



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

**ELC PETITION NO E021 OF 2025**

**KALUME KILANGO AND 5 OTHERS .....**

**PETITIONERS**

**VERSUS**

**AENI AYUKU LISAMLA AND 6 OTHERS .....**

**RESPONDENTS**

**AND**

**COMMUNITY LAND ADJUDICATION OFFICER, KILIFI**

**.....INTERESTED PARTY**

**RULING**

**1.** The applicants here submitted a petition along with an application dated August 1, 2025. In that application, they requested the following reliefs:

- a) Pending the hearing of the petition and the application, the respondents should be restrained from**

**evicting, transferring, or engaging in any transactions that could interfere with the peaceful coexistence of the community herein.**

**b) That there be *status quo ante* in the suit parcel of land pending the hearing of the application.**

**c) The costs be provided.**

**2.** The application is supported by the attached affidavit of Kalume Kilango, sworn on August 1, 2025, and supplemented by his additional affidavit sworn on August 25, 2025.

**3.** The 1st and 4th respondents have filed grounds in opposition dated August 26, 2025.

**4.** The 5<sup>th</sup> respondent, Kazungu Kakundi Kiboni, has filed a replying affidavit sworn on August 11, 2025.

**5.** The 2nd, 3rd respondent, and the interested party did not file any response.

**6.** The application was disposed of through written submissions.

I acknowledge receipt of submissions from learned counsel for the applicants, Mr. Adika; learned counsel for the 1st and 4th respondents, Ms. Amina; and submissions from learned counsel for the 5th respondent, Mr. Jumbale.

- 7.** The issues I frame for this court's decision are whether to grant a temporary injunction or *status quo* orders pending the hearing and determination of the petition, and who should bear the cost of the application.
- 8.** The applicant claims to represent public interest in Ganze Sub-County, Kilifi County, focusing on two wards, with residents of two community group ranches being seized unlawfully despite ongoing court proceedings.
- 9.** On March 28, 2025, over 60 community members reported land violations concerning Dola and Biryra Ranches. They also reported the issue to the Kilifi Community Land Office, citing interference by local officials.
- 10.** Despite efforts, the matter remains unresolved, and activities by respondents continue, causing displacement and harm in Ganze's villages, affecting over 1,345 children, destroying structures, and displacing families, with increased insecurity and community vulnerability.
- 11.** The community seeks court orders to protect the ranches from further damage.
- 12.** The applicants argue, under Civil Procedure Rules Order 40, that the property is at risk. They contend that they have

demonstrated a *prima facie* case with a probability of success, that the community will suffer irreparable harm if no injunctive or status quo orders are issued, and that the balance of convenience favors their case, especially given the impact on children.

**13.** In this regard, the applicants cite the decisions in **Macharia v Principal Secretary, Ministry of Education & another (Environment and Land Judicial Review Case 1 of 2021) [2025] KEELC 877 (KLR) (27 February 2025) (Ruling)** on the need to protect the substratum of the property pending a hearing

**14.** The applicant also cites the leading decision in this realm, **Giella v Cassman Brown & Co Ltd [1973] EA 358**, on what needs to be surmounted before the issuance of an interlocutory injunction.

**15.** The court is asked to evaluate the matter at hand and ask hard questions as to which harm will be caused if the orders sought are granted.

**16.** The 1st and 4th respondents, in summary, argue that the applicants have failed to prove they are members of Dola or Birya ranches and that they have an ownership interest in

the disputed property, so the court should not consider what is at stake or what they might lose if the sought orders are not granted.

**17.** Furthermore, because the first criterion—a prima facie case with a probability of success—has not been established, the court cannot proceed to determine the other two limbs outlined in the **Giella Case** (supra).

**18.** They further contend that the applicants have no *locus standi* to bring the current petition and application, seeing that they have not shown they are members of those ranches or whether the ranches are group ranches for conversion to community land, or whether they are private ranches.

**19.** Furthermore, since there is an established process for converting group ranches to community land, the applicants have not exhausted the mechanisms outlined in section 39(2) of the Community Land Act 2016. They have also neglected to engage the relevant bodies involved before approaching the court.

