



**Nyakinyua Investment Ltd v Munene (Being Sued as the Capacity of Member of County Assembly of Theta Ward) & 2 others (Environment and Land Case E039 of 2025) [2026] KEELC 579 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 579 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT AND LAND CASE E039 OF 2025**  
**JA MOGENI & AM COCKAR, JJ**  
**FEBRUARY 5, 2026**

**BETWEEN**

**NYAKINYUA INVESTMENT LTD ..... PLAINTIFF**

**AND**

**MOSES MUIRURI MUNENE (BEING SUED AS THE CAPACITY OF MEMBER OF COUNTY ASSEMBLY OF THETA WARD) ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KIAMBU ..... 2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL (BEING SUED ON BEHALF THE LAND REGISTRAR, RUIRU SUB-COUNTY) ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application before me is a Notice of Motion dated 10/03/2025 filed by the Plaintiff/Applicant seeking urgent interlocutory relief regarding a specific property dispute. The application is brought under Sections 1A and 1B of the *Civil Procedure Act*, Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules, and Section 24 of the *Land Registration Act*. The property in question is Land Parcel Ruiru/ruiru East Block 2/1130 (herein after the "Suit property").
2. The Applicant prays for the following orders:
  1. Spent.
  2. Temporary Injunction, restraining the Respondents from constructing temporary structures, interfering with, or alienating the Suit Land pending the inter-partes hearing and the final determination of the suit.
  3. An order restricting and or prohibiting any dealings on the land to preserve it in its current state.



4. Police Assistance where direction to be issued to the OCS and OCPD of Theta Police Station and the Kiambu County Commissioner to enforce compliance and maintain peace.
3. The application is based on the following grounds:
  - a. The Applicant is the registered owner of the Suit property which is a land-buying company representing over 5,000 members.
  - b. The land was registered in the company's name to facilitate an ongoing subdivision process for its members.
  - c. The Respondents have allegedly encroached on the property and commenced illegal construction of structures.
  - d. The Applicant argues that if the injunction is not granted, the company and its members will suffer immense loss and potentially lose the property entirely to the detriment of its members.
  - e. The Court has inherent powers to grant the orders sought
  - f. It is in the interest of just and fair hearing that the orders sought which are necessary to preserve the "subject matter" (the land) until the Court can determine the rightful claims.
4. The application is supported by the Supporting Affidavit of Nduta Ndirangu, along with any further grounds to be presented when the parties canvass the application.
5. The application is opposed through the Grounds of Opposition filed by the 2<sup>nd</sup> Defendant dated 5/07/2025.
6. According to the 2<sup>nd</sup> Defendant/Respondent, the application and the underlying suit are fatally defective for failing to disclose any reasonable cause of action against them. This is raised pursuant to Order 2 Rule 15 (1) (a) & (2) of the Civil Procedure Rules, thus the claim against the 2<sup>nd</sup> Defendant is scandalous, frivolous and or vexatious.
7. Also, the 2<sup>nd</sup> Defendant avers it is raising a jurisdictional and procedural objection against the application and the suit since it is in breach of Sections 13A and 21(4) of the [Government Proceedings Act](#).
8. Meaning that the Applicant failed to serve the mandatory Statutory Notice required before commencing proceedings against a government entity/official, thereby denying the 2<sup>nd</sup> Defendant the legal opportunity to investigate the claim.
9. The 2<sup>nd</sup> Defendant argues there is a total lack of nexus (legal connection) between themselves and the 1<sup>st</sup> Defendant regarding the alleged illegalities. Specifically, it is the 2<sup>nd</sup> Defendant's contention that there is no evidence linking the 2<sup>nd</sup> Defendant to the alleged illegal construction.
10. According to the 2<sup>nd</sup> Defendant, the Applicant has failed to demonstrate any act of commission or omission by the 2<sup>nd</sup> Defendant that would warrant the injunctive orders sought.
11. The 2<sup>nd</sup> Defendant asserts that the Applicant's previous complaints (dated March 2024, December 2024 and January 2025) addressed to various Public Offices (MP, Land Registrar, MCA, DCI) do not implicate the 2<sup>nd</sup> Defendant. Consequently, the 2<sup>nd</sup> Defendant maintains they have been improperly joined to a dispute in which they have not demonstrated involvement.



