

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLC No. E026 OF 2025

**GEOFFREY OGETO SENGERA (Suing as the legal administrator of the estate of CHRISTINE GESARE OGETO (deceased))
..... PLAINTIFF**

VERSUS

**CHARLES OGETO
1ST DEFENDANT
COOPERATIVE BANK OF KENYA
2ND DEFENDANT
THE LAND REGISTRAR, NYAMIRA COUNTY 3RD
DEFENDANT
THE ATTORNEY GENERAL
4TH DEFENDANT**

RULING

1. The Plaintiff moved the Court through Plaint dated 6th August 2025 in which he averred that he was the administrator of the estate of Christine Gesare Ogeto (deceased) pursuant to letters of administration *Ad Litem* issued to him on 26th June 2025. That the deceased who died in the year 2005 was the registered owner of land parcel number North Mugirango/Bonyarorande/674 (suit property) and that no grant or letters of administration were issued to authorize any dealings with the suit property.

2. The Plaintiff further averred that the Third Defendant put up the suit property for auction and transferred it on 9th September 2011 to the First Defendant who subsequently charged it to the Third Defendant. That the transfer and all subsequent transactions including a charge were null and void.
3. Consequently, the Plaintiff prayed for judgment against the Defendants jointly and severally for:
 - i. *A declaration that the transfer of the suit parcel of land No. North Mugirango/Bonyarorande/674 from the name of the late Christine Gesare Ogeto to the name of Charles Ogeto on 9th September 2011 was illegal, unlawful, null and void ab initio on account of the fact that no letters of administration and grant was issued by any court over the estate of the late Christine Gesare Ogeto to sanction such a transaction and a declaration that all entries subsequent to the aforesaid transfer including a charge registered in favour of the 2nd defendant are null and void.*
 - ii. *That the said transfer of the suit parcel of land No. North Mugirango/Bonyarorande/674 from the name of the late Christine Gesare Ogeto to the name of Charles Ogeto on 9th September 2011 is hereby cancelled and the title reverts to the names of the late Christine Gesare Ogeto.*

iii. An order of permanent injunction restraining the Defendants jointly and severally either by themselves, their agents and/or servants from trespassing onto, wasting, spending, alienating, auctioning or transferring and/or otherwise interfering or dealing with the suit land title No. North Mugirango/Bonyarorande/674 in any other manner whatsoever.

iv. Costs of and interest of the suit.

4. Subsequently, the Plaintiff filed Notice of Motion dated 7th January 2026, which is the subject of this ruling. The following orders are sought in the application:

1. [Spent]

2. [Spent]

3. Pending the hearing and final determination of this suit there is hereby issued an order of temporary injunction restraining against the 1st and 2nd defendants either by themselves, agents, servants, assigns and/or whomsoever claiming through them from disposing, alienating, constructing, selling and/or building any structure on L.R No. North Mugirango/Bonyarorande/674.

4. Costs of this application be provided for.

5. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Plaintiff. He deposed

that the deceased died on 12th October 2005 and that he was the personal representative of her estate. That the deceased did not transfer the suit property to anyone and that the First Defendant fraudulently and illegally transferred it to himself without the consent of other beneficiaries of the estate then charged it to the Second Defendant.

6. The First Defendant responded to the application through a Replying Affidavit which he swore on 6th February 2026. He deposed that he agreed with the Plaintiff's prayer for an injunction against the Second Defendant and added that he legally obtained title to the suit property which was family land and that he was ready and willing to subdivide it to all beneficiaries. He added that he had filed Nyamira CMCC No. E002 of 2025 against the Second Defendant seeking to be allowed to replace the suit property with another security since the borrower had defaulted.
7. The Second Defendant similarly opposed the application through a Replying Affidavit sworn on 30th January 2026 by Jackson Oire, its Legal Officer. He deposed that the Second Defendant advanced a facility of KShs 600,000 to Robin Momanyi Nyakundi (borrower) which was secured by a charge which was registered against the suit property on 3rd November 2011.
8. He further deposed that the borrower defaulted and that the outstanding sum stood at KShs 946,405.75 as of 21st January

2026 prompting the Second Defendant to issue a demand letter and 90 day statutory notice dated 9th October 2023 to the First Defendant. He added that the Second Defendant also served both the First Defendant and the borrower with a 40 day notice of intention to sell.

