



**Njenga (Suing as the administrator of the Estate of the Late Wilson Mwaura Njenga) v
Wambugu (Sued in person and also as an administrator of the Estate of the Late John Peter
Wambugu) (Land Case E115 of 2025) [2026] KEELC 1002 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE E115 OF 2025
MAO ODENY, J
FEBRUARY 23, 2026**

BETWEEN

**JOHN KARANJA NJENGA (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE WILSON MWAURA NJENGA) PLAINTIFF**

AND

**FAUSTER WAMBUI WAMBUGU (SUED IN PERSON AND ALSO AS
AN ADMINISTRATOR OF THE ESTATE OF THE LATE JOHN PETER
WAMBUGU) DEFENDANT**

RULING

1. This ruling is in respect of the Plaintiff's Notice of Motion dated 24th October, 2025, seeking the following orders:
 - a. Spent.
 - b. That pending the hearing and determination of this application inter-parties, this Honourable court do issue an order of injunction restraining the defendant, her agents, employees and/or servants from interfering with land known as Kiambogo/Kiambogo Block 1/9686.
 - c. That pending the hearing and determination of this suit, this Honourable court do issue an order of injunction restraining the defendant, her agents, employees and/or servants from interfering with land known as Kiambogo/Kiambogo Block 1/9686.
 - d. That OCS Mwariki Police Station to provide security and ensure strict compliance of the order.
 - e. That pending the hearing and determination of this application inter parties this honourable court do issue orders of restriction against land known as Kiambogo/Kiambogo Block 2/9686



barring all transactions and dealings on the land and particularly by the defendant, Fauster Wambui Wambugu.

- f. That pending the hearing and determination of this suit, this honourable court do issue orders of restriction against land known as Kiambogo/Kiambogo Block 2/9686 barring all transactions and dealings on the land and particularly by the defendant, Fauster Wambui Wambugu.
 - g. That costs of this application be provided for.
2. The Application was supported by the annexed affidavit of John Karanja Njenga, sworn on 24th October 2025, where he deponed that he is the brother of the deceased Wilson Mwaura Njenga who was the registered owner of the suit land Kiambogo/Kiambogo Block 2/9686, which was a resultant subdivision from Kiambogo/Kiambogo Block 2/111 which belonged to their late father Njenga Mwaura.
 3. It was his disposition that, in 2021, the Defendant grabbed the suit land and caused two individuals namely Robert Kagiri and Brian Gesora, to settle on the land, and further learnt that the Defendant had fraudulently transferred the suit land into his name.
 4. The Applicant also deponed that the Defendant is in the process of selling the suit land and that he has commenced permanent developments thereon, which is detrimental to the beneficiaries of the deceased. The Applicant urged the court to allow the application for a temporary injunction and a restriction to be lodged on the suit land to preserve the land pending the hearing and determination of the case.
 5. The Defendant/Respondent, Fauster Wambui Wambugu, filed a replying affidavit sworn on 5th December 2025, and deponed that L R. NO. Kiambogo/Kiambogo Block 2/9686, is non-existent as the title was cancelled and its register closed upon lawful and/or procedural subdivision and any orders issued would be an academic exercise.
 6. The Respondent also stated that her late husband John Peter Wambugu was a member of Mwariki Farm Limited, who was issued with a Share Certificate No. 238, jointly with three (3) other members namely, James Wachira, Moses Njoroge And Peter KIMITI, and were allocated land parcel No. Kiambogo/Kiambogo Block 2/111, and that the late Njenga Mwaura was not a member of the farm.
 7. It was the Respondent's further disposition that, subsequently the shareholders, James Wachira, Moses Njoroge, John Peter Wambugu And Peter Kimiti, mutually agreed to subdivide the land into four portions namely, Kiambogo/Kiambogo Block 2/9686 (Mwariki), Kiambogo/Kiambogo Block 2/9687 (Mwariki), Kiambogo/Kiambogo Block 2/9688 (Mwariki), Kiambogo/Kiambogo Block 2/9689 (Mwariki).
 8. According to the Respondent, upon subdivision, her late husband became the registered owner of parcel of land known as LR NO. Kiambogo/Kiambogo Block 2/9686 (Mwariki), which he later subdivided into 21 plots L R Nos. Kiambogo/Kiambogo Block 2/23941 to 23961 (Mwariki) of which the Respondent annexed a duly registered mutation form, sketch map, certificate of official search dated 19th December 2019, Application for consent dated 3rd February 2020, letter of consent for subdivision dated 4th February 2020 and payment receipts.
 9. The Respondent further deponed that the late husband entered into a sale agreement dated 4th January 2019, with Robert Gathinji Kagiri where he paid the full purchase price, but stated that he is not aware of Brian Gesora whom the Plaintiff sued vide Nakuru ELC No. E200 of 2021.



