



REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT AT KENYA AT
THIKA**

ELCLC NO. E078 OF 2025

**MOSES NJOROGE GITAU (Suing as the administrators of the
Estate of Late ELIUD GITAU NJOROGE(Deceased).....
PLAINTIFF**

VERSUS

**DANIEL NDICHU MBUGUA.....1ST
DEFENDANT**

**PATRICK NJOROGE WANJAU.....2ND
DEFENDANT**

**DAVID KARUKU WANJAU.....3RD
DEFENDANT**

**FREDRICK NGENYA MBUGUA.....4TH
DEFENDANT**

**JAMES KARIUKI NJENGA.....5TH
DEFENDANT**

**CHARLES MWAURA WAMUGI.....6TH
DEFENDANT**

**SIMON MUIRURI MUTITU.....7TH
DEFENDANT**

**HEZRON KIMWAKI NJUGUNA.....8TH
DEFENDANT**

SUSAN WANJIRU NJUGUNA.....	9TH
DEFENDANT	
GRACE MUTHINI MUTIE.....	10TH
DEFENDANT	
CAROLINE NYAMBURA MUCHOKI.....	11TH
DEFENDANT	
PAUL WARIUNGI KARONGO.....	12TH
DEFENDANT	
JOHN NDUNGU MWANGI.....	13TH
DEFENDANT	
JENNIFER WANJIKU NDUTA.....	14TH
DEFENDANT	
JOHN KAMAU WANJIKU.....	15TH
DEFENDANT	
SAMUEL NDICHU NJUGUNA.....	16TH
DEFENDANT	
THE HON ATTORNEY GENERAL.....	17TH
DEFENDANT	
THE LAND REGISTRAR, RUIRU LANDS REGISTRAR.....	18TH
DEFENDANT	

RULING

1) This Ruling is in respect of the Notice of Motion dated 07/05/2025 brought to Court by the Plaintiff/Applicant under Section 1A, 1B, 3, and 3A of the Civil Procedure and Order 40, Order 51 rule 1 of the Civil Procedure Rules, Section 68 Land Registration Act 2012 and all enabling provisions and Regulations of the Law seeking the following:

a) Spent.

b) Spent.

c) THAT pending hearing and determination of the main suit, this Honorable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents whether by themselves, their respective agents, servants, employees and/or any other person in their names from trespassing, cultivating, construction, disposing off, selling, re-allocating, alienating, transferring, or in any other manner dealing with land parcel Nos. RUIRU EAST/JUJA EAST BLOCK 2/43645-43652 and RUIRU EAST/JUJA EAST BLOCK 2/43883-43900, all being resultant sub-division portions of title LR No. RUIRU EAST/JUJA EAST BLOCK 2/3879.

d) THAT this Honorable Court do issue an order directing the Land Registrar, Ruiru to register a restriction against Land Parcel No. RUIRU EAST/JUJA EAST BLOCK 2/43645-43652 and RUIRU EAST/JUJA EAST BLOCK 2/43883-43900 pending hearing and determination of the main suit.

e) THAT costs of this application be in the cause.

2) The Court on 03/07/2025 noted that all parties had not been served properly and directed that the Plaintiff/Applicant

serves the Respondents by way of substituted service since the Plaintiff stated that whereas they served the Defendants/Respondents they had refused to sign the Court papers. Thus, when the parties appeared in Court on 23/10/2025 the Plaintiff informed the Court to have served the parties via Daily Nation dated 14/07/2025.

- 3) Whereas the Counsel for the 1st to 3rd, 11th, 13th and 14th Defendants informed the Court that he had filed a Preliminary Objection, the Court noted that it had not been placed in the Court file and served upon the parties. This being the case, the Court could not give directions on the disposal of the Preliminary Objection.
- 4) Therefore, the Court proceeded to have parties canvass the Application dated 07/05/2025 which is based on the grounds on the face of it and the Supporting Affidavit sworn by Moses Njoroge Gitau on even date.
- 5) The deponent, Moses Njoroge Gitau, in his capacity as the legal personal representative of the Estate of the late Eliud Gitau Njoroge, the deponent's late father who died on 2/02/2014, his authority being confirmed by a Grant Ad-litem annexed and marked "**MNG-1**". He avers that the deceased acquired the suit property, specifically **Ruiru East/Juja East Block 2/3879**, in 1991 and held a Certificate of Title a copy of which is annexed and marked "**MNG-2**". He contends that the estate maintained quiet, continuous, and uninterrupted possession of the land until the recent unlawful

encroachment by the Defendants. That the land was never sold or transferred to any third party.

