



REPUBLIC OF KENYA



**Kibui v Mwangi & 8 others (Environment and Land Case  
E096 of 2025) [2026] KEELC 1651 (KLR) (23 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1651 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E096 OF 2025**

**MAO ODENY, J  
MARCH 23, 2026**

**BETWEEN**

**DOMINIC WAINAINA KIBUI ..... PLAINTIFF**

**AND**

**JOHN CHEGE MWANGI ..... 1<sup>ST</sup> DEFENDANT**  
**DAVID MWANGI ..... 2<sup>ND</sup> DEFENDANT**  
**FRANK MWANGI ..... 3<sup>RD</sup> DEFENDANT**  
**LABAN WAHIHI ..... 4<sup>TH</sup> DEFENDANT**  
**FRANCIS NJENGA ..... 5<sup>TH</sup> DEFENDANT**  
**PETER NJENGA ..... 6<sup>TH</sup> DEFENDANT**  
**THE NAKURU LAND REGISTRAR ..... 7<sup>TH</sup> DEFENDANT**  
**LETSHEGO KENYA LIMITED ..... 8<sup>TH</sup> DEFENDANT**  
**THE ATTORNEY GENERAL ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of a Notice of Motion dated 22<sup>nd</sup> September, 2025, by the Plaintiff/Applicant seeking the following orders:
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this application inter- partes, this Honourable court be pleased to issue an injunctive order restraining the Defendant/Respondents by



themselves , servants or any other persons acting under their instructions or interests from entering, occupying, possessing, remaining, trespassing, alienating, selling, dealing or in any other manner interfering with all that parcel of land known as Kiambogo/kiambogo Block 2/596 (Mwariki).

4. That pending the hearing and determination of the instant application and suit, the 7<sup>th</sup> Defendant/Respondent herein be compelled to produce a certified copy of the green card, transfer documents from the Plaintiff or any other party to the 1<sup>st</sup> Defendant pertaining to the suit parcel of land known as Kiambogo/kiambogo Block 2/596 (Mwariki).
5. That the cost of this application be provided for.
2. The application is based on the annexed affidavit of Dominic Wainaina Kibui, sworn on 22<sup>nd</sup> September 2025, and a further affidavit sworn on 19<sup>th</sup> February 2026, where the Applicant deponed that he is the registered owner of the suit property, known as Kiambogo/kiambogo Block 2/596 (Mwariki), measuring approximately 0.41Ha, which he purchased in 1989.
3. It was his disposition that upon purchase, he fenced it, constructed semi-permanent structures, and utilized the parcel without interference or interruption from third parties. He further deponed that in July 2025, he learnt that the 1<sup>st</sup> to 6<sup>th</sup> Defendants had encroached on the suit property and destroyed the semi- permanent structures and started putting up their own.
4. The Applicant further deponed that he applied for an official search to confirm the status of the registration at the Nakuru land Registry but the department declined to issue him with a certificate of Official search on the grounds that he should bring a copy the original title deed which he was hesitant to avail
5. It was the Applicant's case that he later came to know that a third party had conducted a search on 11<sup>th</sup> September 2023, which indicated that the 1<sup>st</sup> Defendant was the registered owner of the suit parcels and had been charged to the 8<sup>th</sup> Defendant to secure a loan facility of Kshs. 15,000,000/= That despite requests to the 7<sup>th</sup> Respondent to furnish the information on the green card, in respect of the transfer to the 1<sup>st</sup> Defendant, the same has not been availed.
6. The Applicant urged the court to allow the Application to compel the 7<sup>th</sup> Respondent to produce the official search, green card and transfer documents confirming the 1<sup>st</sup> Respondent's ownership before the court.
7. The 8<sup>th</sup> Respondent filed a replying affidavit sworn by its Legal Officer, RITA NJORA on 15<sup>th</sup> January, 2026, where she deponed that the charge registered over the suit property is legal and enforceable by the 8<sup>th</sup> Respondent in the event of default of repayment by the borrower, one Jack Mwaura Njuguna.
8. She further averred that prior to advancing the financial facility, the 8<sup>th</sup> Defendant had conducted due diligence and established that it belonged to the 1<sup>st</sup> Defendant, and further that Jack Mwaura Njuguna and the 1<sup>st</sup> Respondent have failed to redeem the suit property despite being served with the requisite statutory notices and demand for payment.
9. It was her disposition that the 8<sup>th</sup> Respondent is left with the option of selling the property in exercise of its statutory power of sale, and that the orders sought by the Applicant are prejudicial to the 8<sup>th</sup> Respondent as it will interfere with its legal right to exercise the statutory power of sale. The deponent also stated that the Applicant could seek to recover the commercial value of the suit property from the 1<sup>st</sup> Respondent in the event his suit succeeds.



