



Wathi & another v Mbithi & 2 others (Environment and Land Case E094 of 2025) [2026] KEELC 2480 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2480 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE E094 OF 2025
NA MATHEKA, J
APRIL 28, 2026**

BETWEEN

JOHNSON KYALO WATHI 1ST PLAINTIFF

GEDION MBITHI WATHI 2ND PLAINTIFF

AND

VERONICA MUTUKU MBITHI 1ST DEFENDANT

THE LAND REGISTRAR MACHAKOS 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The application is dated 28th July 2025 and is brought under Article 40 of *the Constitution* of Kenya, 2010, Order 40 Rules 1,2 and 4 of the Civil Procedure Rules, 2010, Section 3A of the *Civil Procedure Act* seeking the following orders;
 1. That this application be certified as urgent and be heard ex-parte in the first instance owing to the imminent danger of irreversible loss and prejudice to the Applicant’s constitutional property rights.
 2. That the status quo obtaining on the ground to be maintained pending the hearing and determination of the suit.
 3. That this Honourable Court be pleased to issue a temporary injunction Restraining the 1ST Defendant/Respondent whether by herself, her agents, servants and/or employees, from entering upon, trespassing, alienating, disposing, transferring, charging, mortgaging, leasing or otherwise encumbering in any manner whatsoever land parcel number Machakos/ Kilandani/576 pending the hearing and final determination of the suit herein.



4. That this Honourable Court be pleased to issue an interim order of status quo directing the 2nd Defendant/Respondent to forthwith suspend all entries, alterations, dealings or transactions of any nature whatsoever in respect of land parcel number Machakos/Kiandani/576 pending the hearing and determination of this Application.
 5. That this Honourable Court be pleased to issue an order compelling the 1st Defendant/Respondent to deposit the purported, fraudulently illegal and /or none existing title document of land parcel number Machakos/Kiandani/576 Acreage 0.84ha in Court forthwith, pending the hearing and determination of this suit.
 6. That this Honourable Court be pleased to issue an order directing the 2nd Respondent (The Land Registrar Machakos) to produce the entire Land Register (Green Card), mutation forms and ownership history relating to land parcel number Machakos/Kiandani/576 in Court, for forensic and judicial examination pending the hearing and determination of this suit.
 7. That the costs of this Application be borne by the Respondents.
2. It is premised on the grounds that the Applicants are the lawful heirs of the late Simon Wathi Mbithi and the 1st Applicant is the registered absolute proprietor of land parcel Machakos/Kiandani/576 since 23rd April 2010, holding the same in trust for the 2nd Applicant and their sister, Milcah Nzisa Wathi. That the title held by the 1st Applicant is conclusive proof of ownership and protected by Article 40 of *the constitution* and sections 24, 25 and 26 of the *Land Registration Act*, 2012, and cannot be defeated except by fraud or mistake proven to a high legal threshold. That on 10th July 2006, this Court authoritatively and completely pronounced itself vide a ruling by Hon. Justice Onyancha prohibiting the burial of the 1st Defendant's husband on the said land, after finding that he had no legal or equitable interest in the property. That over a decade later and through a succession cause riddled with procedural and substantive irregularities, the 1st Defendant unlawfully introduced land parcel number Machakos/Kiandani/576 into her late husband's estate despite having initially excluded it in her petition. That the 1st Defendant and/or in collation with the 2nd Defendant made fraudulent entries in the Land Register, falsely listing her late husband and the Applicant's father as joint proprietors without surrender of the original title or court sanction, in utter disregard of *the Constitution*, the *Land Registration Act*, and settled legal principles.
3. That these entries were made clandestinely, without notification, and in defiance of existing title and without mandatory instruments of transfer, transmission or partition, suggesting collusion or administrative misconduct.
 4. This court has considered the application and the supporting affidavit therein. The application was not opposed. The principles of granting temporary injunctions are well settled and are set out in the judicial decision of *Giella vs Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (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, ally any doubts as to b, by showing that the balance of convenience is in his favour.
 5. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.



6. Consequently, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd (2003) EKLK* the Court of Appeal gave a determination on a prima facie case. The court stated that;

... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

7. In support of the application, the Applicant stated that Applicants are the lawful heirs of the late Simon Wathi Mbithi and the 1st Applicant is the registered absolute proprietor of land parcel Machakos/Kiandani/576 since 23rd April 2010, holding the same in trust for the 2nd Applicant and their sister, Milcah Nzisa Wathi.

8. Secondly, the Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR* provides an explanation for what is meant by irreparable injury and it states;

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

9. The Applicant states that the 1st Defendant unlawfully introduced land parcel number Machakos/Kiandani/576 into her late husband’s estate despite having initially excluded it in her petition. That the 1st Defendant and/or in collusion with the 2nd Defendant made fraudulent entries in the Land Register, falsely listing her late husband and the Applicant’s father as joint proprietors.

10. Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLK* which defined the concept of balance of convenience as:

‘ The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

11. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

12. The decision of *Amir Suleiman vs Amboseli Resort Limited (2004) eKLR* where the learned judge offered further elaboration on what is meant by “ balance of convenience ” and stated;

The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”



13. The Applicants stated that unless the Court intervenes urgently, there is an imminent risk that the 1st Defendant may further alienate, dispose of, or encumber the suit property, thereby perpetrating and concealing the fraud, and rendering the suit nugatory.
14. The 1st Defendant/Respondent submitted that the subject land is registered in the names of Wathi Mbithi and Veronica Mutuku Mbithi with each holding a half share attached and marked VMM1 is a copy of the official search. That the title deed previously held by John Kyalo Wathi was cancelled on the 23rd April 2010 pursuant to a decision in Appeal case Number 375 of 1986 annexed and marked VMM2. I find that the 1st Defendant may have acquired her title through a court order.
15. Bearing this in mind, I am convinced that there is a risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.
16. In *Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another (2019) eKLR* where the court in deciding on an injunction application stated;

circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to grant a temporary injunction to restrain such acts...”

17. In view of the foregoing, I find that the application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