- 6) The deponent further states that the original title deed was misplaced and lost, upon which the matter was reported to Juja Police Station vide OB No. 19/21/02/21, a copy of which is annexed and marked "**MNG-3**".
- 7) The matter was thereafter referred to the Directorate of Criminal Investigations, Juja, for further assistance. Investigations conducted by that office revealed, through an official Green-Card search annexed and marked "**MNG-4**", that the suit land had been fraudulently and illegally transferred on 21/05/2020 in favour of the 1st Defendant, without the knowledge or consent of the estate and in the absence of any Succession Cause to warrant such transfer.
- 8) Taking advantage of the deceased's demise and in a bid to disinherit the estate and its rightful beneficiaries, the 1st Defendant proceeded to irregularly subdivide the suit land into 25 portions, some of which were hastily sold to the 2nd to 16th Defendants, as evidenced by the bundle of Green-Card copies of the resultant subdivision portions annexed and marked "**MNG-5**". The remaining portions continue to be offered for sale to unsuspecting members of the public, while the 2nd to 16th Defendants have defiantly commenced construction of permanent buildings on their respective portions, as depicted in the bundle of photographs annexed and marked "**MNG-6**".

- 9) The Applicant expresses a well-founded apprehension that unless the Court intervenes to preserve the *status quo*, the Defendants will further intermeddle with the suit property, leading to the total dissipation of the estate and causing the beneficiaries to suffer irreparable loss. He maintains that the estate has a prima facie case with a high probability of success, and that the balance of convenience favors the protection of the deceased's proprietary rights against the Defendants' unjustifiable actions.
- 10) The Application is opposed. The 1st Defendant filed a Replying Affidavit sworn on 27/10/2025. He dismisses the application and the suit in its entirety as being founded on falsehoods and misrepresentations, and states that the same deserves nothing but contempt. He however concedes that the late Eliud Gitau Njoroge was indeed the previous registered owner of the suit land parcel Ruiru East/Juja East Block 2/387.
- 11) The 1st Defendant depones that sometime in 2010, in the course of carrying on his personal business in the meat industry, he met the deceased who expressed his willingness to sell him the entire parcel. The two negotiated the purchase price and the deceased personally took him to his own Advocate, whereupon they executed a Sale Agreement for the sale of land dated 28/04/2010, a copy of which is annexed and marked "**DNM-1**". He further states that given his status as a small-scale businessman at the time, he paid

the purchase price in installments, and that it was the deceased himself who insisted on being paid in cash. The 1st Defendant explains that the deceased's insistence on cash payment was driven by the fact that his first family had long abandoned him and relocated to the United States of America, leaving him in need of money to sustain himself.

12) That upon completing payment in full, the 1st Defendant depones that the deceased signed and executed the transfer documents and even procured a Land Control Board consent to facilitate the transfer of the parcel in his favour. Having received all the completion documents, he placed them safely in his house, took immediate possession of the land and proceeded to keep cattle sourced from the Matuu area for slaughter in furtherance of his meat business.

13) He continued in this manner until the onset of the COVID-19 Pandemic, at which point he resolved to subdivide the suit land and sell the resultant portions, relying on the completion documents he held. He states that the subdivision was successfully carried out and that selling subdivided parcels has since become his primary business venture.

14) On the legal merits, the 1st Defendant depones that he has been advised by his Advocates on record, which advice he holds to be sound and true, that the Applicant is estopped by doctrine from seeking to resile from a transaction that his

late father entered into consciously, freely and without any duress or coercion.

- 15) He further points out that the Applicant and his family were clearly not in contact with the deceased, given that the deceased died in 2014 and they are only now, ten years after his demise, seeking to pursue his estate. He maintains that all the transactions were lawful, that all titles and subsequent titles were issued by the relevant statutory authorities following due process, and that the co-Defendants conducted their own due diligence before purchasing their respective portions, upon which some have since constructed residential homes while others are utilizing their portions through farming and related activities.
- 16) The 1st Defendant concludes by asserting that the application is frivolous, obnoxious and a complete waste of the Court's time, and urges that both the application and the entire suit be dismissed with costs.
- 17) The second Replying Affidavit is sworn on 27/10/2025 by Patrick Njoroge Wanjau, the 2nd Defendant/Respondent. He deposes that he has been granted authority to plead and swear on behalf of the 3rd, 11th, 13th and 14th Defendants/Respondents, and does so accordingly by virtue of an authority to plead dated 29/10/2025, annexed and marked "**PNW-1**".
- 18) At the outset, the deponent dismisses the application and the suit as frivolous, vexatious and an abuse of the

Court process, founded entirely on falsehoods and misrepresentations. He states that he, together with his co-Defendants, each conducted their own due diligence on the suit parcel at different times and places, including conducting a search on the Green Card prior to purchasing their respective resultant portions. The findings of that due diligence established that the suit parcel had been lawfully purchased by the 1st Defendant from the deceased as far back as 2010, with the deceased having granted the 1st Defendant physical and actual possession of the parcel at the time of sale.

