



THE JUDICIARY



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO 281 OF 2017

MOSES KAMANDE NYAMBURAPLAINTIFF/RESPONDENT

VERSUS

FRANCIS MUNYUA NGUGIDEFENDANT/APPLICANT

RULING

(1) This ruling is on the notice of motion dated 24-7-2025. The motion which is by the Defendant is brought under **Section 3** of the **Civil Procedure Act** and all other enabling provisions of law seeks two residual orders.

2. That the firm of T.M. Njoroge Advocates be granted leave to come on record for the Defendant/Applicant Francis Munyua Ngugi herein instead of Mbue Ndegwa and Co. Advocates who were on record in this matter.

3. That there be an order of permanent injunction restraining the Plaintiff whether by himself, his agents, servants and/or workers from encroaching, cultivating, tilling, alienating, intermeddling and/or committing acts of waste in the dealing in any way with L.R. No. Loc.6/Muthithi/1920 pending the hearing and determination of this matter.

4. Warrants of arrested issued herein against the Defendant be lifted forthwith.

(2) The motion is based on nine (9) grounds and it is supported by the affidavit of the Defendant dated 24-7-2025. The gist of the grounds and the affidavit are as follows. One, the Plaintiff who has no proprietary rights over the suit land has unlawfully encroached thereon without any right whatsoever and has demolished buildings and cut down trees belonging to the Defendant. These acts of the Plaintiff are unwarranted and contrary to the law and they cause harm to the Defendant. Secondly, the Defendant has paid a substantial amount of money to the tune of Kshs 126,000/= to the Plaintiff and the remaining balance of Kshs. 74,000/= will be paid in due course. Finally, the Defendant has established a prima facie case against the Plaintiff and the application is made in good faith.

- (3) The Defendant has filed yet another application dated 1-8-2025 in which he seeks an order similar to prayer 3 of the motion dated 24-7-2026. The only slight difference is that the order is not sought pending the hearing and determination of this matter as it is in the application dated 24-7-2025.
- (4) The motion is opposed by the Plaintiff who has filed a replying affidavit dated 21-8-2025 in which he responds as follows. Firstly, the Plaintiff denies constructing buildings and cutting down trees on the suit land. The land on which the building stand is his own land. Secondly, nothing on the land belongs to the Defendant. Thirdly, the Plaintiff owns the land and the Defendant has no right to restrict his enjoyment of his land. Finally, the Plaintiff will suffer great prejudice if the application by the Defendant were allowed.
- (5) The only submissions that I see on the record are those by the Defendant's counsel dated 18-11-2025. I see no submissions by the Plaintiffs' counsel.
- (6) I have carefully considered the two motions dated 24-7-2025 and 1-8-2025 respectively including the affidavits by both sides, the record and the written submissions by the learned counsel for the parties. I find that the following issues arise.
- (i) Who is the registered owner of the suit land.**
 - (ii) Whether warrants of arrest against the Defendant can be lifted by this Court.**
 - (iii) Whether the Defendant has proved that he is entitled to the orders of injunction.**
 - (iv) Whether the firm of T.M. Njoroge Advocates should be allowed to come on record instead of Mbue Ndegwa and Co. Advocates.**
- (7) On the first issue, I find that there is a Judgement on record dated 19-4-2018 which found that the Plaintiff was entitled to Kshs. 200,000/= plus costs. He was not awarded any land. He does not therefore own the suit land which is Loc.6/Muthithi/1920.
- (8) Regarding the second issue of the warrant of arrest, I find that this Court did not issue any warrants of arrest. If there is any warrant of arrest, it should be dealt with by the person who issued it.

- (9) I find that the Defendant is entitled to the orders of injunction because he is the owner of the suit land and the Plaintiff has no good reasons for invading the Defendant's land. He has therefore established a prima facie case with a probability of success as against the Plaintiff.
- (10) Finally on the 4th issue, I find that the firm of T.M. Njoroge Advocate should be allowed to come on record in place of the firm of Mbue Ndegwa and Co. Advocates. The motion dated 24-7-2025 is served upon the firm of Mbue Ndegwa and Company Advocates and it is not opposed.
- (11) For the above stated reasons, the notice of motion dated 24-7-2025 is allowed in terms of prayer 2 only and the one dated 1-8-2025 is allowed in terms of prayer **(b)**.
Costs to the Defendant.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 24th day of February, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Jackline
Plaintiff's Counsel – Mr Mbuthia
Defendant's Counsel – Mr T.M. Njoroge