



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLOS OF E015 OF 2023

JOHN MURIGI CHEGE1ST APPLICANT /RESPONDENT
AGNES WANGARI WAWERU2ND APPLICANT /RESPONDENT
MARGARET WAMBUI IRUNGU3RD APPLICANT /RESPONDENT
ANGELICA MUMBI MBURU4TH APPLICANT /RESPONDENT
MWANGI NJOROGE5TH APPLICANT /RESPONDENT
BERNARD GICHEHA MAINA6TH APPLICANT /RESPONDENT
GLADYS NKIROTE WAGEMBA7TH APPLICANT /RESPONDENT

VERSUS

MBOI KAMITI FARMERS CO. LTD1ST RESPONDENT
RUTH NYAKWEYA WANGOMBE.....2ND RESPONDENT
ANTHONY MUCHOKI MWANGI3RD RESPONDENT/APPLICANT

RULING

(1) This ruling is on the notice of motion dated 30-10-2025. The motion which is brought under **Section 3A of the Civil Procedure Act, Orders 40 rule 7 and Order 45 rule 1 of Civil Procedure Rules and Article 159(d)** of the Constitution of Kenya seeks one main order which is as follows:-

2. **That this Court be pleased to discharge, vary or set aside its orders dated 13-3-2025 in respect of the notice of motion dated 13-2-2025.**

(2) The motion is based on three grounds and is supported by the affidavit of the third Respondent, Anthony Muchoki Mwangi dated 30-10-2025. The gist of the grounds and the affidavit is as follows. Firstly, there are three mistakes and errors apparent on the face of the record.

(a) **The Respondents were restrained from interfering with the Applicants' occupation of the suit land Nginga/Samar Block 2 (ex Samar)/504 when indeed it is the 3rd Respondent who has been in occupation since the year 2014 when he purchased the suit property.**

(b) **The Court issued a substantive order in the interim which should have been issued upon completion of the trial which reads as follows.**

“ That an order be and is hereby issued that any transfer that may have been made in the suit land during the subsistence of this suit be cancelled and the land be restored to the original position at the filing of this suit.”

(c) The Court granted status quo as at the date of the filing of the suit instead of as at the date of order which means the order is intended to operate retrospectively contrary to the known principles of the law.

(d) An order of injunction is sought in an originating summons with no main injunction prayer sought.

Secondly, the 3rd Respondent was never served with the originating summons until 12-10-2025 when he discovered from the 2nd Respondent the existence of the order issued on 24-2-2025 hence he could not challenge the notice of motion dated 13-2-2025.

Finally, it is in the interest of justice that the orders sought be granted.

(3) I have not seen the replying affidavit by the Respondents. Neither have I seen the written submissions by either side. This is not to say that the affidavit and the submissions may not have been filed. They may have been filed but the motion dated 30-1-2025 is so meritorious that whatever the Respondents may say will not matter because there is an obvious error apparent on the face of the record.

Firstly, there is no evidence that the Applicant was ever served with the amended originating summons dated 22-3-2024 or any other originating summons filed earlier and more importantly with the notice of motion dated 13-2-2025 which led to the issuance of order dated 24-2-2025 which is the subject of the current motion. The affidavit of service dated 24-2-2025 is to effect that only Mwangi Wambugu and Co. Advocates and the 2nd Respondent were served. According to the notice of appointment of advocate filed by Mwangi Wambugu and Company Advocates and dated 27-5-2024, that firm represents the 1st Respondents only. Since the Applicant/3rd Respondent was not served, it means that it was neither fair nor just to issue the order of 22-2-2025 against him.

(4) Secondly, the motion dated 13-2-2025 sought orders that should not have been sought and granted at the interlocutory stage. The order for the cancellation of a transfer of the suit land

should not have been allowed until after a trial. This was an error on the part of the Court which I highly regret.

(5) Consequently and for the reasons already given, the notice of motion dated 30-10-2025 is allowed in terms of **prayer 2** and the order dated 24-2-2025 is set aside. Costs in the cause.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 3rd day of March 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -

Court Assistant – Jackline

Applicant's Counsel – Mr Kimwere

Respondent's Counsel – Mr Muinde