

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 232 OF 2015

MARGARET WAIRIMU NGUGI

YUSUF GITHINJI KEGESHO

JOHN MAINA (Suing on their behalf and as the officials of WAMAGATA
SQUATTERS SELF HELFP GROUP**PLAINTIFFS**

VERSUS

SAMUEL NDUNGU MUNYIRI

ANTHONY MAINA

SAMUEL WAITHAKA (Sued on their own behalf and as the officials of
MAGATA SELF HELP GROUP)

MAGATA CO-OPERATIVE SOCIETYDEFENDANT

R U L I N G

1. This ruling is in respect of the Notice of Motion dated 23rd
January 2026 brought Under Section 1A,1B,3A of the Civil
Procedure Act, Order 40 Rules 1,2 & 3 of the Civil

Procedure Rules, Section 13 of the Environment and Land Court Act, and all enabling provisions of the Law.

2. It seeks orders: -

1. Spent

2. Spent

3. That pending the hearing and determination of this suit, a temporary injunction be issued restraining the Defendant, his agents, servants, employees, assigns or any other person acting under his authority from entering upon, excavating soil, removing earth, marram, stones or any materials, constructing, fencing, selling, leasing, wasting, alienating, or in any manner whatsoever interfering with Land Parcel No. Nakuru Municipality Block 16/835

4. That the OCS Nakuru Central Police Station be directed to assist in the enforcement and compliance of the orders of this Honourable Court.

5. That costs of this Application be borne by the Defendant.

3. The grounds are in the face of the Application and are set out in paragraphs a to i.

4. The Application is supported by the affidavit of Yusuf Githinji Kagesho, Secretary to the plaintiff/Applicant, sworn on the 23rd January 2026.
5. The application is opposed. There is a Replying Affidavit sworn by Anthony Maina, one of the officials of the 1st Defendant/Respondent, on the 13th February 2026.
6. On the 16th of February 2026, the court with the consent of the parties, directed that the Notice of Motion be canvassed by way of written submissions.
7. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions and authorities cited. The issues for determination are :-
 - (i) **Whether the plaintiffs/Applicant's application meets the threshold for granting of temporary injunction.**
 - (ii) **Who should bear cost of this application?**
8. The principles governing the grant of interlocutory injunctions were settled in the celebrated case of **Giella**

Vs Cassman Brown & Co Ltd (1973) EA 358, where the court held that an applicant must demonstrate;

- (a) A *prima facie* case with probability of success;**
- (b) That the applicant stands to suffer irreparable harm which cannot be compensated by damages; and;**
- (c) If the court is in doubt, the matter should be decided on a balance of convenience.**

9. The Court of Appeal in in ***Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others (2003) KECA 175 (KLR)*** stated to what amounts to prima facie case.

10. It is the plaintiff/Applicants' case that the Defendants/Respondents have forcefully entered the land and commenced excavation and removal of soil and other materials.

11. The Defendants/Respondents on the other hand contend that the parcel of land in which excavation is being conducted is Nakuru Municipality/Block 16/305 and not Nakuru Municipality Block 16/835 which is claimed by the Plaintiffs/applicants.

12. It is the defendants/Respondents' counterclaim that the said parcel belongs to one Geoffrey Kahungu Hungu Who

has obtained all the required permits and entered into an agreement with the area Member of County Assembly for the supply of Murram.

13. In my view these averments have not been rebutted by the Plaintiffs/Applicants in any way.

14. It should be noted that this suit was filed way back in the year 2015. The same is pending to date.

15. I also note that the matter was scheduled for hearing of the main suit on the 16th February 2026. Instead of proceeding the plaintiff's counsel informed the court that they wished that this application be dealt with first.

16. It should be noted that the Plaintiffs/Applicants obtained similar orders way back on 20th November 2016. To date they are yet to prosecute their case.

17. I agree with the Defendants/Respondents that the application is yet another attempt to delay the hearing of the main suit.

18. I find that the Plaintiffs/Applicants are not deserving of the orders sought as no *prima facie* case has been established. It is not clear who is undertaking the excavation.

19. In conclusion I find no merit in this application. The same is an abuse of the court process. The Plaintiff/Applicants

are hereby directed to expedite the hearing of the main suit.

20.The Application is hereby dismissed with costs to the Defendants/Respondents.

**Ruling dated signed and delivered virtually at Nakuru
this 23rd day of April 2026**

L KOMINGOI

JUDGE

In presence of:

Ms.Nyabuto for Mrs Gachecha for the plaintiffs

Ms Kiprop for Mrs Ndeda for the 1st,2nd defendants

Court Assistant: Derick