- 19) Upon physically visiting the suit parcel, the deponent found that it had already been subdivided and beacons placed therein, with the local authorities being fully aware of the said subdivision. He further depones that the subdivision of some of the portions had in fact to be redone owing to errors made by the initial surveyor in surveying some parcels, and that the correction of boundaries was carried out in the presence of the 1st Defendant and the local area Chief.
- 20) Following the completion of their due diligence, the deponent and his co-Defendants proceeded to execute agreements with the 1st Defendant, obtained Land Control Board consent and subsequently had the respective portions transferred into their names. The entire process was smooth and raised no queries whatsoever from the Land Registry at

Ruiru. The deponent and his co-Defendants thereafter took actual possession of their respective parcels and proceeded to construct their residential homes thereon, having been in uninterrupted possession for over four years.

- 21) The deponent firmly denies any collusion with the 1st Defendant to defraud the Applicant, asserting that they are bona fide purchasers for value without notice. He further contests the Applicant's claim of possession, stating that upon purchasing their parcels, they found the 1st Defendant already in actual possession of the suit land.
- 22) He concludes by urging that the suit and the application be dismissed with costs at the earliest opportunity, maintaining that their proprietary rights over the respective parcels are legally grounded, flowing from lawful land transactions and transfers, and are entirely free from any fraud as alleged by the Applicant.
- 23) The parties were directed to file their written submission and the Court directed that any documents filed after 28/10/2025 will stand automatically expunged from the Court record. As at the time of writing this Ruling, only the Plaintiff/Applicant had filed their written submissions dated 28/06/2025. This is because when the parties appeared in Court on 23/10/2025, the Plaintiff/Applicant informed the Court that he had filed and served their submissions as per directions issued on 09/05/2025 by the Court.

Plaintiff's Submissions

- 24) On the law, the Plaintiff/Applicant submits that the conditions for the grant of a temporary injunction are well settled in the celebrated case of **Giella v Cassman Brown & Company Limited (1973) EA 358**, where the Court held that an Applicant must first show a prima facie case with a probability of success, secondly that an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages, and thirdly that if the Court is in doubt, it will decide the application on the balance of convenience.
- 25) The Plaintiff/Applicant further draws the Court's attention to the case of **American Cyanamid Co. v Ethicom Limited (1975) All ER 504**, where three elements were identified as being of great importance, namely that there must be a serious and fair issue to be tried, that damages must not be an adequate remedy, and that the balance of convenience must lie in favour of granting the application. The Plaintiff/Applicant further relies on the Court of Appeal decision in **Lucy Wangui Gachara v Minudi Okemba Lore, Civil Appeal No. 4 of 2015 (2015) eKLR**, where it was held that all three conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially.

- 26) On the question of whether a prima facie case has been established, the Plaintiff/Applicant relies on the definition settled in **Mrao Ltd v First American Bank of Kenya & 2 Others (2003) KLR 125**, where the Court held that a prima facie case is one in which, on the material presented before the Court, a tribunal properly directing its mind 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.
- 27) The Plaintiff/Applicant submits that ownership of the suit land is not in dispute, the title deed having been issued in 1991 in favour of the late Eliud Gitau Njoroge, and that the register record clearly demonstrates that the subsequent transfer to the 1st Respondent on 21/05/2020 was fraudulent, having been effected without any succession cause to warrant the same.
- 28) In this regard, the Plaintiff/Applicant invokes the provisions of Section 26 of the Land Registration Act, No. 3 of 2012, which provides that a Certificate of Title issued by the Registrar shall be taken by all Courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner, subject only to challenge on the ground of fraud or misrepresentation to which such person is proved to be a party, or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme.