9. He additionally deposed that the Second Defendant then set in motion its statutory power of sale by instructing Metrocosmo Limited to value the suit property and later Hegeons Auctioneers to conduct a public auction with a view to recovering the outstanding sum. He stated that a 45-day redemption notice was issued to the borrower and that the auctioneers advertised the intended public auction in the Standard Newspaper.
10. Mr Oire also deposed that the Second Defendant was not aware of any alleged fraud in the transfer of the title to suit property or any pending succession dispute relating to the suit property at the time the charge was created and that it acted in good faith. That granting an injunctive order against the Second Defendant Bank would unjustly prejudice it as a secured creditor.
11. The application was canvassed through written submissions. After giving parties an initial opportunity to file and serve submissions, a final opportunity was given, with strict cut-off timelines. The plaintiff filed submissions dated 28th January

2026 while the First Defendant filed submissions dated 17th February 2026.

12. The Second Defendant did not file any submissions within the given timelines. The Third and Fourth Defendants did not file any response or submissions. Learned Litigation Counsel appearing for them informed the Court that the application did not affect his clients.
13. I have carefully considered the application, the affidavits and the submissions. The sole issue for determination is whether the orders sought in the application should issue.
14. The Plaintiff/Applicant is seeking an injunction pending hearing and determination of the suit. To succeed in such an application, the Applicant must establish a *prima facie* case with a probability of success. Even if he succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the Court is in doubt as to whether damages will be an adequate compensation then the Court will determine the matter on a balance of convenience.
15. All the foregoing conditions and stages are to be applied as separate, distinct, and logical hurdles which the Applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Giella -vs- Cassman**

Brown & Co Ltd [1973] EA 358 and Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR.

16. The Court of Appeal defined “*prima facie* case” in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR** as meaning 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 as to call for an explanation or rebuttal from the other party. The Court added that *prima facie* case is more than an arguable case and the evidence presented by the Applicant must show an infringement of a right coupled with probability of success of the Applicant’s case upon trial.

17. The Plaintiff’s case is that the First Defendant obtained title after the deceased’s death without going through succession and that both the title and the ensuing charge in favour of the Second Defendant are tainted by illegality. A perusal of the copy of the certificate of death annexed by the Plaintiff shows that the deceased died on 12th October 2005. The copy of the register in respect of the suit property shows that the deceased was registered as proprietor of the suit property on 8th September 1976 and remained the proprietor until 9th September 2011 when the First Defendant became proprietor.

18. The registration of the First Defendant as proprietor and the charge in favour of the Second Defendant all took place after the deceased’s death. The First Defendant has not contested

the Plaintiff's claim that the registration took place without any grant having been issued. In fact, the First Defendant is overtly supporting the Plaintiff's application and has stated that the suit property is family land which is to be shared among beneficiaries.

19. Pursuant to **Section 45 (1)** of the **Law of Succession Act**, no dealing with any free property of a deceased person is allowed in the absence of a grant of representation or authority issued under the Act. Legality of the First Defendant's title and all subsequent dealings are matters that will need to be addressed at trial. For now, I am satisfied that there exists a right which has apparently been infringed by the Defendants and that an explanation will need to be provided at trial.

20. Arising from the foregoing, the Plaintiff has established a *prima facie* case with a probability of success. Damages is not an adequate remedy since the dispute is over land claimed to be family property in respect of which there may be other beneficiaries.

21. In view of the foregoing discourse, I find merit in Notice of Motion dated 7th January 2026. I make the following orders:

a) Pending the hearing and determination of this suit, an injunction is hereby issued restraining the 1st and 2nd Defendants by themselves, their

agents, servants, assigns and/or anybody claiming through them from disposing, alienating, selling and/or building any structure on L.R No. North Mugirango/Bonyarorande/674.

b) In line with Order 40 rule 6 of the Civil Procedure Rules, the injunction shall, unless extended by the Court, remain in force for a period of only twelve months from the date of this ruling or until the case is determined, whichever occurs first. Consequently, parties are reminded to expeditiously prosecute the suit.

c) The Plaintiff shall have costs of the application. The First and Second Defendants shall bear the said costs.

Dated, signed, and delivered at Nyamira, this 29th day of April 2026.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Mr Okemwa for the Plaintiff

1st Defendant present in person

Mr Mongare holding brief for Mr Makori for the 2nd Defendant

Mr Ndiritu for the 3rd and 4th Defendants

Court Assistant: B Kerubo