12. By failing to demonstrate the 2<sup>nd</sup> Defendant's involvement in the encroachment or construction, the Applicant has failed to establish a prima facie case with a probability of success specifically against the 2<sup>nd</sup> Defendant.
13. Therefore the 2<sup>nd</sup> Defendant maintains that the application against them is a legal nullity and an abuse of the Court process, praying for the dismissal of the application with costs to the 2<sup>nd</sup> Defendant/ Respondent.
14. In response to the Grounds of Opposition the Applicant filed a Supplementary Affidavit whose gist was that despite the 2<sup>nd</sup> Defendant's procedural objections (such as lack of nexus and cause of action), the Respondents have failed to state by what authority or legal instrument they occupy or claim interest in Land Parcel Ruiru/ruiru East Block 2/1130.
15. Further, that the 2<sup>nd</sup> Defendant have not specifically denied the factual allegation that they are currently constructing on the suit land.
16. According to the Applicant the suit property is private property and not public land. Thus, Applicant argues that any entry or construction by the Defendants is an illegal encroachment, regardless of whether the land appears "vacant".
17. Further the Applicant asserts that if the Defendants intend to build public facilities, such projects must be situated on land designated for public utilities not on private land belonging to the Applicant.
18. The Applicant further introduces a specific allegation regarding the 1<sup>st</sup> Defendant where it depones that the 1<sup>st</sup> Defendant is using the Applicant's land for political gain (campaigning/wooing voters) by initiating construction projects to secure a re-election bid.
19. The Applicant maintains that political or social goodies should not be provided at the expense of the Applicant's constitutionally protected property rights.
20. The Applicant reiterates that their Right to Property (under Article 40 of *the Constitution*) is being actively infringed upon by the Defendants, who have no legal standing or color of right to be on the land.
21. Apart from the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants did not file any response.
22. When parties appeared in Court on 6/11/2025 they were directed to file their written submissions. The 2<sup>nd</sup> Defendant filed their submissions earlier, they are dated 15/07/2025 while the Applicant filed their submissions dated 6/11/2025.
23. The Applicant submitted that their case is centered on the unauthorized invasion and illegal construction on private property (ruiru/ruiru East Block 2/1130) by the 1<sup>st</sup> Defendant (a Member of County Assembly). The Plaintiff argues that the 1<sup>st</sup> Defendant is erecting market stalls for political expediency on land belonging to a private land-buying company and its 5,000 shareholders.
24. It is the Applicant's contention that while the 1<sup>st</sup> Defendant has failed to respond, the 2<sup>nd</sup> Defendant's Opposition relies on procedural technicalities rather than addressing the substantive issue of ownership. The Applicant maintains that the land is private, not public, and that the Constitutional right to property must be protected over political interests.
25. According to the Plaintiff/Applicant they argue that they have demonstrated a clear right to the land through maps, ownership claims and evidence of the ongoing subdivision process. They assert that the Defendants have provided no proof of ownership or authority to build on the land.



26. Given their proof of ownership therefore, it is their case and submission that if the market stalls are completed, members of the public (stall-holders/traders) will occupy the land. This would create a legal and social nightmare because the third parties are not part of the suit but would claim entitlement to the spaces.
27. According to the Plaintiff's submissions, removing large numbers of mama mbogas and boda bodas is notoriously difficult, making an award of damages an inadequate remedy for the loss of use of the land.
28. On the Constitutionality of Statutory Notice (Section 13A of the *Government Proceedings Act*), the Plaintiff submits that the 2<sup>nd</sup> Respondent's Objection for lack of a 30-day Statutory Notice should not defeat substantive justice. Since substantial compliance was achieved through multiple written complaints and notices sent to various authorities (DCI, MCA, MP and Land Registrar).
29. The Plaintiff/Applicant has relied on the cases of *Giella v Cassman Brown & Co. Ltd* [1973] EA, *Mrao Ltd v First American Bank of Kenya Ltd* [2003] KLR 125 and *Kenya Bus Service Ltd v Minister for Transport* [2012] KEHC 2402.
30. On his part the 2<sup>nd</sup> Defendant has submitted that the Plaintiff has failed to show any legal liability on the part of the County Government. They contend that the suit is an abuse of the Court process and should be struck out under Order 2 Rule 15 of the Civil Procedure Rules.
31. On the issue of liability, the 2<sup>nd</sup> Defendant poses a rhetorical question to the Court which is: What specific act or omission is the County responsible for? They maintain the pleadings are silent on this, making the County's inclusion scandalous and vexatious.
32. The core of the 2<sup>nd</sup> Defendant's defense is the failure of the Plaintiff to serve the mandatory 30-day Statutory Notice which according to the 2<sup>nd</sup> Defendant is a breach of Statutory Notice (Section 13A *Government Proceedings Act*) which is a requirement under the Act.
33. They argue that because the Government is a vast organization, the notice is a mandatory pre-requisite to allow for internal investigation and the protection of public funds. Further that without this notice, then the 2<sup>nd</sup> Defendant was denied the opportunity to investigate the claim before being dragged into litigation and this is prejudicial to them.
34. The 2<sup>nd</sup> Defendant points out that even in the Plaintiff's own annexures and letters of complaint, there is no specific allegation against the County Government of Kiambu thus the nexus to the County is missing. They argue that the Plaintiff is struggling to find a reason to keep the 2<sup>nd</sup> Defendant in the suit.
35. In their submissions the 2<sup>nd</sup> Defendant relied on the cases of *Yaya Towers Limited v Trade Bank Limited* [2000] eKLR and *Kenya Bus Service Ltd & Anor. v Minister for Transport & 2 Others* [2012]
36. At the same time, they also referred the Court to Order 2 Rule 15 (CPR) which focuses on the nature of the pleadings and empowers the Court to strike out any pleading that discloses no reasonable cause of action or may embarrass/delay a fair trial. Additionally, they pointed the Court to Order 3 Rule 2 (CPR) on public interest which emphasizes that notice is of paramount importance in suits involving the Government to mitigate liability and protect the public interest.