**20.** The 1st and 4th respondents believe that no constitutional issues have been raised that would justify invoking the court's constitutional jurisdiction.

**21.** The 5th respondent argues in the same manner as the 1st and 4th respondents, adding that the prayers sought are vague, lack legal basis, are not linked to any specific property, and are supported by no credible evidence. They further state that: applicants lack *locus standi*; have no authority to act on behalf of others; have failed to prove membership in the alleged ranches; have ignored statutory internal dispute resolution mechanisms; have not shown irreparable harm; and have proposed reliefs that are entirely speculative and unidentifiable.

**22.** The 5th respondent asserts that this is an ordinary matter before the court, yet the application is presented as if invoking constitutional issues; a careful reading reveals that the core issue is a private dispute over alleged membership and rights within a group ranch, and therefore it should not be disguised as a constitutional petition.

**23.** The 5th respondent submits that, as drafted, the application has not met the test as laid out in the **Giella Case** (supra).

**24.** In deciding this matter, let me start from Order 40 Rule (1) of the Civil Procedure Rules. It states as follows:

*“Where in any suit it is proved by affidavit or otherwise*

*—*

*(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*  
*(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”*

**25.** The principles for the issuance of interlocutory injunctions were articulated in the well-known case of **Giella v Cassman Brown & Company Limited [1973] EA 358,**

reiterated in **Nguruman Limited v Jan Bonde Nielsen & 2 others [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) allay any doubts as to b, by showing that the balance of convenience is in his favour.*

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

**26.** A *prima facie* case is defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, where the Court of Appeal held as follows:

*“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer*

***irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience...A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It***

*would be in the appellant's interest to adopt a genuine and arguable case standard rather than one of a prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."*

**27.** At the core of this issue are grievances that the group ranches Dola and Biryra are in the process of being converted from group ranches to community land. Before this happens, the ranches have been invaded, and private individuals have descended on them, beginning to alter the landscape to the disadvantage of the *bona fide* members. Hence, this petition and application.

**28.** A good starting point is understanding how a group ranch converts community land. The Constitution, Article 63,

assigns community land to communities based on ethnicity, culture, or similar interests. It also describes community land as including land held by groups under the Land (Group Representatives) Act and unregistered land held by County Governments in trust for communities under the Trust Land Act. The Community Land Act 2016 repealed the Land (Group Representatives) Act, Cap 287, and the Trust Lands Act, Cap 288, and established a process for transferring land held under the Group Representatives Act into community land.

**29.** It has been disputed that the land in question is not covered under the Land (Group Representatives) Act. However, the applicants have shown through a letter dated 18th August 2025 issued by the Land Adjudication and Settlement Officer that Kilifi/Birya/38 and Kilifi/Dola/10 are Group Ranches in Kilifi County and are both transitioning to Community Land pursuant to the Community Land Act of 2016, as shown in the attached title documents.

**30.** As noted, the Community Land Act 2016 repealed the Land (Group Representatives) Act and provided in Section 47 of the Act that:

***“Group representatives***

***(1) In relation to land held under the Land (Group Representatives) Act (Repealed), the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.***

***(2) Upon registration, the respective group representatives shall cease to hold office.***

***(3) Land held by group representatives referred to under subsection (1) shall not be sold, leased or converted to private land before it has been registered under this Act.***

***(4) Title documents issued to group representatives under the Land (Group Representatives) Act (Repealed) shall continue to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with this Act.***

***(5) The transitional provisions set out in the Schedule shall apply upon commencement of this Act.***

***(6) The Cabinet Secretary may prescribe regulations for giving effect to this section.”***

**31.** Under Section 48 of the Act, the Cabinet Secretary was required to establish regulations to ensure public participation in the transition process, as follows:

***“Without prejudice to the generality of subsection***

**(1), the Cabinet secretary, ensuring public participation may make Regulations prescribing—**

**(a)the procedures of recognition and registration of all parcels of community land rights;**

**(b)procedure for settlement of disputes arising from the community land registration process;**

**(c)the requirements for investor partnerships;**

**(d)the procedures of registering any other entity holding community land;**

**(e)conversion of other categories of land into community land;**

**(f)the fees payable for any application or the issue of any certificate or other document in terms of this Act;**

**(g)the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on community land;**

**(h)public education and awareness on the rights of communities over community land;**

**(i)the combating and prevention of soil erosion and degradation, the protection of the pastoral resources and the limitation and control of the grazing of stock;**