10. The Applicant, in his further affidavit, stated that the 8<sup>th</sup> Respondent's exercise can await the outcome of the case, which will ultimately determine the issue of ownership, and denied knowing any of the Respondents apart from the 7<sup>th</sup> and 9<sup>th</sup> Respondents, who are public officers. He also denied having sold the suit parcel to the 1<sup>st</sup> Respondent or having guaranteed any loan using the suit property, and urged the court to grant the orders as prayed for.

### **Applicant's Submissions**

11. Counsel for the Applicant filed submissions dated 18<sup>th</sup> February 2026, and identified the following two issues for determination:
  - a. Whether or not the application for temporary injunction herein is merited.
  - b. Whether or not the 7<sup>th</sup> Defendant ought to be compelled to produce the documents requested for.
12. On the first issue, counsel relied on the cases of *Giella vs Cassman Brown & Co Ltd*, (1973) EA 358, *Hezron Kamau Gichuru v Kianjoya Etrprises Ltd & another* [2022] KEELC 756 (KLR), *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125, and submitted that the Applicant has met the necessary threshold for the grant of injunctive orders sought.
13. On the issue whether the Applicant has established a prima facie case with a high probability of success, counsel submitted in the affirmative as the Applicant has produced a titled deed registered in his name by virtue of the title deed in his name. It was counsel's submission that the Applicant stood to suffer irreparable loss unless the injunction is granted, and relied on the cases of *Pius Kipchirchir Kogo V Frank Kimeli Tenai* (2018) eKLR, and *UBHI, HSC V MOHAMED* [2024] KEELC 157 (KLR), and urged the court to allow the application as prayed as the balance of convenience lies in favour of the Applicant.
14. On the second issue, as to whether the 7<sup>th</sup> Defendant should be compelled to produce the documents requested for, counsel submitted that it was within the court's powers to compel the 7<sup>th</sup> Respondent to produce the necessary documents, and other than the 9<sup>th</sup> Defendant, none of the other Defendants including the 7<sup>th</sup> Defendant, have filed a response to the application. Counsel therefore urged the court to allow the application as prayed.

### **8<sup>th</sup> Respondent's Submissions**

15. Counsel for the Respondent filed submissions dated 23<sup>rd</sup> February 2026, and submitted that the Applicant did not seek orders of injunction pending the hearing of the main suit, nonetheless submitted that the Applicant failed to establish the threshold for grant of a temporary injunction.
16. Mr. Maina further submitted that there was no privity of contract between the Applicant and the 8<sup>th</sup> Defendant to warrant the stoppage of its exercise of the statutory power of sale. He stated that it is not contested that the borrower Jack Mwaura Njuguna, the 1<sup>st</sup> Defendant and Elizabeth Nyambura Mwangi duly entered into a legally enforceable agreement with the 8<sup>th</sup> Defendant and submitted that a contract cannot as a general rule confer rights or impose obligations arising under it on any person except the parties to it.
17. Counsel submitted that the Applicant has failed to meet the threshold for the grant of injunctions and relied on the case of *Andrew Muriuki Wanjohi V Equity Building Society Limited & 2 Others* [2006] eKLR, and urged the court to dismiss the application with costs.



