



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC E019 OF 2025

SAMUEL MWANGI KAMAU PLAINTIFF

VERSUS

MERCY NYAMBURA 1ST DEFENDANT

LAND REGISTRAR MURANG'A 2ND DEFENDANT

RULING

(1) This ruling is on the notice of motion dated 4-6-2025. The motion which is by the Plaintiff seeks the following residual orders.

- b) An injunction be issued against the Defendant, its servants or agents restarting them from constructing, interfering with, alienating, transferring or in any way meddling with the suit property until this suit is heard and determined.**
- c) Conservatory orders be issued against interfering with the suit property until this suit is heard and determined and status quo be maintained.**
- d) Any other orders that the Court may deem fit to grant.**
- e) The costs of this application be awarded.**

(2) The motion is based on five (5) grounds and is supported by an affidavit by the Plaintiff dated 28-5-2025. The gist of the grounds and the affidavit is as follows. Firstly, the Defendant started construction on the suit property upon receipt of service of this claim. The aim of the construction is to defeat justice. The construction which is proceeding at a high speed will cause the Plaintiff irreparable loss and the orders sought should issue. Secondly L.R. No. Loc.7/Gakoigo/2534 was developed by the parents of the Plaintiff who were Agnes Njeri Kamau and Barnaba Kamau Joakim Ndirangu long before the 1st Defendant was married by the Plaintiff's father as a second wife. Three, after the death of the Plaintiff's father on 7/2/2025, it was discovered that the suit land is registered in the joint names of the

1st Defendant and the Plaintiff's father. This joint registration is suspicious because the Plaintiff was not aware. Due process was not followed in this registration yet the Plaintiff's father was of poor health and unable to enter into any transaction. Four, the Plaintiff has property on the suit plot and he is directly affected by the registration of the 1st Defendant as joint owner. For the above and other reasons, the Plaintiff prays for the orders.

(3) The motion is opposed by the Respondent who has sworn a replying affidavit dated 23-7-2025 in which she responds as follows. Firstly, she was not served with the application by the Plaintiff and it is only her lawyer who found it in the portal. Secondly, it is true that the suit land is registered in her name and that of her husband. This registration was on 23-2-2024 and it was a gift *inter vivos*. Before this registration took place the deceased had summoned all his family members including the Plaintiff at the office of the assistant County Commissioner Maragua where he declared how he intended to distribute his property. Thirdly, the Plaintiff was gifted with L.R. No. Loc. 7/Gakoigo/2528 which is now in his name. L.R. No. 5921 was also transferred to the Plaintiff alongside his siblings. Fourthly, the Plaintiff knows that the construction that he is complaining about has been in existence for some time and it is by a tenant called Caroline Kaari Ngari and all the tenant is doing is improving on the said structure which is not permanent. The Plaintiff should have disclosed that he also has a shop on the suit land which he took by force. Fifthly, the Plaintiff has not demonstrated that the 1st Defendant has any intention of alienating the suit land and she is not against the preservation of the suit land. Finally, the suit land comprises of the 1st Defendant's matrimonial home where she has lived with her late husband since 1975.

(4) Counsel for the parties filed written submissions dated 18-11-2025 and 8-12-2025. The issues identified by the 1st Defendant's counsel are as follows.

(1) Whether the Applicant has established a prima facie case with a probability of success.

(2) Whether the same application has demonstrated that he stands to suffer irreparable loss not compensable by an award of damages.

(3) Where the balance of convenience tilts.

(4) Whether the Plaintiff is justified in seeking the orders in the motion in the light of material non disclosure on his part.

(5) Who is entitled to costs.

(5) I have carefully considered the motion in its entirety including the grounds, the affidavits and the annexures as well as the submissions by learned Counsel for the parties. This being a case where the motion seeks an order of injunction, the principles in the case of **Giella vs. Cassman Brown [1973] E A** come into play. Since this is a case where I will have to hear the parties during the trial, it is prudent that I only look at the balance of convenience so that I do not make remarks that may prejudice the fair hearing of the suit finally.

(6) I find that the balance of convenience tilts in favour of maintaining the status quo. The status quo is that the 1st Defendant and Barnaba Kamau Joakim Ndirangu are the registered owners of the suit plot. It would seem that the Plaintiff and the Defendant are in occupation of the suit land. I say seem because after the 1st Defendant deponed that the Plaintiff has a shop on the suit land, the Plaintiff did not file a supplementary affidavit to controvert this. Again the Plaintiff did not controvert the averment that the construction on the suit land is not permanent and it is by a tenant. Finally, the 1st Defendant has expressly said that she has no intention of alienating the suit land and it is where her matrimonial house is situated having lived there since the year 1975.

(7) For the above stated reasons I order as follows.

(a) Status quo to be maintained on the suit land.

(b) The status quo is that both the Plaintiff and the 1st Defendant are in occupation of the suit land.

(c) The registration status quo of the suit land in the joint names of the 1st Defendant and Barnaba Kamau Joakim Ndirangu to be maintained pending the hearing and determination of the suit.

(d) Costs in the cause.

It is so ordered.

Dated, signed and Delivered virtually at Murang'a this 9th day of March, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of: -
Court Assistant – Jackline
Plaintiff's Counsel – Mr Kimwere
1st Defendant's Counsel – Mr Ngugi