10. The Respondent gave a chronology of the events that took place in the Magistrate's Court where the Plaintiff had filed a suit in respect of the same subject matter being Nakuru ELC No. E200 of 2021, which was dismissed for non-attendance, and several applications which were subsequently dismissed for non-compliance with the court orders.
11. She therefore urged the court to dismiss the application with costs.

Plaintiff's Submissions

12. Counsel for the Plaintiff filed submissions dated 6th November 2025, and listed the following issues for determination:
 - a. Whether the Applicant has established a prima facie case to warrant the grant of temporary injunctive orders.
 - b. Whether the Applicant has demonstrated that he will suffer irreparable loss which cannot be compensated by damages if the injunction is not granted.
 - c. Whether sufficient cause has been shown for the registration of a restriction over Kiambugo/ Kiambugo Block 2/9686, under section 68 of the *land Registration Act*, 2012.
13. Counsel relied on the principles for the grant of injunctions and submitted that the applicant has shown that his late father allocated the land to the deceased. Counsel relied on the cases of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2012] eKLR, *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] and urged the court to allow the application as prayed as the Defendant is already subdividing, constructing and offering the suit land for sale.

Defendant's Submissions

14. Counsel for the Defendant filed submissions dated 20th January 2026, and reiterated the contents of the Respondent's replying affidavit and relied on the principles for grant of injunctions and the cases of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, *Mbutu v Mwangangi (Environment and Land Appeal E001 of 2023)* [2025] KEELC 3169 (KLR), eKLR, *Jojomera & another v Kauli (Land Case E013 of 2022)* [2025] KEELC 3257 (KLR), and submitted that the Applicant has not met the threshold for the grant of the orders sought for injunction and restriction.
15. It was counsel's submission that the Applicant has not demonstrated that he is likely to suffer irreparable harm if injunction orders are not granted, as he has also not stated whether he is claiming a beneficial interest in the suit property. Further, the suit property was long subdivided and third parties acquired some of the resultant subdivisions and titles in 2020, who have not been sued, hence it would be impracticable to issue orders against them.
16. On the issue of the balance of convenience, counsel relied on the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, and submitted that the balance of convenience lies in favour of the Defendant who is in occupation and the Plaintiff has never been in use or shown that his brother was ever in occupation of the suit land. Counsel urged the court to dismiss the application with costs.

Analysis And Determination

17. The issue for determination is whether the Applicant has met the threshold for grant of temporary injunctions as was held in the case of *Giella Cassman Brown* (supra). Has the Applicant established a prima facie case with a probability of success? Has he demonstrated that he will suffer irreparable loss



not capable of being compensated by way of damages if an order of injunction is not granted? Which side does the balance of convenience lie?

18. In the case of *Rockland Kenya Limited v Elliot White Miller* [1994] eKLR, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff’s undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

19. The Plaintiff/Applicant filed an application for injunction, and at the time of writing this ruling, the Respondent had filed an elaborate replying affidavit with explanations which the Applicant should have responded to as they are fundamental questions that go to the root of the case and the merit or demerits of the application.

20. The Respondent gave a chronology of the case that had been filed in the power court in respect of the suit property, the subsequent subdivisions which have since been registered in third parties’ names who are not parties to this suit.

21. One of the issues for determination that counsel for the Plaintiff listed is “whether in the circumstances of this case the application being unopposed the court should allow the application as prayed.” The Applicant having been served with a replying affidavit that raised fundamental issues should have filed a further affidavit to debunk the contents of the affidavit.

22. There were titles, which were as a result of the subdivision of the suit land registered in third parties’ names who are not parties to this suit. It would be an injustice for the court to issue orders against parties who are not parties to this suit.

23. Similarly, it is trite that courts do not give orders in vain which are incapable of being enforced as was held in the case of *Kimondo & another v Progressive Credit Ltd (Civil Appeal 49 of 2023)* [2025] KEHC 7297 (KLR).

If the mother title was subdivided and surrendered upon the subdivision, and resultant titles issued, the court would not issue an order on a non – existent title.

24. The upshot is that the application lacks merit and is therefore dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 23RD DAY OF FEBRUARY 2026.



M. A. ODENY
JUDGE

