



Munyiri (Suing as the legal administrator of the Estate of Isaac Gitau Munyiri alias Isaak - Deceased) & another v Wairagu & 3 others (Land Case E065 of 2025) [2026] KEELC 2641 (KLR) (6 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2641 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
LAND CASE E065 OF 2025**

**MN GICHERU, J
MAY 6, 2026**

BETWEEN

SUSAN WAMBUI MUNYIRI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF ISAAC GITAU MUNYIRI ALIAS ISAAK GITAU MUNYIRI - DECEASED) 1ST PLAINTIFF

DAVID KAMAU MUNYIRI 2ND PLAINTIFF

AND

BENSON KIEMO WAIRAGU 1ST DEFENDANT

THE CREEK VENTURES LIMITED 2ND DEFENDANT

MBO-I-KAMITI FARMERS COMPANY LIMITED 3RD DEFENDANT

THE LAND REGISTRAR MURANG'A 4TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 17-11-2025. The motion which is by the Plaintiffs is brought under Orders 51, 40 rules 1,2 and 4 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of law.
2. The motion seeks three (3) residual orders.
3. That pending the hearing and determination of this suit, a temporary injunction do issue restraining the 1st and 2nd Defendants, whether by themselves, their agents, employees or anyone claiming through them from entering upon, fencing, constructing, cultivating, depositing materials, cutting trees, or in any way interfering with the Plaintiffs' quiet possession, occupation and ownership of land parcel No. Nginda/Samar Block 2/441.



4. That the Officer Commanding Station (OCS) nearest to the suit property do supervise and ensure compliance with the orders of this Court.
5. That the costs of this application be provided for.
3. The motion is based on twelve (12) grounds and is supported by two affidavits sworn by the 1st Plaintiff dated 17-11-2025 and 17-2-2026 respectively. The gist of the grounds and two affidavits is as follows. One, the 1st Plaintiff is the administratrix of the estate of the registered owner of the suit land, the late Isaac Gitau Munyi. The 2nd Defendant claims to have purchased the suit land from the deceased in 2015 which is not true. Two, the 1st and 2nd Defendants have encroached upon the suit land, cut trees and erected a fence. They have also deposited building materials, excavated the ground to construct a pit latrine. Thirdly, on 28-1-2026 in Succession Cause No. E038/2022 at Gatundu Chiefs Magistrate's Court, the Defendants' application seeking to revoke the grant issued to the 1st Plaintiff was dismissed.
4. The 1st and 2nd Defendants filed a notice of preliminary objection dated 10-12-2025. The preliminary objection is based on the following grounds.
 - a. The suit is res judicata as per Sections 6 and 7 of the *Civil Procedure Act*.
 - b. The subject matter is within the pecuniary jurisdiction of the Magistrates Court as the value is Kshs 6,250, 000/=
 - c. The reliefs sought are not attainable in law.
 - d. The suit is an abuse of court process and the Plaintiffs come with unclean hands.
 - e. The suit is fatally defective and should be dismissed in limine.
5. In addition to the preliminary objection, the 1st Defendant filed a replying affidavit dated 27-2-2026 which reiterated the grounds in the preliminary objection.
6. Counsel for the parties filed written submissions dated 11-2-2026 and 12-2-2026 respectively.
 - i. Whether a case for the grant of an order of injunction as per the principles in *Giella v Cassman Brown* [1973] EA 358 has been made out.
 - ii. Whether the notice of preliminary objection is well grounded.
 - iii. Whether the suit should be heard by this Court or the Magistrate's Court.
7. I have carefully considered the motion in its entirety including the grounds, the three affidavits on record, the notice of preliminary objection, the written submission and the law cited therein.
8. On the first issue, I find that the Plaintiffs have been in possession of the suit land since the year 2015. The attempted entry by the 1st and 2nd Defendants is recent.
9. The Defendant's preliminary objection is not anchored on any pleadings. Since December 2025 when the 1st and 2nd Defendants filed their preliminary objection, they have not filed any defence. Without a defence, the preliminary objection hangs in the air. The decision of the Land Registrar, a valuation report on the value of the suit land, evidence of fraud to mention but a few are not on record. They needed to be filed by ether party so that the Court could see the totality of the pleadings. In short, the preliminary objection is based on facts which are not yet pleaded and therefore unknown to the



Court. It is not based on a pure point of law. In the case of Mbaja v Oraro Civil Appeal No. 85/1992 the Court held as follows.

“A preliminary objection cannot be raised where facts contested. If the court needs to investigate facts, examine evidence, or test the truth of allegations, then the matter ceases to be a preliminary objection.”

10. Regarding the third and final issue, it is the Defendants who are saying that the value of the suit land is valued at less than Kshs 20,000,000/=. They have not filed a valuation report. According to the plaintiff particularly paragraph 8, the value of parcels Nos. 458 and 441 was Kshs. 12.5 Million in the year 2015. I do not know what the value could be in 2026, about 11 years later. It is up to the Plaintiffs who are in occupation to carry out a valuation and file a report.
11. In conclusion and for the reasons already given, I order as follows.
 - a. The notice of motion dated 17-11-2025 allowed in terms of prayers 3 and 4.
 - b. Notice of preliminary objection dated 10-12-2025 is dismissed.
 - c. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6TH DAY OF MAY, 2026.

M.N. GICHERU JUDGE.

Delivered online in the presence of;

Court Assistants – Jackline and Antony

Plaintiffs' Counsel – Mr Manzi

1st and 2nd Defendants Counsel –Miss Wanjira