- 29) On the question of irreparable injury, the Plaintiff/Applicant annexes photographs of ongoing construction on the resultant portions of the suit property and avers that the Respondents continue to offer the remaining resultant titles for sale to unsuspecting members of the public, thereby exposing the estate to the risk of losing its entire interest to third parties.
- 30) The Plaintiff/Applicant further relies on the Court of Appeal decision in **Lucy Wangui Gachara v Minundu Lore (2015) eKLR, Civil Appeal No. 4 of 2015**, which cited with approval the holding in **Kenya Commercial Finance Co. Ltd v Afraha Education Society (2001) Vol. 1 EA 86**, to the effect that the Court must be satisfied that the injury the Applicant will suffer in the event the injunction is not granted will be irreparable, and that if damages recoverable in law are an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted.
- 31) The Plaintiff/Applicant also relies on **Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another [1990] KLR 557** where Bosire J, (as he then was), held that to succeed in an application for injunction, an Applicant must show that he has a legal or equitable right which requires protection by way of injunction.
- 32) On the balance of convenience, the Plaintiff/Applicant relies on the Court of Appeal decision in **Nguruman Limited**

v Jan Bonde Nielsen & 2 Others, CA No. 77 of 2012, reaffirming that the three conditions for the grant of an injunction are to be applied as separate, distinct and logical hurdles to be surmounted sequentially by the Applicant. The Plaintiff/Applicant submits that having properly established the first and second criteria, the balance of convenience tilts in favour of granting the orders sought.

33) On the question of costs, the Plaintiff/Applicant submits that costs are a discretionary award granted to a successful party, relying on ***Halsbury's Laws of England, 4th Edition (Re-issue) 2010, Vol. 10, paragraph 16***, which notes that the Court has an absolute and unfettered discretion to award or not to award costs, and that such discretion must be exercised judicially, not arbitrarily, but in accordance with reason and justice. The Plaintiff/Applicant accordingly urges the Court to find in his favour and award him the costs of the application.

34) In conclusion, the Plaintiff/Applicant urges the Honourable Court to find that he has satisfied the tripartite principles for the grant of injunctive orders as established in the foregoing authorities, and to allow the application as prayed.

Analysis and Determination

35) Having considered the pleadings, the rival Affidavits, and the submissions of the Applicant, the Court finds that the following issues fall for determination:

- i. Whether the Applicant has established a prima facie case with a probability of success.*
- ii. Whether the Applicant stands to suffer irreparable injury that cannot be compensated by an award of damages.*
- iii. On which side the balance of convenience lies.*
- iv. Who bears the cost of the application?*

36) The conditions governing the grant of an interlocutory injunction in this jurisdiction are firmly anchored in the celebrated East African decision of **Giella v Cassman Brown & Company Limited (supra)**, where the Court pronounced that an Applicant must first establish a prima facie case with a probability of success, secondly demonstrate that he stands to suffer irreparable injury that would not adequately be compensated by an award of damages, and thirdly, that if the Court is in doubt on the foregoing, the application ought to be determined on the balance of convenience. These three conditions have since been consistently applied by our Courts as the governing standard for injunctive relief.

37) The Supreme Court of Kenya in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others, Petition No. 2B of 2014 (2014) eKLR** affirmed that the purpose of an interlocutory injunction is to preserve the status quo pending the determination of the dispute on its merits, and that in considering whether to grant or decline such relief, the Court

must be alive to the need to avoid causing greater injustice than that which it seeks to prevent. That principle resonates strongly with the circumstances of the present application.

38) The Court of Appeal in **Lucy Wangui Gachara v Minudi Okemba Lore, Civil Appeal No. 4 of 2015 (supra)** was emphatic that the three conditions set out in **Giella v Cassman Brown (supra)** are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially, and that the existence of a prima facie case does not permit the Applicant to leapfrog the remaining hurdles. This Court is duly guided by that pronouncement.

39) The threshold for establishing a prima facie case was authoritatively settled by the Court of Appeal in **Mrao Ltd v First American Bank of Kenya & 2 Others (supra)**, where the Court held that a prima facie case is one in which, on the material presented before the Court, a tribunal properly directing its mind 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. This Court is in full agreement with that formulation and adopts it as the applicable standard.

40) It is not in dispute that the late Eliud Gitau Njoroge was at one point the registered absolute proprietor of the suit land, having been issued with a Certificate of Title on 7/07/1991. Section 26(1) of the Land Registration Act, No. 3

of 2012 provides that a Certificate of Title issued by the Registrar shall be taken by all Courts as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner, and that such title shall not be subject to challenge except on the ground of fraud or misrepresentation to which the person is proved to be a party, or where the Certificate of Title has been acquired illegally, unprocedurally or through a corrupt scheme. The principle of indefeasibility of title is therefore not absolute and yields to proof of fraud or illegality.