### **Analysis and Determination**

37. The core of this dispute lies in the tension between Article 40 (Right to Property) and Article 159(2)(d) (Substantive Justice) of *the Constitution* on one hand, and Section 13A of the *Government Proceedings Act* (GPA) and Order 2 Rule 15 of the Civil Procedure Rules on the other.



38. On the issue of injunctions, the Court must apply the three-pillar test principles of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 namely;
- i. Prima Facie Case  
In the current application though the Applicant has not produced title documents they have produced documents related to the land such as the maps to support their claim of proprietorship of the land which bear the name of the Plaintiff. The 2<sup>nd</sup> Defendant has not produced a rival map or any document to support the claim that the suit property is a public utility.
  - ii. Irreparable Injury:  
From the pictures presented by the Applicant if the market stalls are completed and occupied by third parties mama mbogas and boda bodas, as was stated then it is true the Applicant faces a multiplicity of suits and the permanent loss of the land's character. This aligns with the case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, which holds that an injunction should be granted where damages are an inadequate remedy.
  - iii. Balance of Convenience  
From the analysis of the issues presented the balance of convenience seems to lean towards finding for the Applicants.
39. I note that the 2<sup>nd</sup> Defendant seeks dismissal based on the lack of a 30-day notice. However, modern Kenyan jurisprudence has shifted with the regard to the Statutory Notice. The High Court of Kenya: In *Kenya Bus Service Ltd v Minister for Transport* [2012] eKLR, Justice Majanja held that Section 13A of the GPA is an impediment to access to justice and must be read through the prism of Article 48 of *the Constitution*.
40. The Court of Appeal in *The Attorney General v Josephat Waweru & 4 Others* [2015] eKLR, the Court observed that where there is an imminent threat to a constitutional right (like property), the Court's inherent power to grant an injunction takes precedence over the requirement for Statutory Notice.
41. And in India, the Supreme Court in the decision in the case of *In State of Rajasthan v Rekhchand* (2011), it was held that the purpose of Statutory Notice is to prevent frivolous litigation, not to act as a trap to defeat a citizen's legitimate claim against the state for urgent relief.
42. On another note, the 2<sup>nd</sup> Defendant claims that there is no nexus between the Plaintiff's claim and any cause of action against them. However, under the *Physical and Land Use Planning Act*, the County Government, (2<sup>nd</sup> Defendant) is the sole authority for approving constructions.
43. If construction is happening on the suit property, it is either with the County's authorization or through its negligence/omission to stop an illegal development.
44. This establishes a triable issue that cannot be struck out at the interlocutory stage. As held in *Yaya Towers Limited v Trade Bank Limited* [supra] a suit should only be struck out if it is hopeless and bound to fail. Given the County's regulatory role, this suit is not hopeless.
45. Therefore, the Court, having considered the rival submissions and the law, finds as follows:
46. On Urgency and Notice: The threat to the suit property is imminent. The requirement for a 30-day Statutory Notice is directory, not mandatory, in instances where an interlocutory injunction is sought to prevent the evaporation of the subject matter of the suit. To hold otherwise would render the Court a helpless spectator to illegality.



- 47. On Ownership: The Applicant produced documents that lend credence to their claim to proprietorship which remains unchallenged by any rival document from the Respondents. The 1<sup>st</sup> Defendant/Respondent has remained silent even on the claim of trespass by the Plaintiff.
- 48. On the 2<sup>nd</sup> Defendant/Respondent’s liability: The County Government is a necessary party to this suit as the Planning Authority. Their presence is required to explain how construction approvals were issued (or why they failed to stop unauthorized construction) on private land.
- 49. Given the foregoing I make the following finding:
  - 1. The Application dated 10<sup>th</sup> March 2025 is hereby allowed.
  - 2. An Order of Temporary Injunction is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from further construction, interference or alienation of Land Parcel Ruiru/ruiru East Block 2/1130 pending the hearing and determination of the main suit.
  - 3. The OCS Theta Police Station is directed to enforce these orders.
  - 4. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT THIKA VIA MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026.**

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**MOGENI J  
JUDGE**

In the presence of:-

- ..... for Plaintiff/Applicant
- ..... for the 1<sup>st</sup> Defendant/Respondent
- ..... for the 2<sup>nd</sup> Defendant/Respondent
- ..... for the 3<sup>rd</sup> Defendant/Respondent
- Melita..... Court Assistant

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