



**Delmonte Kenya Limited v County Government of Murang'A (Environment and Land Case E006 of 2025) [2026] KEELC 2005 (KLR) (14 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2005 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND CASE E006 OF 2025**

**MN GICHERU, J  
APRIL 14, 2026**

**BETWEEN**

**DELMONTE KENYA LIMITED ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF MURANG'A ..... RESPONDENT**

*(Being an Appeal from Decree delivered by the Hon. S. Mwangi (S.R.M) on the 23rd day of August 2023, in the Chief Magistrate's Court at Murang'a in M.C.E.L.C Case No. E069 of 2022)*

**RULING**

1. This ruling is on the notice of motion dated 26-2-2025. The motion which is by the Plaintiff is brought under Sections 1A, 1B, 3A and 63(c) and (e) of the Civil Procedure Act, Orders 40 rule 1, 50 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.  
The motion seeks two (2) residual orders.
3. That pending the hearing and determination of this suit, an injunction do issue restraining the Defendant, its agents, servants, employees or any other person acting under them from entering, trespassing upon, using, erecting structures, or conducting any other activities on land reference No. 12157/10.
4. That the costs of this application be provided for.
2. The motion is based on nineteen (19) grounds and is supported by an affidavit of Harry Odondi, the legal officer of the Plaintiff, dated 26-2-2025. The essence of the grounds and the affidavit is to the following effect. Firstly, the Plaintiff is the registered owner of the suit land which is L.R. No. 12157/10 situated in Ithanga-Kakuzi sub location of Murang'a County. The Plaintiff has a certificate of lease for 99 years from 1-12-2020. Before this, the suit property was known as L.R. No. 12157/1 and was owed by the Plaintiff under a lease from the Government of Kenya for a term of 49 years from 1-5-1973.



The initial leasehold period expired on 30-4-2022 but was renewed as aforesaid. Before the renewal of the leasehold, the Defendant gave its approval of the application for the renewal. Since 1973, the Plaintiff has been in uninterrupted possession of the suit land where it undertakes lawful activities which include pineapple production. The Plaintiff is therefore entitled to quiet, peaceful and exclusive use and enjoyment of the suit land without any interference by the Defendant or any other person whatsoever.

3. Secondly, on 7-2-2025, the Defendant's officers visited the suit land and claimed to be carrying out a surveyor exercise. Again, vide a letter dated 13-2-2025, the Defendant claimed that the suit land was encroaching on L.R. No. 9213/1 which the Defendant claims to own. It is the Plaintiff's contention that L.R. No. 9213/1 does not exist and the Defendant does not own any land anywhere near the suit land. In the same letter of 13-2-2025, the Defendant gave the Plaintiff 14 days within which harm to vacate the suit property failing which the Defendant would invade the land and proceed to use it as appropriate. This letter by the Defendant is illegal and does not comply with the strict provisions of Section 152 C of the Land Act, 2012. The Plaintiff has responded to the notice to vacate by a letter dated 24-2-2025 and asked the Defendant to withdraw the notice to vacate and challenged them to produce a copy of the title deed for L.R. No. 9213/1 but the Defendant has not obliged.
4. Finally, the Defendant's threatened action, if not stopped by this Court would cause irreparable harm to the suit land which harm cannot be adequately compensated by an award of damages. It would also contravene the Plaintiff's Constitutional rights under Articles 40, 42 and 69 of the Constitution of Kenya.
5. The motion is opposed by the Defendant and Josephine Wanjiru Wanjiku, the County Chief Officer, Lands Department has sworn a replying affidavit dated 12-5-2025 in which she replies as follows. One, the subject matter of the dispute comprises parcel numbers 9213/1 and 9213/2 which were declared to be public land belonging to the County Government of Murang'a in the Judgment of this Court in Murang'a ELC Case No. 47 of 2020 (OS) Samuel Irungu Muiruri and 4 Others vs. Murang'a County Government and Others.

The Plaintiff was the interested party in the above suit and actively participated by filing pleadings and Applications. The Judgment in the above suit clearly shows that parcel No. 9213/1 exists and the Plaintiff even acknowledged that it was in possession of the said land. The Plaintiff has never appealed against the said judgment which was delivered on 6-7-2023.

6. Two, pursuant to the above mentioned, the Defendant proceeded to undertake a survey to establish the boundaries of the land and assess the extent of the encroachment, if any. After the survey, the Defendant discovered that the Plaintiff had encroached into the public land under its management being L.R. No. 9213/1 and consequently sent the Plaintiff a notification letter demanding that it ceases the encroachment and vacate the encroached portions.
7. Three, the judgment in ELC 47/2020 (OS) was recently affirmed by Thika ELC Petition No. EO16 of 2024, General of the Salvation Army vs Murang'a County Government and Others where the Court held that any issues related to L.R. Nos. 9213/1 and 9213/2 cannot be re litigated as they were declared to be public land in ELC Case No. 47/2020. The ruling by the Thika ELC was widely published on 14-3-2025 in the Daily Nation and the Applicant has never moved to reopen, set aside, review vary or appeal against the ruling. In ELC case No. 47 of 2020, the map of L.R. No 9213/1 was tendered in evidence and the Plaintiff did not object to its production or raise the question of its non-existence. The Plaintiff has not demonstrated in evidence that the certificate of title of the suit land incorporates public land No. L.R. 9213/1. When the Defendant approved the renewal of the lease of the suit land



in favour of the Plaintiff, this was subject to the suit land not constituting part of disputed public/private utility land/allocations.