## Analysis And Determination

18. The issues for determination are whether the Applicant has met the threshold for the grant of a temporary injunction, and whether the 7<sup>th</sup> Defendant should be compelled to produce certified copies of the green card and transfer documents in respect of the suit land Kiambogo/kiambogo Block 2/596 (Mwariki).
19. The principles for the grant of a temporary injunction are well settled as was held in the Giella Casman Brown case (Supra). It is incumbent upon the Applicant to prove that he has a prima facie case with a probability of success as was held in the Court of Appeal case of Mrao Ltd (Supra).
20. Order 40 Rule (2) of the Civil Procedure Rules provides that:
  - “(1)In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
  - (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.”
21. The Applicant deponed that he is the registered owner of the suit land and attached a copy of the title deed and photographs of the structures that were destroyed. The title shows prima facie that he is the registered owner of the suit land at this interlocutory stage.
22. The 1<sup>st</sup> to 6<sup>th</sup> and the 7<sup>th</sup> Respondents neither filed a replying affidavits nor submissions to counter the averments of the Applicant. It is only the 8<sup>th</sup> Respondent who filed a response to the application together with submissions.
23. There are contested issues in respect of the ownership of the suit property, and the purpose of a temporary injunction is to preserve the substratum of the suit property pending the hearing and determination of the case to determine who actually owns the parcel of land and the root of a title where there are two titles in respect of the same parcel of land.
24. The 8<sup>th</sup> Respondent submitted that there is a legal charge for Kshs. 15,000,000/= which was secured with the suit land by the 1<sup>st</sup> Defendant and one Elizabeth Nyambura Mwangi, which information the Applicant stated that he became aware of in 2023, when he did a search but was denied a certificate of official search by the 7<sup>th</sup> Defendant. This shows that the suit parcel of land needs to be secured to avoid further transfers or transactions, which might change the character of the parcel pending the adjudication of the ownership issues.
25. The Applicant has already satisfied that he has a prima facie case with a probability of success and that he will suffer irreparable injury if an order of a temporary injunction is not issued.
26. In the case of Paul Gitonga Wanjau –vs- Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR, the court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should



be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

27. On the issue of which side the balance of convenience lies, the court is obliged to make a determination on which party will suffer greater harm if an order of injunction is not issued. The court is guided accordingly, and is of the opinion that it would be in the interest of justice to grant an order of status quo to be maintained pending the hearing and determination of this suit.
28. On the issue of whether the 7<sup>th</sup> Defendant should be compelled to produce the documents requested by the Applicant, Section 9 (1) of the [Land Registration Act](#) 2012 mandates the Land Registrar to maintain the register and any document required to be kept in a secure, accessible and reliable format.
29. Section 10 of the [Land Registration Act](#) 2012 provides as follows:

“Subject to [the Constitution](#) and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe.”
30. Similarly, in the case of Esther Kabugi Njuguna –vs Martha Chebet & 3 others [2020] eKLR the court stated that:

“The Land Registrar is the custodian of all land records and is expected to have custody of all copies of registered instruments and when such are not available questions of complicity on the part of the officer are bound to arise.”
31. The question that begs an answer is why has the Land Registrar not issued the Applicant with a certificate of official search and a certified copy of the green card of the suit parcel of land? What is there to hide, as these are public documents?
32. Article 35 of [the Constitution](#) of Kenya provides as follows:
  - “ 35. Every citizen has the right of access to—
    - (a) information held by the State; and
    - (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
  2. Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
  3. The State shall publish and publicise any important information affecting the nation.”



33. In addition, Section 4 of the [Access to Information Act](#) provides as follows:

“ 4.

- (1) Subject to this Act and any other written law, every citizen has the right of access to information held by —
  - a. the State; and
  - (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.
- (2) Subject to this Act, every citizen's right to access information is not affected by —
  - (a) any reason the person gives for seeking access; or
  - (b) the public entity's belief as to what are the person's reasons for seeking access.
- (3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

34. In the case of *Kitundu V Sheik* (Environment & Land Case E327 of 2021) [2022] KEELC 3163 (KLR), the court held as follows:

“ 31. From the nature of orders and/or reliefs sought, there is no gainsaying that what the Applicant is seeking for is an order to compel the designated offices/department, to supply and/or avail unto her documents and/or information, which are held by the said offices/Departments.

32. In the premises, the bottom-line of the Plaintiff's/Applicant's Application, is that the Plaintiff/Applicant is seeking to exercise her Constitutional Right to Access to Information as enshrined vide article 35 of [the Constitution](#) 2010.”

35. The information the Applicant seeks is fundamental in establishing the root of the title, the transactions and transfers as admitted by the 8<sup>th</sup> Respondent in respect of the legal charge to secure a facility of Kshs 15 million. All this is contained in the green card and this information would benefit both parties in their quest to establish the ownership of the suit land.

36. It was his contention that he had requested for the said documents to no avail yet it was necessary for the court to establish the rightful owner of the suit parcel.

37. Consequently, I find that the application has merit and the 7<sup>th</sup> Respondent is hereby directed to supply the applicant with a certified copy of the Green card and certificate of official search and transfer forms for Kiambogo/kiambogo Block 2/596 (Mwariki) within 14 days from the date of this ruling. Costs of the Application will be in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 23<sup>RD</sup> DAY OF MARCH 2026.**

**M. A. ODENY**

**JUDGE**