41) It is equally not in dispute that the late Eliud Gitau Njoroge died on 2/02/2014, and that as at the date of the transfer of the suit land to the 1st Defendant on 21/05/2020, no Succession Cause had been instituted before any competent Court to warrant the transfer of the deceased's estate. Under the Law of Succession Act, Cap 160 of the Laws of Kenya, the estate of a deceased person vests in the personal representative upon the Grant of Letters of Administration or Probate, and no valid transfer of property forming part of a deceased's estate can be effected outside the framework of succession proceedings.

42) Therefore, the transfer of the suit land to the 1st Defendant in the year 2020, six years after the death of the registered proprietor and in the complete absence of any Succession Cause, raises grave questions of fraud and

illegality that this Court cannot turn a blind eye to at this stage.

43) The Pakistan Case of **Rasheed Ahmad Versus Azra Parveen (deceased) reported in 2024 LHC 894**, the Court observed that where a transfer of land belonging to a deceased person is effected without any Court sanction through succession proceedings, such a transfer is prima facie tainted with fraud and cannot confer valid title upon the transferee. That observation is particularly instructive in the present matter.

44) Although the 1st Defendant annexes a Sale Agreement dated 28/04/2010 to lend credence to his claim of lawful purchase from the deceased, this Court notes that the said agreement, even if genuine, cannot by itself explain how a valid transfer of land belonging to a deceased person was effected in 2020 without recourse to succession proceedings. A Sale Agreement creates contractual obligations between the parties thereto but does not by itself transfer title, and any purported transfer of a deceased's registered land outside the framework of the Law of Succession Act is void and of no legal effect whatsoever. As was held by the Environment and Land Court in **Mbithi v Musyoka & Another (Environment and Land Appeal Case E006 of 2021) [2025] KEELC 234 (KLR)**, delivered on January 22, 2025 that the death of a registered proprietor operates as a legal bar to any dealings in the property of the estate

save through the proper succession process, and any transfer effected in circumvention of that process is a nullity.

45) Whilst it is true that the 2nd and co-Defendants claim to be bona fide purchasers for value without notice, this Court notes that the doctrine of bona fide purchase cannot protect a party who derives title from a root of fraud. As was expressed by the Court of Appeal in **Vijay Morjaria v Nansingh Madhusingh Darbar & Another (2000) eKLR**, a purchaser who traces his title to a fraudulent transaction cannot shelter behind the doctrine of bona fide purchase as though that doctrine were a laundry that cleanses fraudulently acquired titles. The question of whether the co-Defendants' due diligence was adequate and whether they truly had no notice of the irregularity is a matter that can only be fully ventilated at the full hearing of the main suit.

46) This Court is accordingly satisfied that the Plaintiff/Applicant has established a prima facie case with a probability of success sufficient to warrant further inquiry into the merits of the claim.

47) The second condition requires the Applicant to demonstrate that he stands to suffer irreparable injury in the event the injunction is not granted, being injury that would not adequately be compensated by an award of damages. The Court of Appeal in **Lucy Wangui Gachara v Minundu Lore (supra)**, citing with approval the holding in **Kenya Commercial Finance Co. Ltd V. Afraha Education**

Society & Others, Civil Application No. 142 of 1999, (2001) 1 EA 86 held that the Court must be satisfied that the injury the Applicant will suffer in the event the injunction is not granted will be irreparable, and that if damages recoverable at law are an adequate remedy and the Respondent is capable of paying, no interlocutory injunction should normally be granted.

48) The Plaintiff/Applicant has placed before this Court photographic evidence of ongoing permanent construction on the resultant portions of the suit property. He has further demonstrated that the 1st Defendant continues to offer the remaining resultant titles for sale to members of the public. Land is by its very nature unique and irreplaceable, and the progressive alienation of portions of the suit property to third parties, coupled with the erection of permanent structures thereon, presents a situation that cannot be adequately remedied by an award of damages. As was aptly stated by the High Court of Kenya in **Nguruman Limited v Jan Bonde Nielsen & 2 Others, CA No. 77 of 2012**, once land is alienated to multiple third parties and developed, it becomes practically impossible to restore the original position, and no monetary award can adequately substitute for the loss of proprietary rights in land.

