



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLC E064 OF 2025

GRACE LORNA WANGUI KIMOTHO PLAINTIFF
VERSUS

GABRIELLE WANJIKU KINYANJUI FIRST DEFENDANT
(Sued in her capacity as the Administrator of the Estate of the Late Titus Kinyanjui Waithaka)
LAND REGISTRAR –MURANG'A COUNTY.....SECOND DEFENDANT

RULING

(1) This ruling is on the notice of motion dated 4-11-2025. The motion is brought under **Orders 40 rule 1, 51 rule 1** of the **Civil Procedure Rules 2010, Sections 1A, 1B and 3A** of the **Civil Procedure Act, Articles 50(1) and 159 (2) (d)** of the constitution and any other enabling provision of the law. It seeks the following residual orders.

4. Pending the inter parties hearing and final determination of the suit, this court do issue an order of injunction or status quo restraining the Respondents from any dealing or interference with L.R. No. Loc.6/Gikarangu/ 4052, suit land.

5. That costs of this application be provided for.

(2) The motion is based on six (8) grounds and an affidavit sworn by the Plaintiff and dated 4-11-2025. The gist of the grounds and the affidavit is as follows. Firstly, the Plaintiff is the beneficial owner of the suit land which is registered in the name of Titus Kinyanjui Waithaka who was her brother and father to the first Defendant. The Land was inherited from Julius Waithaka and Esther Mweru who were the parents of the Plaintiff and grandparents of the 1st Defendant. The Plaintiff's interest relates to a section which comprises of a residential dwelling formerly occupied by her parents and adjoining the farmland to the south. Secondly, the Plaintiff's beneficial interest arises from an unregistered trust created by her late father, through a handwritten note dated 2006 and which was re-affirmed verbally in family meetings in the years 2008 and 2012 in the presence of the deceased and other family

members. Thirdly, on 30-5-2025, a judgment was delivered in Kigumo Succession Cause No. 222 of 2018, in the estate of Titus Kinyanjui Waithaka, declaring the suit parcel and the family graveside part of the deceased's estate. The said decision is now subject of the Appeal Cause No . E023 of 2025. At the hearing of the case at Kigumo, the Plaintiff did not raise the issue of the trust. Instead she claimed as a dependant. The issue of the trust has not been litigated upon. Fourthly, attempts to resolve the suit amicably have failed and the Plaintiff being old and retired has resided on the suit land for nearly ten (10) years. The 1st Defendant is determined to dispose of the Plaintiff's interest to third parties. Finally it is only fair and just that the status quo be maintained until this suit is heard and determined.

(3)The motion is opposed by the first Defendant who has sworn a replying affidavit dated 18-12-2025 in which she replies as follows. One, the suit land belongs to the estate of her late father Titus Kinyanjui Waithaka where she is the sole beneficiary and administrator. This land was given to the late Titus Kinyanjui by his own father the late Julius Waithaka during the lifetime of both. Titus was issued with a title deed in the year 2009. Two, the suit land was never held in trust for the Plaintiff because Julius Waithaka distributed his estate to his Children during his lifetime. The Plaintiff was given land at Kaharati area. The issue of a trust did not arise during the lifetime of Titus Kinyanjui or Julius Waithaka but only in 2018 after the death of Titus Kinyanjui. The occupation of the suit land occurred by the Plaintiff also happened in 2018 after the death of Titus Kinyanjui and Julius Waithaka. Three, the Plaintiff is married, has her own land and is not destitute as she claims. Finally the status quo that is to be maintained is the one prior to the unlawful occupation of the suit land by the Plaintiff. For the above reasons, the 1st Defendant prays for the dismissal of the Plaintiff's motion.

(4)Counsel for the parties filed written submissions dated 25-2-2026 and 19-3-2026 respectively. Both sides are agreed that since the motion seeks an order of interlocutory injunction, the principles in the case of **Giella Vs. Cassman Brown 1973 EA 358**, apply. The principles are that the Applicant must establish a prima facie with a probability of success and secondly that she stands to suffer irreparable loss that cannot be adequately compensated with an

award of damages. If the court is not sure of the above, it looks at the balance of convenience.

(5) Since the suit is still at the interlocutory stage and the pleadings are not yet closed, it is premature to consider whether a prima facie with a probability of success has been made out. The only ground to look at is the balance of convenience. Since it is not in dispute that the Plaintiff is in occupation of the land, it is only fair and just that she continues occupying the land like she has since 2018 rather than order her to vacate the suit land before her claim based on trust has been heard and determined. Were the order to vacate issued, it would mean that the Plaintiff will have been condemned unheard yet **Article 50(1)** of the Constitution commands that any dispute capable of resolution by the application of law be heard by an impartial tribunal. Let the Plaintiff be heard as she remains in occupation of the land.

(6) Consequently and for the reasons already given, the motion dated 4-11-2025 is allowed in terms of prayer 4. Costs in the cause.

Costs in the cause.

Dated, Signed and Delivered virtually at Murang'a this 13th day of April, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Jackline
Plaintiff's Counsel – Miss Bundi holding brief
1st Defendant's Counsel – Mr Ng'ang'a
2nd Defendant's Counsel – None