



Gathuma & Gaithuma (Suing as the Administrators Ad Litem of Nahashon Wagacha – Deceased) & 4 others v Embakasi Ranching Company Limited & 3 others (Environment and Land Case E555 of 2025) [2026] KEELC 2660 (KLR) (24 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2660 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E555 OF 2025**

**TW MURIGI, J
APRIL 24, 2026**

BETWEEN

PETER NJATHI GATHUMA & ISAAC NDUNGÚ GAITHUMA (SUING AS THE ADMINISTRATORS AD LITEM OF NAHASHON WAGACHA – DECEASED) 1ST PLAINTIFF
PETER NJATHI GAITHUMA 2ND PLAINTIFF
ISAAC NDUNGÚ GAITHUMA 3RD PLAINTIFF
HENRY KARANJA GAITHUMA 4TH PLAINTIFF
JOHN MUTHOGA GAITHUMA 5TH PLAINTIFF

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST DEFENDANT
LUCY NJOKI MATHENGE 2ND DEFENDANT
WALTER KIGERA WAREN 3RD DEFENDANT
THE CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. By a Notice of Motion dated 3rd November 2025, brought under Sections 13 and 14 of the [Environment and Land Court Act](#) No. 19 of 2011, Order 40 Rules 1, 2, and 4 of the Civil Procedure Rules, and Sections 3A and 63 (e) of the [Civil Procedure Act](#), the Plaintiffs/Applicants seek the following orders:
 - a. Spent.



- b. Spent.
 - c. Spent.
 - d. That a temporary injunction does issue as the Court may direct against the Defendants, their agents, employees, servants, successors and assigns from blocking the Plaintiffs' entry or exit into or from their NAIROBI BLOCK 136/10050, 136/9692, 136/9900, 136/9624, 136/9949, 136/9687, 136/9957, and 136/9971 situated at Ruai within Embakasi Ranching Company Limited Settlement Scheme pending the determination of this suit.
 - j) That OCPD and OCS Ruai Police Station does assist in the service and effecting of the orders..
 - g) That cost hereof be to the Applicants.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Peter Njathi Gaithuma, Isaac Ndungú Gaithuma, Henry Karanja Gaithuma and John Muthoga Gaithuma, sworn on even date.

The Applicant's Case

- 3. It is the Plaintiffs' case that they are the equitable owners of the suit properties herein by virtue of allotment by the 1st Defendant.
- 4. They asserted that land parcel No. Nairobi Block 136/10050 is registered in the name of the deceased, while the 2nd Plaintiff owns Nairobi Block 136/9692 and Nairobi Block 136/9900. The 3rd Plaintiff owns Nairobi Block 136/9624 and Nairobi Block 136/9949, the 4th Plaintiff owns Nairobi Block 136/9687 and Nairobi Block 136/9957, and the 5th Plaintiff owns Nairobi Block 136/997. They argued that the 1st, 2nd, and 3rd Defendants are attempting to double-allocate the properties to their agents and have refused to grant them access. He further averred that he is the registered owner of 136/9662.
- 5. The Applicants are apprehensive that the Defendants might sell, alienate, or occupy the suit property if an injunction is not granted.

The Respondent's Case

- 6. Though duly served, the 1st – 3rd Defendants did not file any response to the application.
- 7. The 4th Defendant entered an appearance but did not file any response to the application.

Analysis And Determination

- 8. Having considered the application and the supporting affidavits, the issue that arises for determination is whether the Applicants have met the threshold for the grant of an injunction.
- 9. The principles for granting an injunction were established in the celebrated case of *Giella vs Cassman Brown & Co. Ltd.* 1973 EA 358 as follows:
 - a) Firstly, the Applicant must show a prima facie case with a probability of success.
 - b) Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - d) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.



10. The first issue for determination is whether the Applicants have established a prima facie case with a probability of success.
11. In *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal defined a prima facie case as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case”. It is a case 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 as to call for an explanation or rebuttal from the latter.”
12. The Applicants claim is based on the ownership documents issued by the 1st Defendant. The Applicants alleged that the Defendants are attempting to double allocate the suit properties and have denied them access.
13. At this stage, the Court is not required to determine the issues that will be canvassed at trial. The Court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters in dispute.
14. In *Mbuthia vs Jimba Credit Corporation Ltd* [1988] KLR, the Court held that:

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law, and the court should only weigh the relative strength of the parties' cases.”
15. Similarly, in *Edwin Kamau Muniu –vs- Barclays Bank of Kenya Ltd*, NBI HCCC No.1118 of 2002, the Court held that:

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled to at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”
16. At this interlocutory stage, the Court is not required to make final findings on the contested issues. The issues of ownership and double allocation can only be determined at a full trial where the parties will have the opportunity to call evidence and have it challenged through cross-examination. Based on the evidence on record, I find that the Applicant has established a prima facie case with a probability of success.
17. Regarding irreparable harm, the Applicants must demonstrate that the harm cannot be adequately remedied by an award of damages.
18. The Applicants are apprehensive that the Defendant might double allocate the properties if the orders sought are not granted. It is trite that land is unique and its loss cannot ordinarily be adequately compensated by damages. The threatened alienation of the suit properties would, if carried out, cause the Applicants irreparable harm and render the suit nugatory.
19. On the balance of convenience, I find that it favours maintaining the status quo pending the hearing and determination of this suit.
20. In the end, I find that the application dated 3rd November 2025 is merited and the same is hereby allowed as follows:



RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF APRIL, 2026.

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T. MURIGI

JUDGE

In the presence of:

In the absence of the parties

Ahmed- Court assistant