49) The English Court of Appeal in **American Cyanamid Co. v Ethicon Limited (1975) All ER 504** per Lord Diplock held that where the subject matter of the dispute is land, the

Courts have traditionally been reluctant to refuse injunctive relief on the ground that damages would be an adequate remedy, given the unique and irreplaceable character of land as a form of property. That reasoning applies in equal measure in the present case.

50) Furthermore, as was held by the High Court of Kenya in **Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another (supra)**, where Bosire J, (as he then was), expressed himself to the effect that to succeed in an application for injunction, an Applicant must show that he has a legal or equitable right which requires protection by way of injunction, this Court is satisfied that the Plaintiff/Applicant, as a personal representative of the deceased's estate, has a right in the suit property that is deserving of the Court's protective intervention pending the full determination of the main suit.

51) This Court is accordingly satisfied that the Plaintiff/Applicant has discharged the second limb of the **Giella v Cassman Brown (supra)** test and demonstrated that he stands to suffer irreparable loss if the injunction is not granted.

52) Having found that the Plaintiff/Applicant has established both a prima facie case and the likelihood of irreparable injury, it is strictly speaking unnecessary for this Court to proceed to consider the balance of convenience. However, in the interest of completeness and guided by the Court of

Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others (supra)**, this Court proceeds to weigh the competing interests of the parties.

53) On one side of the scale, the Plaintiff/Applicant and the rightful beneficiaries of the estate of the late Eliud Gitau Njoroge stand to lose their entire inheritance if the ongoing alienation and development of the suit property proceeds unchecked. On the other side, the Defendants stand to suffer inconvenience in being restrained from further dealing with parcels whose very ownership is now in serious question. It is a fundamental principle of equity that a party who allegedly derives his interest from a fraudulent transaction ought not to be preferred over the rightful owner in the balancing of the scales of convenience. The Court in the case of **Said v Issack & 3 Others (Environment and Land Case Civil Suit 101 of 2023)**, in its Ruling the Court addressed a dispute between a registered owner alleging fraud and a party claiming under a contested transaction, concluding that the balance of convenience required maintaining the status quo and preserving the registered owner's interest until the full determination of the suit. Thus, where the competing interests are between a registered owner alleging fraud and a party claiming under a contested transaction, the balance of convenience must tilt in favour of preserving the registered owner's interest pending the full

determination of the dispute. This Court is guided accordingly.

54) The balance of convenience in the present matter tilts decisively in favour of the Plaintiff/Applicant. The suit property represents the sole known asset of the estate of the late Eliud Gitau Njoroge, and any further dissipation or development of the same pending the hearing of the main suit would render any eventual Judgment in favour of the Plaintiff/Applicant an academic exercise devoid of practical utility.

55) On the question of costs, it is trite law that costs follow the event and are awarded at the discretion of the Court. As was noted in **Halsbury's Laws of England, 4th Edition (Re-issue) 2010, Vol. 10, paragraph 16**, the Court has an absolute and unfettered discretion to award or not to award costs, and that discretion must be exercised judicially and in accordance with reason and justice. This Court finds it appropriate to order that the costs of this application be in the cause.

Disposition

56) Having considered the application, the Replying Affidavits, the written submissions of the Plaintiff/Applicant and the applicable law, this Court is satisfied that the Plaintiff/Applicant has surmounted all three sequential hurdles set out in **Giella v Cassman Brown & Company**

Limited (1973) EA 358 and is therefore entitled to the injunctive relief sought.

57) Accordingly, this Court hereby makes the following orders:

a) A temporary injunction is hereby issued restraining the Defendants/Respondents, whether by themselves, their respective agents, servants, employees and/or any other persons acting in their names, from trespassing, cultivating, constructing, disposing off, selling, re-allocating, alienating, transferring or in any other manner dealing with land parcels Ruiru East/Juja East Block 2/43645-43652 and Ruiru East/Juja East Block 2/43883-43900, being all resultant subdivision portions of title LR No. Ruiru East/Juja East Block 2/3879, pending the hearing and determination of the main suit.

b) The Land Registrar, Ruiru, is hereby directed to register a restriction against the said titles to prevent any further dealings pending the final determination of this suit.

c) The costs of this application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH
MICROSOFT TEAMS ON THIS 7TH DAY OF MAY, 2026.**

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**MOGENI J
JUDGE**

Judgement read in virtual Court in the presence of:

Miss Mwema for the Plaintiff/Applicant

Mr. Mungai for the Defendants/Respondents

Mr. Melita - Court Assistant.

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**MOGENI J
JUDGE**