**(j)payment of royalties to communities from income generated from resources within community lands;**

***(k)the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;***  
***(l)the rules and procedure for election of a community land management committee; and***  
***(m)the procedures for registration of interest in community land as enshrined in Article 63 of the Constitution.”***

**32.** Pursuant to the foregoing, the Community Land Regulations, 2017, were created to implement the Community Land Act, 2016. Section 26 of the Regulations outlines the steps for converting group ranches to community land:

***Conversion of Group Representatives to a Community land***

***(1) The Cabinet Secretary shall cause to be prepared an inventory of all land held under the repealed Land (Group representatives) Act (Cap. 287) (now repealed) indicating their status and forward it to the registrar.***

***(2) Upon the commencement of these Regulations, the registrar shall notify the group representatives and their members, including those group representatives***

***which had applied for dissolution before the commencement of this Act but had not dissolved, of the requirement to convert into a community.***

***(3) Within twelve months of the commencement of these Regulations, the groups shall make an application to register as a community.***

***(4) Upon issuance of certificate of registration, the community's particulars and interest shall be entered in the register in accordance with section 8 of the Land Registration Act (Cap. 300) and thereafter certificate of title or lease issued.***

***(5) The registrar shall, before issuing certificate of title or lease, require the surrender of the existing title document and certificate of incorporation issued under the Land (Group Representatives) Act (now repealed) for cancellation.***

***(6) Where the existing title document and certificate of incorporation are not surrendered to the registrar in accordance with this regulation, they shall be deemed cancelled at the expiry of thirty days.***

***(7) The Groups that have applied for dissolution and have been issued with certificates of dissolution shall be allowed to finalize the process within three years.***

***(8) The Director of Land Adjudication and Settlement shall on behalf of the Cabinet Secretary facilitate the handing over and any changes caused by implementation of these Regulations.”***

**33.** What do we have here? An examination of the applicants' allegations reveals limited information about the Dola and Birya Group ranches, including how they are managed, who the officials are, whether they have collectively applied to dissolve and convert or to register as community land, whether any of the steps outlined under the Community Land Act have been undertaken, and whether these ranches have and hold assemblies for decision-making.

**34.** The only limited information available comes from the Land Adjudication and Settlement office in Kilifi, with two title documents indicating that the two parcels are group ranches. A perusal of the two titles shows that Kilifi/Briya/38 is approximately 13,972 hectares, while Kilifi/Dola/10 covers about 21,118 hectares. These are indeed vast parcels of land.

**35.** Notably, the applicants admit that the membership register for those ranches is unavailable. The current petition

and application highlight disputes that have troubled group ranches in Kenya as they transition to community land.

**36.** I will then agree with the respondents that issuing injunctive orders at this stage will be futile, since those orders may not be enforceable. The applicant has not presented the basics—whether it is a member of these group ranches or not—stating that the ranches are transitioning and that an injunction or *status quo* orders should be issued pending the transition is not enough. The applicants ought to have gone further and laid claim to the parcels, or parts of them, and shown, at the very least, that their membership has begun the transition process. None of it happened here.

**37.** Not much has been done by the applicants to help themselves adjust to the transition processes (if any) from group ranches to community land. It is not a court-driven exercise but an effort that must be undertaken by the various government agencies and stakeholders, as elaborated in the Community Land Act, 2016. It is an involving exercise, as the examples of the few ranches that have transitioned suggest. See the Namati Report Monitoring the Transition of Group Ranches to Community Land in

Kenya: A Case Study of Laikipia, Kajiado, West Pokot, and Samburu Counties, September 2023. The report revealed that:

***“Initial research revealed that progress on transitioning group ranches across Kenya to community land has been slow. While efforts began in 2017, by May 2023, only 46 out of 315 group ranches nationally had fully transitioned. To determine why progress has been slow, the NLC and Namati Kenya studied sixteen (16) undissolved group ranches in four counties (Laikipia, Samburu, Kajiado, and West Pokot) that had either started or had yet to start the transition process. The findings established that the slow rate of progress is due to conflicts and disputes within and amongst the group members (39.7%), financial constraints (22.5%), inadequate information on the processes and procedures (20.6%), and challenges related to the registration processes (17.2%). “***

**38.** The applicants are facing the same challenges highlighted in the study I have cited, for example, they are largely unaware of the dispute resolution mechanisms outlined in Section 39 of the Community Land Act and the Regulations

established under it, particularly Rule 25 of the Community Land Regulations 2017, which states:

***“Settlement of disputes***

***(1) Any disputes arising from community land may be resolved through alternative dispute resolution mechanisms at first instance as provided for in the Act.***

***(2) Where the community is unable to resolve the dispute arising from community land recognition, adjudication and registration process within a registration unit, the complainant shall refer the dispute to the land adjudication officer in Form CLA 11 who shall record the dispute in a register in Form CLA 12.***

***(3) Where the dispute traverses different registration units the claim shall be received and recorded by either of the land adjudication officers in charge of any of the affected registration units and copied to the other.***

***(4) The Cabinet Secretary may appoint an ad hoc committee to hear and determine the disputes filed under paragraph (2) consisting of—(a)deputy county commissioner who shall be the chairperson of the committee;***

***(b)two (2) nominees from the county government where the community land is situate;***

***(c)Government Surveyor; and***

***(d)land adjudication officer, who shall be the secretary.***

***(5) The ad hoc committee shall co-opt not more than four (4) representatives from the communities where the community land is situate.***

***(6) The co-opted representatives shall not be members of the community land management committee and the appointment will comply with the two thirds gender rule.***

***(7) Where the community land under dispute traverses different registration units or Counties, the Cabinet Secretary may constitute a special ad hoc committee consisting of not more than nine persons.***

***(8) In constituting the special ad hoc committee, the Cabinet Secretary shall ensure there is representation from the registration units or counties involved.***

***(9) An ad hoc committee shall elect one of its members from nominees in paragraph (4) to be chairman, who shall preside at all meetings at which he is present, and if at any meeting the chairman is absent the members present shall elect one of themselves to preside at that meeting.***

***(10) In hearing the dispute, the ad hoc committee may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where appropriate.***

***(11) The process of conducting hearings by the ad hoc committee shall be in accordance with the Fourth Schedule.***

***(12) Nothing in these regulations shall prevent any person or entity from lodging a claim of an interest over community land in accordance with paragraph (3).***

***(13) A party dissatisfied with the decision of the ad hoc committee may, within thirty days after the date of the determination of the dispute, appeal to the court."***

**39.** This court (Njoroge J.) addressed how grievances regarding the transition of Group Ranches to community land (I, not the matter, also involved Biryra Ranch under discussion here) should be handled. This decision is reported as **Yaa alias Bengi & 42 others v Ziro alias Kibogoyo & 18 others [2025] KEELC 2867 (KLR)**. The court discussed dispute resolution mechanisms under the Act and commented as follows.

***"Section 39 of the Community Land Act, 2016 which deals with dispute resolution mechanisms under the said Act stipulates at its Section 39(2) as follows: -***

***“Any dispute arising between members of a registered community and another registered community shall at first instance, be resolved using any of the internal dispute resolution mechanism set out in the respective community by-laws.”***

***Section 39 (3) also stipulates that where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative method of dispute resolution.”***

**40.** Without addressing the other issues raised by the respondents, I have stated enough to demonstrate that I do not see a *prima facie* case with a reasonable chance of success; therefore, the application dated August 1, 2025, is hereby dismissed with costs.

**Dated, signed, and delivered electronically in Nyeri on this 9th day of April, 2026.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Adika for the Applicants**

**Ms. Amina for the 1<sup>st</sup> and 4<sup>th</sup> Respondent**

**Kendi: Court Assistant**

**In the absence of:**

**Mr. Jumbale for the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents**