



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
LAND DIVISION
ELCEPCC NO E002 OF 2026

DEL MONTE KENYA LIMITEDPLAINTIFF
VERSUS

CYRUS NJOROGE MUTHONI
(Sued on his own behalf and as Chairman and representative of
Gatanga Quarry Owners).....1ST DEFENDANT
PATRICK GITHINJI.....2ND DEFENDANT
TIMOTHY KIMATHI..... 3RD DEFENDANT
PETER KIHUNGI.....4TH DEFENDANT

RULING

1) This ruling is on the notice of motion dated 12-2-2026. The motion which is by the Plaintiff seeks the following residual prayers.

4. **That pending the hearing and determination of this suit, an injunction do issue restraining the Defendants, their agents, servants, employees or any other person acting under them from entering, trespassing upon, creating roads, quarrying, carting away stones, placing quarrying machinery or tools, or conducting any other activities on L.R. No. 12157/10, suit land.**
5. **That pending the hearing and determination of this suit, an order be issued compelling the Defendants to immediately vacate the suit land and to remove all machinery, equipment and structures installed thereon.**
6. **That this court be pleased to issue an environmental preservation order prohibiting further degradation on the suit land.**
7. **That the Officer Commanding Ngati Police Station (OCS Ngati) be directed to enforce the orders of the Court herein and to ensure there is peace and order.**
8. **That this Court do make such further and/or alternative orders as may be necessary to meet the ends of justice.**
9. **That the costs of this application be provided for.**

2) The motion which is brought under **Sections 1A, 1B, 3A and 63 (c) and (e)** of the Civil Procedure Act, **Section 3** of the Environment and Land Court Act, **Orders 40 rule 1 and 50 rule 1** of the **Civil Procedure Rules** and all other enabling provisions of law is based on fourteen (14) grounds and is supported by the affidavit of Harry Odoni, the legal officer of the Plaintiff dated 12-2-2026. The essence of the grounds and the affidavit is as follows. Firstly, the Plaintiff is the registered owner of the suit land situated in Ithanga-Kakuzi sub-location of Murang'a County under a leasehold term of 99 years effective from 1-12-2020 and is in occupation of the entire land. Secondly, the Defendants' have trespassed onto the suit land where they have begun extensive quarrying activities which include creating roads, rock mining, preparation for rock drilling and blasting operations. Thirdly, the Defendants' only authority for occupation of the suit land is a letter dated 19-9-2025 purportedly issued by the County Government of Murang'a. This letter has been denounced by the County Government of Murang'a vide a letter dated 5-11-2025 and its authorship is the subject of police investigation. Fourthly, the Defendants' actions of quarrying are causing environmental degradation, pollution and silting of the Plaintiff's irrigation systems and pose a serious threat to the surrounding ecosystem including the nearby river through pollution siltation and degradation. Fifthly, the Defendants, their servants, agents and employees have demonstrated hostility, aggression and violent conduct whenever the Plaintiff has attempted to engage them or assert its proprietary rights over the suit land. The Applicant has reported this unlawful encroachment to the relevant administrative and police authorities including the Deputy County Commissioner Ithanga-Kakuzi but they have not assisted. Instead they have advised that a Court is necessary to enable them restore law and order on the suit land.

For the above and other reasons, they pray for the orders to issue.

3) The motion is opposed by the 1st and 2nd Defendants and in this connection, the 1st Defendant's Chairman has sworn a replying affidavit dated 19-2-2026 in which he deposes as follows. One, in May 2017, the 1st Defendant made an application to the County Government of Murang'a to operate a quarry along the riparian reserve land of Chania River in Gatanga Sub-location. The request was allowed by the County Government vide a letter dated 2-11-2017. Two, the 1st Defendant obtained a licence from the National Environmental Management Authority and occupied the land where they

have been conducting quarrying activities since then. These activities are not taking place on the suit land but within land delineated under surveyor plans F/R No. 127/2 and F/R No. 129/24. Three, pursuant to a parliamentary committee recommendation, parcels numbers F/R No. 127/2, 129/24, 10733, 10735 and 9213/1 were all amalgamated to form L.R. No. 12157. Three, in ELC Petition No. E002/2023, the Plaintiff sought to prohibit the implementation of recommendations of report dated 5-10-2023 made by the National Assembly Committee on Lands and the said petition was dismissed by the Court on 30-9-2025. Finally, the 1st and 2nd Defendants are not quarrying on the Plaintiff's land. For the above and other reasons, they may pray for the dismissal of the Plaintiff's motion.

- 4) The 4th Defendant in a replying affidavit dated 17-2-2026 replies as follows. Firstly, he is a member of the National Assembly for Kangema Constituency. Secondly he is not a member of the Gatanga Quarry Owners Association and he is therefore wrongly joined in this case as a party. Thirdly, on 8-1-2026, he was called by the Plaintiff's Chief Security Officer for a meeting at Plaintiff's offices. He declined to attend the meeting insisting that it be held at Blue Post Hotel. The meeting did not take place as the two could not agree on the venue. The 4th Defendant was sued before the Plaintiff could carry out due diligence and explain his connection with this case. He is therefore not a proper party in the suit. Finally the Plaintiff has not demonstrated how the alleged quarrying activities have caused significant environmental damage to the land including pollution of the air, soil and water. For the above and other reasons, the 4th Defendant prays for the dismissal of the motion against him.
- 5) In a supplementary affidavit dated 24-2-2026, the legal officer of the Plaintiff rejoins as follows. One, the suit property has been exclusively owned, occupied and used by the Plaintiff since the year 1973 and this is the land where the quarrying by the Defendants is taking place. Two, the Defendants cannot rely on the report by National Assembly to justify their quarrying activities because it did not authorize quarrying. Three, the judgment dated 30-9-2025 dismissing the Plaintiff's petition in ELC Petition No. E002/2023 has been appended against in Nyeri Civil Appeal No. E217/2025 which came up for hearing on 9-3-2026. Four, in Murang'a ELCA No. 25 of 2019, the 1st and 2nd Defendants were prohibited from quarrying and mining activities on the Plaintiff's L.R. No 12157 in a ruling dated 17-12-2020. Five, a letter dated 19-9-2024 purporting to authorize the Defendants to carry out quarrying activities is a forged document. Six the

stone cutting machine on the suit land belongs to the 4th Defendant and he did not deny its ownership when confronted by the Plaintiff's security officer. Finally, the Defendants have not demonstrated that prior to commencing the quarrying activities they submitted an Environmental Impact Assessment report and obtained an approval from the National Environmental Management Authority as required by the law. For the above and other reasons, the court should allow the remaining prayers in the notice of motion to restrain the Defendants from causing further harm to the suit property.

6) Counsel for the 1st and 2nd Defendants filed written submissions dated 4-3-2026, while those by the Plaintiff's counsel are dated 6-3-2026. Having carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavits, the supplementary affidavit and the written submissions by learned counsel for the parties, I find that the following issues arise.

(i) Whether the court should allow the Defendants to operate a quarry along the riparian reserve and along river Chania when it is not certain that the Defendants have the requisite authority to engage in quarrying activities.

(ii) Whether the recommendation by the Parliamentary committee authorized quarrying or any land by any person.

(iii) In whose favour does the balance of convenience tilt?

7) Regarding the first issue, I find that the Court should not allow quarrying on the riparian land along river Chania until there is certainty that such land exists and the Defendants have the requisite approvals to carry out the quarrying activities. Prayer 6 of the notice of motion dated 12-2-2026 is for an environmental preservation order prohibiting further degradation of the suit land. The 1st and 2nd Defendants have not denied that they are indeed carrying out quarrying activities on riparian land along river Chania. Under **Section 3** of the Environment Management and Coordination Act (Act No. 8 of 1999) this Court has the mandate to "prevent, stop or discontinue any act or omission deleterious to the environment," and in exercising such jurisdiction, to be guided by the six principles of sustainable development including the pre-cautionary principle. Under this principle it is better to be safe than sorry when dealing with activities that could damage the environment. Rather than wait to confirm if the alleged letters from the County Government of Murang'a and NEMA are genuine or not, the Court would rather stop the quarrying now, than risk the degradation of the environment which might turn

out to be irreversible eventually. Moreover, it is strongly contended by the Plaintiff that there is no such land as the 1st and 2nd Defendants claim to be quarrying on but all their activities are on the suit land.

- 8) Looking at the second issue, I find that the report of the Parliamentary Committee concerned the settlement of landless people on land registered in the name of the Plaintiff. It did not concern quarrying on the riparian land along river Chania. Whatever the outcome of Murang'a ELC Petition No. E002/2023, no authority was conferred on any person, not even the landless people to quarry on any land.
- 9) Since the pleadings in this case have not closed, it is not prudent for me to deal with the principles in *Giella vs. Cassman Brown [1973] EA 358* concerning a prima facie case with a probability of success and the Applicant proving loss that cannot be adequately compensated with an award of damages. The only condition to consider at this stage is the balance of convenience. Should the court allow the Defendants to continue quarrying on land they do not own and which the Plaintiff claims to own or should it wait for the conclusion of the case to determine the rights of the parties? I find that the Court should stop the quarrying activities until there is a certainty on the legality of the Defendant's activities.
- 10) For the above stated reasons, I **allow** the notice of motion dated 12-2-2026 in terms of prayers **4,5,6** and **7**. Costs in the cause.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 17th day of March , 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Muturi
Plaintiff's Counsel – Mr Thuo and Mr Sande
1st and 2nd Defendant's Counsel – Mr Richu
4th Defendant's Counsel – Mr Anzala