



REPUBLIC OF KENYA



**Mula & 2 others v Mutuma & another (Land Case E018 of 2025)  
[2026] KEELC 1791 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1791 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
LAND CASE E018 OF 2025  
NA MATHEKA, J  
MARCH 25, 2026**

**BETWEEN**

**VINCENT MUSINDA MULA ..... 1<sup>ST</sup> PLAINTIFF  
JANET MUMBI MULA ..... 2<sup>ND</sup> PLAINTIFF  
EVERLYN MUTHEU MULA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**LUISER NTHAMBI MUTUMA ..... 1<sup>ST</sup> DEFENDANT  
PURITY WANJIKU KARIUKI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application is dated 24<sup>th</sup> February 2025 and is brought under Order 40 Rule 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 seeking for the following orders;
  - a. That the Respondents herein, their agents and /or servants be restrained from selling, transferring, alienating, disposing of, charging, or in any other way interfering with the ownership, use, and possession of LR. Numbers Masinga/Kasonde/10655 and 10656 pending the hearing and determination of this suit.
  - b. That cost of this Application be provided for.
4. It is made on grounds that the Applicants herein are beneficiaries of the estate of Mula Musinda(deceased), who was the original LR No. Masinga/Kangonde/2150. The Respondents fraudulently and unlawfully caused the transfer and subdivision of LR. No. Masinga/Kangonde/2150 into LR Nos. Masinga/Kangonde/ 10655 and 10656 without the consent and knowledge of the Applicants. That unless the orders sought are granted, the Respondents are likely to dispose or transfer interfere with the suit properties to unsuspecting third parties and thus deprive thereby depriving the Applicants of their ancestral land permanently. The Applicants have been in occupation of the suit



land since birth, and any further transfer or disposed of the suit properties will remove the properties outside the reach of the Applicants and cause the Applicants irreparable loss. That the Applicants have a prima facie case with a high probability of success, and the balance of convenience tilts to their favor. That it is in the interest of Justice that this Honourable Court grants the orders prevent further alienation of the suit properties. It is also supported the annexed Affidavit of Vincent Musinda Mula the Applicant herein.

5. The 1<sup>st</sup> Respondent opposed the application and stated that the land belonged to her husband Peter Mwangani Mula and not to her father in law and hence not family or ancestral land. That she filed a succession cause in Kitui Magistrate's court as she was residing in Kitui County. That after succession she sold a portion of the land to the 2<sup>nd</sup> Respondent.
6. This court has considered the application and the submissions therein. On the issue of temporary injunction the principles are well settled and are set out in the judicial decision of Giella vs Cassman Brown (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of Nguruman Limited vs Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

7. Consequently, the Plaintiff ought to, first, establish a prima facie case. In Mrao Ltd vs First American Bank of Kenya Ltd (2003) EKLR the Court of Appeal gave a determination on a prima facie case. The court stated that;

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

8. In support of the application, the Applicants stated that during adjudication Land Reference No. Masinga/Kangonde/2150 was registered in the name of their eldest brother Peter Mwangangi Mula (Deceased) to hold the same in trust for all the family members. That the applicants are all siblings and the land belonged to their father.

9. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.



10. The Applicants stated that Peter Mwangangi Mula was murdered on 14<sup>th</sup> Novemebr 2018 and thereafter the 1<sup>st</sup> Respondent fraudulently and applied for letters of administration of his estate far away from the local courts and without including them. The Applicants state that they all reside on the suit land and the 1<sup>st</sup> Respondent has since sold a portion of the land to the 2<sup>nd</sup> Respondent.

11. Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLK which defined the concept of balance of convenience as:

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

12. The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated;

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

13. The 1<sup>st</sup> Respondent maintains that the suit land belonged to her husband and was lawfully transferred to her through succession.

14. Bearing this in mind, I am convinced that there is a risk in not granting orders of temporary injunction than granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/ or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.

15. In Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another (2019) eKLR where the court in deciding on an injunction application stated;

“ circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or

alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

16. In view of the foregoing, I find that the application is merited and order that the status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25<sup>TH</sup> DAY OF MARCH 2026.**



**N.A. MATHEKA**  
**JUDGE**

