



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS E020 OF 2025

ESTHER WAMBUI MWANGI Suing as legal representative of estate of
FRANCIS MWANGI NJUGUNA

PLAINTIFF/APPLICANT

VERSUS

SIMON NJUGUNA MWANGI.....1ST
DEFENDANT/RESPONDENT

PETER NDUNGU MWANGI.....2ND
DEFENDANT/RESPONDENT

RULING

1) This ruling is on the notice of motion dated 3-9-2025. The motion which is brought under **Order 40 rules 1 and 2 of the Civil Procedure Rules** seeks the following residual order.

3. That an order of temporary injunction do issue restraining all dealings in land parcel No. Loc.4/Ngarania/758 situated in Kandara sub location, Murang’a County by the 1st Defendant, her servants, employees and or agents or persons claiming through them or under them from carrying out any activities on the suit land pending the hearing and determination of this suit.

5. That the said order be served upon the area chief, sub chief and OCS Kandara Police Station for compliance.

2) The motion is based on Six (6) grounds and is supported by an affidavit sworn by the Applicant’s counsel dated 3-9-2025.

The gist of the grounds and the affidavit is as follows.

Firstly, the Plaintiffs and their family members have been arrested and charged at Kandara Law Courts on baseless claims. Secondly, this matter is pending before Court yet the 1st Defendant is threatening to construct a home on the suit land and also demolish the Plaintiffs’ houses yet the Plaintiffs have a prima facie case. Thirdly, the Plaintiffs live on the suit land and have lived thereon for many years having been born and raised on the suit land. Finally, the suit land has been the subject of long litigation and there has never been an order for the Plaintiffs to be evicted.

3) The motion is opposed by the Respondents and the 1st Respondent has sworn a replying affidavit dated 11-9-2025 in which she responds as follows. Firstly, the suit land is

registered in the name of the 1st Respondent's husband. Secondly, the Applicants have trespassed on the suit land and they have been charged with forcible detainer after full investigations have been carried out.

4) Counsel for the parties filed written submissions dated 12-1-2026 and 20-11-2025 respectively.

5) I have carefully considered the motion in its entirety including the affidavits, grounds and the written submissions by learned counsel for the parties. This being an application for injunction, the applicable case is that of **Giella vs Cassman Brown [1973] EA 359** which lays down three conditions for the grant of an injunction. They are that the Applicant must establish a prima facie case with a probability of success and proof that she stands to suffer irreparable loss that cannot be adequately compensated with an award of damages if the order is not allowed. Finally, the Court will look at the balance of convenience if it is not sure of the first two(2) conditions. In this case, I will only look at the balance of convenience because the suit is still pending before me and the pleadings are not yet closed. It is therefore too early to conclude whether a prima facie has been made out. It is not disputed that the Applicants are in actual occupation of the suit land. The 1st Respondent has in paragraph 7 of the replying affidavit said as follows.

“That I aver that the Applicants are the one (sic) in possession of the suit property having unlawfully trespassed ...”

On this ground alone, I find that the balance of convenience tilts in favour of the Applicants. Since they have been on the suit land for long, they should be left to continue occupation until the suit is heard and determined. Let the Respondents keep off the land until the conclusion of this suit.

For the above stated reasons, I allow the notice of motion dated 3-9-2025 in terms of prayers 3 and 5. Costs in the cause.

Dated, signed and Delivered virtually at Murang'a this 11th day of February, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of :-
Mwangi Njonjo - Court Assistant
Plaintiffs' Counsel – Mr Njogu
1st Defendant's Counsel – Absen