



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELCLC NO. E100 OF 2025**

**MERCY WAMBUI KIMANI.....**  
**PLAINTIFF**

**VERSUS**

**GODFREY MWANGI KIMANI.....1<sup>ST</sup>**  
**DEFENDANT**

**LETSHEGO KENYA LIMITED.....2<sup>ND</sup>**  
**DEFENDANT**

**THIKA LAND REGISTRY.....3<sup>RD</sup>**  
**DEFENDANT**

**THE ATTORNEY GENERAL .....4<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. The Plaintiff vide a Notice of Motion Application dated 7/03/2025 asking the Court for two main things regarding the property identified as **JUJA/KALIMONI BLOCK 8/276**:
  - a) A temporary injunction which will lead to a total freeze on any dealings selling, transferring, or further charging of the land;
  - b) A cancellation of Charge meaning the removal of a Ksh 3,500,000 charge registered on September 5, 2024, in favor of Letshego Kenya Limited; and

- c) Costs of the application to be provided for.
2. The application is built on the grounds advanced by the Applicant that the land belongs to the Estate of the late Joyce Wairimu Kimani. That the charge was entered fraudulently since the person who took the loan, the chargor did not have a Grant of Representation to manage Joyce's Estate.
  3. The Applicants argue that their proprietary rights under Article 40 (although the Notice of Motion talks about Article 49, but Article 40 is the Kenyan Constitutional right to property) are being violated. Thus, they contend that they want to preserve the substratum of the property so that if they win the main case later, the land will not already have been sold or auctioned off.
  4. The Application is opposed vide the Replying Affidavit sworn by Rita Njora, the Legal Business Partner of the 2<sup>nd</sup> Defendant sworn on 20/11/2025. Where she essentially argues that the 2<sup>nd</sup> Defendant (herein after **"the bank"**) followed all legal protocols and that the 1<sup>st</sup> Defendant, Godfrey Mwangi Kimani, is the legally recognized owner, not the Estate of the deceased.
  5. She avers at paragraphs 4 to 6 of the Replying Affidavit that Godfrey Mwangi Kimani is the registered proprietor and that while the Plaintiff through Mercy is relying on a title deed from 2007, there was a subsequent legal transfer where Godfrey was issued a new Certificate of Lease on 2/06/2023.

6. The 2<sup>nd</sup> Defendant argues that under Kenyan Land Law, Section 26 of the Land Registration Act, a Certificate of Title is prima facie evidence of absolute ownership. That therefore the bank argues they relied on this official government record in creating the charge.
7. That whereas the Plaintiff claims that the land belongs to the Estate of Joyce Wairimu Kimani, the bank notes that the Plaintiff failed to attach a Death Certificate or a Grant of Representation to the application. This being the case, this weakens the Plaintiffs' *Locus Standi*.
8. At paragraph 14-23, the 2<sup>nd</sup> Defendant avers that the bank is a bona fide lender. That the bank conducted an official search as shown vide Annexure **'RN-7'** and it showed Godfrey as the owner with no restrictions or cautions on the title.
9. The bank Advocates for separation of liability at paragraph 23 and avers that the relationship between the 2<sup>nd</sup> Defendant and Godfrey is purely financial. Thus, even if Godfrey did something wrong regarding the family estate, the bank argues it cannot be held liable for his personal or fraudulent actions if it was not aware of them.
10. At paragraph 24-32 the bank makes a case in the Replying Affidavit for financial risk and damages and states that the loan has grown. As of 8/07/2025, the debt is **Ksh 4,623,897.45**. That if the Court lifts the charge now, the bank loses its security (the land). If the bank loses its security, it has no way to recover the Ksh 4.6 million.

11. Yet according to the bank, if the Plaintiffs eventually win the main case, the bank is a stable financial institution and can simply pay the damages and or money. Therefore, issuance of an injunction is not necessary.
12. The Court issued directions on filing of written submissions on 21/07/2025 and a further extension of time on 24/11/2025. Parties filed their submissions; the Plaintiffs' submissions are dated 15/12/2025 and the 2<sup>nd</sup> Defendant filed theirs dated 21/11/2025.
13. I have read the submissions.
14. The Applicant has structured her arguments around the three pillars of injunction law from the famous case **Giella v. Cassman Brown [1973] E A 358.**
15. The Applicant argues they have a legal right that has been infringed. They point to the battle of the titles where the Applicant has a 2007 title which is in the name of Joyce Wairimu Kimani deceased while the Defendant has a 2023 title. It is the Applicant's contention that this contradiction alone calls for an explanation from the Defendants and so this being the case it is therefore correct that they have met the threshold for a *prima facie* case.
16. On the second issue of irreparable harm, the Applicant argues that if the 2<sup>nd</sup> Defendant sells the land under the 40-day notice issued on 29/06/2025, the loss cannot be compensated by money. The injury is the disinheritance of the family of the late Joyce Wairimu Kimani.

17. On the last pillar which is the balance of convenience, the Applicant has averred that the Court must weigh who suffers more. The Applicant argues that losing ancestral land forever is a greater mischief than the Bank simply having to wait a little longer to recover its loan.
18. She also referred to the cases of **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR) (7 March 2003) (Judgment)**.
19. The Applicant uses Section 26 of the Land Registration Act and the case of **Munyua Maina v. Hiram Gathiha Maina [2013] KECA 94 (KLR)** to argue that when the root of title is under attack, it is not enough to just dangle the title which is under scrutiny. Therefore, she avers that because the Applicant has challenged how he got it, the 1<sup>st</sup> Defendant is now obliged to prove the legality of the acquisition.
20. That while titles are usually indefeasible the Applicant argues this title was acquired unprocedurally, by skipping Succession Laws, which falls under the legal exceptions in Section 26(1)(a) and (b).
21. On their part, the 2<sup>nd</sup> Defendant argues that they are a bona fide mortgagee for value. They emphasize that in June 2023, the Land Registry officially listed Godfrey who is the 1<sup>st</sup> Defendant as the owner. Thus, that they submit that the Bank is a stranger to the family's succession issues. Legally, a bank is not required to investigate a customer's family

history if the Title Deed and an Official Search from the Government show the customer is the legal owner.

22. The Bank argues that the Plaintiff has failed the very first step of the **Giella v. Cassman Brown (supra)** test because whereas the Plaintiff claims the land belongs to a deceased person's estate, they did not provide a Death Certificate. That without proof of death or a Grant of Representation, the Bank argues they have no legal standing to sue over the property.

23. They cite the case **American Cyanamid v. Ethicon 1975 AC, 396** arguing that since fraud is only an allegation at this stage and not proven fact, the injunction must be denied. Further they argue that damages is an adequate compensation for the Applicant since a key role in Kenyan injunction law is that if you can be compensated with money later, you do not need to get an injunction now.

24. Further that even if Mercy (the Plaintiff) eventually wins the main case, the Bank is a stable financial institution. It can simply pay her the value of the land in cash. Therefore, there is no irreparable injury.

25. The Bank highlights that the debt has ballooned from **Ksh 3.5 Million to Ksh 4.6 Million** due to interest. They argue the balance of convenience favors them because every day the injunction stays in place, the Bank loses more money. They cite Section 99(4), Land Act 2012 to support this argument.

26. At the same time, they cited the cases of **Nguruman Ltd v. Jan Bonde Nielsen [2014] KECA 606 (KLR)** and the case of **Clesoi Holdings v. Prime Bank [2016] KEHC 3696 (KLR)** which confirm that banks have Statutory Power of Sale once there is a default.

27. The bank has urged the Court not to cancel the charge and they argue that canceling a charge at this early stage is a substantive order that would end the case before a full trial, which is procedurally unfair to the Bank.

### **Analysis and Final Disposition**

28. From my reading of the application, the Supporting Affidavit, the Replying Affidavit and its annexures and the submissions, the Court is persuaded to find that a *prima facie* case has been established. While the Bank claims indefeasibility of title, the Court of Appeal in **Munyua Maina v. Hiram Gathiha Maina [Supra]** held that a title holder must prove the root of title when challenged. The fact that the property moved from a deceased person to the 1<sup>st</sup> Defendant without a Grant of Representation creates a triable issue regarding the legality of the 2023 title.

29. A fundamental principle in Kenyan law, as seen in **Public Trustee vs Wanduru Ndegwa [1984] KECA 72 (KLR)** is that any dealing with a deceased person's estate without a Grant is null and void. Section 45 of the Law of Succession Act provides that no person shall take possession or dispose of the property of a deceased person unless authorized by law.

30. In the English case of **Long v. Lett (1853), 23 LJ Ex 36** it was established that an administrator's title relates back to the death, but a person dealing with the estate beforehand does so at their own peril. Whereas the bank relies on the sanctity of the Register, Kenyan Courts have increasingly ruled that banks cannot hide behind a search if the underlying transaction was a fraud on the Law of Succession. In **Elijah Makori Nyang'wara v Stephen Mungai Njuguna & 2 Others [2010] KEHC 2283 (KLR)** the Court held that the Land Registration Act does not wash clean a title obtained through a breach of the Succession Act.

31. I do find that the Balance of Convenience tilts in favor of the Plaintiffs. While the Bank loses time in recovering its loan, the Plaintiffs stand to lose a unique piece of land which is the substratum of the suit. Money and or damages is rarely considered an adequate substitute for land in Kenyan jurisprudence, especially where family heritage is concerned.

32. Based on the above, the Court issues the following orders:

***a) An order is hereby issued for a temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from selling, transferring or further encumbering JUJA/KALIMONI BLOCK 8/276 pending the hearing and determination of the main suit.***

***b) The Court declines to lift or vacate the Charge at this interim stage. Revoking a registered instrument is a substantive remedy that can***

***only be granted after a full trial where fraud is proved.***

***c) The status quo as of today shall be maintained meaning no sale, auction or alienation of the suit property until the suit is heard and determined.***

***d) Given the Bank's growing interest now at Ksh 4.6M, the main suit shall be heard on priority basis.***

***e) Parties are referred to the Hon Deputy Registrar for Pre-trial Conference on 19/03/2026.***

***f) Costs of this application shall be in the cause.***

Ordered accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS VIA VIDEOLINK ON THIS 11<sup>TH</sup> DAY OF MARCH 2026.**

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**MOGENI J  
JUDGE**

**In the presence of:**

Plaintiff/Applicant - Absent

Wambugu Mwangi for the 1<sup>st</sup> Defendant

2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants - Absent

Mr. Melita .....Court Assistant

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**MOGENI J  
JUDGE**

ORIGINAL