8. Four, in the judgment in ELC 47/2020 (O.S.) it was held that the concept of adverse possession does not apply to public land and the averments of uninterrupted possession of the suit land since 1973 do not confer any proprietary rights over public land, to wit, 9213/1. Title L.R. 12157/10 generated on 9-9-2022 is fraudulent, illegal, null and void for purporting to incorporate and privatize all public land held by the Defendant and known as L.R. 9213/1.
9. Fifthly, the Plaintiff has not demonstrated the existence of any prima facie case with a probability of success as there is no appeal against the judgment in ELC 47/2020 (OS). Further since the Plaintiff is a pineapple producer damage that may be occasioned by this Court not granting an injunction can be adequately compensated by an award of damages. Moreover, *the Constitution* of Kenya does not protect unlawfully acquired property and Article 40(6) is explicit in this regard. Finally, in the event that the Court is in doubt, the balance of convenience lies in the greater public interest of recovering public land from encroachment and attempted privatization of the public resource. Finally, the instant application is the Plaintiff's attempt to clutch on straws to scuttle the Defendant from realizing the fruits of its judgment of recovering its rightful holding of public land in trust for the benefit of people resident in Murang'a County.
10. In a supplementary affidavit dated 10-6-2025 the legal officer of the Plaintiff, Harry Odondi, rejoins as follows. Firstly, contrary to deposition by the Defendant, there is indeed an appeal against the decision in Murang'a ELC No. 47 of 2020 being Nyeri Civil Appeal No. COACA E175 of 2023, Del Monte Kenya Limited vs Samuel Irungu Muiruri and 6 Others, which is still awaiting hearing and determination. The notice of withdrawal of appeal only related to an appeal on costs. Secondly the judgment in Murang'a ELC 47 of 2020(OS) does not state that the land in question was public land. It only states that the suit is dismissed and each party to bear its costs. Moreover, the Defendant did not actively participate in ELC 47/2020 and did not claim ownership of the land reference Nos. 9213/1 and 2. It did not assist the Court to identify the location of this land hence creating confusion and vagueness. Thirdly, the two parcels claimed by the Defendant are derived from a 1956 survey map which is no longer in use. The Plaintiff has never admitted the existence of the two parcels claimed by the Defendant. The Plaintiff was not a party to Thika ELC Petition No. E016 of 2024 and could not have therefore appealed. Fourthly, the Defendant has not annexed any survey report to identify the land that it claims. The survey exercise was also conducted in a haphazard manner and without adequate notice to the Plaintiff or its involvement. It cannot therefore be used to undermine the Plaintiff's right to the suit property. For the above and other reasons, the Plaintiff prays that the motion be allowed.
11. Counsel for the parties were to file and serve written submissions by 1-4-2026 but none of them complied with timelines agreed upon on 17-2-2026. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit and the supplementary affidavit.

I find that the following issues arise.

- i. Whether land parcels numbers 9213/1 and 9213/2 exist.
- ii. Whether the status of the two parcels mentioned (i) above has been finally determined.
- iii. Whether the Plaintiff was a party in Thika ELC Petition No. E016 of 2024.
- iv. Whether the Plaintiff is in occupation of the suit land.



- v. Whether the Applicant has satisfied the principles in the case of *Giella vs. Cassman Brown* 1973 EA 358.
12. Regarding the 1<sup>st</sup> issue, I find that the precise location and the acreage of the L.R. No. 9213/1 and 2 is still contentious. So far the Defendant has not annexed any title documents for the said parcels and the judgment of this court in case No. ELC 47/2020 is appealed against in Nyeri Civil Appeal No. 175/2023. The question of whether the land is private or public is still pending the decision of the Court of Appeal. This finding covers the 2<sup>nd</sup> issue.
13. A look at the available record, a copy of ruling in *Thika ELC Petition No. E016 of 2024* shows that the Plaintiff was not a party to the suit. The Petitioner was the General of the Salvation Army and the Respondents were the Chief Officer lands, Physical Planning and Urban development Murang'a County Government and the County Government of Murang'a itself. The interested parties were the National Land Commission, the Chief Land Registrar and the Honourable the Attorney General. The Plaintiff does not feature anywhere in the petition.
14. In answer to the 4<sup>th</sup> issue, I find that the Plaintiff is in occupation of the land in dispute. This is why the Defendant had to issue it with the notices that precipitated the filing of this suit.
15. Since the suit is still at the interlocutory stage and the pleadings are not yet closed, I will not dwell on whether or not the Plaintiff has established a prima facie case with a probability of success. I will also not consider whether the Plaintiff stands to suffer irreparable loss that cannot be adequately compensated with an award of damages. What I will consider is the balance of convenience. I find that this balance tilts in favour of the Plaintiff remaining in possession until there is a final determination in the suit.
- To allow the Defendant to enter the land and deal with it when this suit is pending will neither be fair nor just. It will also not be reasonable because we do not as of now know what the outcome of this case will be. It is therefore prudent to preserve the status quo so that the substratum of the dispute is not interfered with.
16. In conclusion and for the reasons already given, I allow the notice of motion dated 26-2-2025 in terms of prayer 3.
- Costs in the cause.
- It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 14<sup>TH</sup> DAY OF APRIL, 2026.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Plaintiff's Counsel – Mr Thuo and Sande

Defendant's Counsel – Absent

