3rd Respondent did not file any response.
26. When the parties appeared in Court on 4/11/2025, they were directed to file written submissions and a Ruling date was reserved.
27. The Applicants did not file submissions within the stipulated timelines.
28. The Respondents through the firm of M/S K. Michuki and Law Advocates filed submissions dated 31/10/2025 which I have read and considered. The Applicants/Plaintiffs did not file any submissions.

Legal Analysis and Decision

29. I have considered the application dated 16/05/2025, the Supporting Affidavit, the Replying Affidavit, the submissions by the Respondents and the applicable law. The Applicants in the said application are seeking an equitable relief of injunction restraining the Defendants/Respondents by themselves and any other person acting on their behalf from trespassing, dealing, alienating or wasting the suit property pending the hearing and determination of this suit.
30. The issue that falls to be determined is whether on the facts, evidence and circumstances as outlined and discussed above the Plaintiffs/Applicants are entitled to the order of injunction sought. The Respondents on their part have established that they are the registered owners of the suit property Thika Municipality Block 19/829 and they have annexed a copy of the Title Deed marked as 'CMK-01'. They claim to have bought the suit property in 2010 and that all processes were followed and they have annexed a copy of the Green Card marked as 'CMK-02'.



31. They also claim to have attached a copy of the Sale Agreement as 'CMK-02' but I perused the Replying Affidavit and noted that there was no Sale Agreement attached.
32. The Plaintiffs on their part have attached the documents which they allege goes to the root of their title claim which includes the Sale Agreement, the Share Certificate from the 3rd Respondent and documents pointing to the Plot 568 mentioned in the Sale Agreement dated 27/07/1991.
33. The Respondents rights as registered proprietors under Section 25 of the Land Registration Act, Act No. 3 of 2012 are subject to leases, charges and other encumbrances as well as overriding interests. The Defendants contend that they have acquired rights of ownership by virtue of their registration the only issue that will need to be proved is the root of title.
34. The Plaintiffs/Applicants on their part have presented documents that show that their deceased father indeed purchased shares for plot identified as 568 in the agreement. The root of title dates back to 1991 long before the 2010 purchase of the said plot by the Defendants/Respondents who however are the registered proprietors.
35. On the evidence and material presented before the Court there is no evidence to suggest that the Defendants/Respondents are in possession of the suit land or part of it as there were no photographs presented to support this claim. The claim made that a wall was damaged is also not supported by any evidence except for a copy of the OB. This is no proof that was reported was indeed a damaged wall constructed by the Defendants/Respondents.
36. It is now settled that in any interlocutory application for injunction, the Court must satisfy itself that the Applicant has established the triple conditions as set out in the celebrated case of *Giella v Cassman Brown Company Ltd* (1973) EA 358 to wit;
 - a. *A prima facie* case with high chances of success;
 - b. Irreparable injury which may be compensated by damages and;
 - c. Where the Court is in doubt, it may decide the application on a balance of convenience.
37. In the present suit, the Plaintiffs/Applicants averred that their deceased father acquired shares that bestowed the suit property Plot 568 to him. They have attached the supporting documentation that attest to this position. I find that the Applicants have established the first condition for the grant of an order of injunction. On their part the Defendants/Respondents claimed to be in possession but have presented no evidence to support this claim. Therefore, I find that if the suit property is disposed/ alienated to third parties, the Applicants may suffer irreparable loss.
38. It is also trite that in deciding whether to grant a temporary injunction or not, the Court in *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another* (2019) eKLR held as follows;

“Circumstances for consideration before granting a temporary injunction under order 40 Rule 1 of the *Civil Procedure Rules* requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the Court in such an application for a temporary injunction, the Court is in such situation enjoined to grant a temporary injunction to restrain such acts ...”
39. The Plaintiffs/Applicants have also stated on oath that the manner through which the Defendant/ Respondents acquired title to the suit property is shrouded with fraud and misrepresentation. In view of those serious allegations, I am convinced that it would be in the interest of justice to grant the



temporary injunction thereby maintaining the status quo pending the hearing and determination of the main suit.

40. As the matter stands now both the Plaintiff and the Defendant are staking claim of ownership to the suit property. The Plaintiff has established a *prima facie* case that has a probability of success based on the evidence of ownership being the root of title right from 1991. The Defendants/Respondents being the registered owners as per the Certificate of Title, the Court also notes that there is credible evidence that the Defendants/Respondents may be in occupation and/or possession of the suit land and/or portion of it. Thus, granting an injunction in the terms sought by the Plaintiffs may amount to conferring the right to the Plaintiffs to evict the Defendants without the suit being heard and determined.
41. As is the position in law that an order for eviction can only be granted where a mandatory injunction is sought which is not the case in the present application and/or after the suit is heard and determined and a party is decreed as the owner as opposed to the other claimant or party. In the present matter I acknowledge there is a need to preserve the suit property until the matter is heard and determined and given the circumstances of the case the order that commends itself to the Court and in order to do justice to all parties is that parties should observe and maintain the present status quo obtaining on the ground and specifically the Court directs and orders that:-
- a. Both parties do maintain the present status quo where no party shall carry out any further developments on the suit property of whatever nature.
 - b. The parties should fast-track the preparation of the suit for hearing by ensuring compliance with Order 11 of the Civil Procedure Rules thus Pre-trial Conference shall be on 19/02/2026.
 - c. The costs of the application to be in the cause.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 5TH DAY OF FEBRUARY, 2026.

MOGENI J

JUDGE

In the presence of:-

..... for Plaintiffs/Applicants

..... for Defendants/Respondents

Melita -Court Assistant

MOGENI J

JUDGE

