

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NYAHURURU**  
**ELCLC NO. E004 OF 2025**

**CATHERINE MUGURE MUTUNGI ALIAS**

**CATHERINE**

**MUGURE**

**IRUNGU.....PLAINTIFF**

**-VERSUS-**

**JOYCE NJOKI GIKORE.....1<sup>ST</sup> DEFENDANT**

**TITUS           MUNENE           KARERIA.....2<sup>ND</sup>**

**DEFENDANT**

**COUNTY           LAND           REGISTRAR(LAIKIPIA).....3<sup>RD</sup>**

**DEFENDANT**

**RULING**

**1.** This ruling relates to two applications one filed by the plaintiff, while the other one was filed by the defendants.

**APPLICATION DATED 27.6.2025**

2. The plaintiff filed the above application seeking orders that;

**“a. Pending the hearing and determination of all pending applications by the respondent a temporary injunction do issue restraining the respondents by themselves, their agents, servants and/or employees from leasing, transferring, charging, entering, remaining on, tilling, cultivating on and/or in any other way interfering with L.R. NO: MARMANET NORTH RUMURUTI BLOCK 2/6485.**

**b. That the O.C.S Rumuruti Police Station to ensure the orders issued herein are complied with.**

**c. That the costs of this application be borne by the respondents”.**

3. The plaintiffs contend that their title to the suit land has never been cancelled. However, the defendants through

fraud colluded and acquired another title. That when this suit was filed, the defendants or their agents embarked on cultivating the suit land thereby occasioning the plaintiffs loss and damage. They contend that the actions of the respondents are against the doctrine of lis pendes.

4. In opposition thereof, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a replying affidavit through the 1<sup>st</sup> defendant dated 19.8.2025 where they contend that there is no evidence to indicate that the suit land shall be disposed of. They contend that the plaintiffs have never occupied the suit land, adding that they are the ones in occupation of the said land as well as being the registered owners thereof.

5. I have considered the rival arguments and submissions. The issue falling for determination is whether the injunctive orders sought by the plaintiffs are warranted.

6. This being on application for injunctive orders, the same shall be weighed against the requisite essentials set out in the celebrated case of **Giella vs Cassman Brown (1973) EA 358** that:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”**

**7.** The Plaintiffs/Applicants in this case are expected to meet those three principles and surmount them sequentially as was stated by the Court of Appeal in **Nguruman Limited V Jan Bonde Nielsen & 2 Ors [2014] eKLR.**

**8.** A perusal of the pleadings of the parties reveal that each one is claiming to be the registered owner of the suit property. In the case of **Cyanamid Co. vs Ethicon Ltd**

**(1975) 1 ALL ER 504; (1975) A.C 396 HL** cited in **Tritex Industries Limited & 3 others vs National Housing Corporation & another (2014) eKLR**, it was held that;

**“It is no part of the court’s function at this state of the litigation to try 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. These are matters to be dealt with at the trial”.**

**9.** Similarly, this court cannot delve into the contested issue of ownership at the interlocutory stage.

**10.** On utilization of the land, the plaintiffs contend that the defendants commenced cultivation of the land when this suit was filed. However in their pleadings, the plaintiffs are mute on how the suit land was being utilized as at the time the case was filed. Further, the

contents of paragraph 4 of the supporting affidavit are rather general with no indication as to how and when the tilling of the land commenced.

**11.** The foregoing notwithstanding, I find that it is pertinent to give orders of preservation of the suit land at this stage to ensure that the land will be available at the conclusion of the case. In that regard, the court disallows the application of 27.6.2025 save that; the suit land shall not be sold or charged during the pendency of this suit. Each party shall bear their own costs of the application.

*APPLICATION DATED 21.7.2025*

**12.** This application has been brought forth by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. They desire to amend their defence so as to include a counterclaim. They contend that they can only be able to seek remedies via a counterclaim.

**13.** In opposition thereof, the plaintiffs filed Grounds of Opposition dated 20.8.2025 where it is argued that the delay in filing the application has not been explained and

that the defendants are introducing new issues which will change the character of the suit.

**14.** I have considered the rival arguments. The issue for determination is whether; Leave to amend the defence to include a counterclaim is merited. The provisions of **Order 8, Rule 3 (1) Civil Procedure Rules, 2010** provides that;

**“ Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings” .**

**15.** The Court of Appeal for East Africa in the *locus classicus* case of **Eastern Bakery vs. Castelino (1958) EA 461** held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side.

**16.** In the current application, the Applicants (1<sup>st</sup> and 2<sup>nd</sup> Defendant) wishes to amend their defence so as to include a counter claim. A perusal of the plaint at paragraph 7 reveals that the plaintiffs are challenging the registration of the applicants as to owners of the suit property, attributing such registration to fraud, illegality and corrupt schemes and therefore desire that the registers be rectified accordingly. The proposed counterclaim of the defendants is nothing but a counter attack of those allegations, whereby the defendants claim that the registration of the suit land to the plaintiffs was through fraud, illegality and collusion. They desire the court to give a declaration to that effect.

**17.** This far, it is apparent that there are competing claims to the suit property and each claimant ought to get an opportunity to ventilate their issues before the court in the best way possible. A pleading is the foundational document that enables a party to present their case before the court. As such, there is no basis to prevent

the defendants from presenting a counterclaim in this matter.

**18.** Thus the application dated 21.7.2025 is allowed, but each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 4<sup>TH</sup> DAY OF MARCH 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**