



REPUBLIC OF KENYA



**Joseph & 29 others v Wainaina (Environment and Land Case
167 of 2024) [2026] KEELC 2729 (KLR) (11 May 2026) (Judgment)**

Neutral citation: [2026] KEELC 2729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 167 OF 2024**

JA MOGENI, J

MAY 11, 2026

BETWEEN

NJEGA N JOSEPH 1ST PLAINTIFF
SOPHIA WANJIRU KARUNJI 2ND PLAINTIFF
HUMPHREY MWENDA GITUMA 3RD PLAINTIFF
HERMAN MUHIHI KABWANA 4TH PLAINTIFF
GODFREY KIMOTHO WACHIRA 5TH PLAINTIFF
SIMON MAINA KARIUKI 6TH PLAINTIFF
MOSES GITHAHI KIHARA 7TH PLAINTIFF
JOSEPH MWANGI GICHERU 8TH PLAINTIFF
SAMUEL NDIRITU KING'ORI 9TH PLAINTIFF
TERESA MUTHONI GICHURI 10TH PLAINTIFF
AYUB NGATA NJENGA 11TH PLAINTIFF
JANE WANJIRU THUO 12TH PLAINTIFF
SIMON MAINA KARIUKI 13TH PLAINTIFF
ALBERT MBUTHIA NDIRANGU 14TH PLAINTIFF
MERCYLORNA WAIRIMU THIRIMU 15TH PLAINTIFF
CHARLES KAROKI GICHUKI 16TH PLAINTIFF
AGNES NJOKI WANYOIKE 17TH PLAINTIFF
PETER KIUGU NDUNGU 18TH PLAINTIFF
AULELIA WAMBUI WAMBUGU 19TH PLAINTIFF



JOSEPH KIMANI MBUGUA 20TH PLAINTIFF
EUNICE GAKENIA WANDERI 21ST PLAINTIFF
PURITY WAKIURU THIRIMU 22ND PLAINTIFF
PETER WACHAGA THIIRU 23RD PLAINTIFF
PATRICK MURIITHI NDIRITU 24TH PLAINTIFF
PAUL MUTURI MAIMBA 25TH PLAINTIFF
JANE WAIRUM KARUNJI 26TH PLAINTIFF
PETER MURIITHI GITHINJI 27TH PLAINTIFF
SAMUEL WERU MUTIGA 28TH PLAINTIFF
PETER MAINA WACHIRA 29TH PLAINTIFF
PAMOJA TUPANDE INVESTMENT SELFHELP GROUP 30TH PLAINTIFF

AND

STEPHEN NJENGA WAINAINA DEFENDANT

JUDGMENT

1. The Plaintiffs brought this application to Court and filed it under Certificate of Urgency dated 30/01/2023 claiming that the Defendant has illegally and unlawfully trespassed on their parcels of land Number Kiambu/Munyu/3319-3353 and has started uprooting beacons cutting down trees haphazardly and mining stones and selling them. Further the Defendant has also unlawfully and illegally occupied a house in Land Parcel Number Kiambu/Munyu/3353.
2. The Application is brought under Order 40 rule 1 of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#) and the Applicants seek the following:
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of this suit a temporary injunction be issued by this Honorable Court restraining the Defendant, his servants and/or agents from trespassing, encroaching, alienating, cutting down trees, mining stones and/or occupying a house in the Plaintiff's Land Parcels Number Kiambu/Munyu/3319-3353 and committing other acts of waste.
 4. That the OCS Ngoliba Police Station do supervise compliance of this Court Order.
 5. That, costs of this application be in the cause.
3. The grounds of the application are on the face of it and are supported by the Supporting Affidavit of Albert Mbuthia Ndirangu the 14th Plaintiff who is the Chairman of the 30th Plaintiff and deponed that he had authority from all the Plaintiffs to swear the said Affidavit on their behalf with regard to the suit.



4. He deposed that the 30th Plaintiff purchased from Duncan Chege Maina, Peter Mwangi Maina and John Kinuthia Chege T/A Kiriko Investments parcel of land number Kiambu/Munyu/559 for a consideration of Ksh 10,700,000 as shown by annexure “AMN1” which is a copy of the Sale Agreement.
5. Once the payment was made which was the full purchase price, the land was transferred to the 30th Plaintiff whose membership resolved to have the land subdivided among its members. This was to enable each member to acquire a title deed for their respective parcel. The resultant subdivision numbers are Kiambu/Munyu/3319 to 3353.
6. That following a recent visit to the parcel of land he found the Defendant occupying a house in plot No. Kiambu/Munyu/3353. That the Defendant and his agents were illegally and unlawfully cutting down trees and mining stones in the Plaintiff’s parcels of land and selling for profit.
7. According to the Plaintiffs, the Defendant informed them that he owns parcel number Kiambu/Munyu/560 yet the Plaintiffs own parcel number Kiambu/Munyu/559 as per the annexed Map marked as “AMN2” and so they believe the Defendant has trespassed and encroached on their parcel since the two are distinct portions of land.
8. That in fact the Defendant for ulterior reasons unknown to them has caused the DCI Kiambu Police Station to place a restriction on all the Plaintiffs parcels yet the Plaintiffs claim to be the Bonafide purchasers of all the plots that were subdivided from parcel number Kiambu/Munyu/559 as per annexure “AMN3” which are copies of title deeds of the said plots.
9. Thus, the Plaintiffs aver that they stand to suffer irreparable harm, loss and damage.
10. The Defendant responded to the Application by filing a Replying Affidavit sworn on 2/03/2023 and a Preliminary Objection of even date. The parties dispensed with the Preliminary Objection through transfer of the file from the Thika Chief Magistrate’s Court.
11. The Defendant through the Replying Affidavit opposed the Application and stated that he was a co-administrator of the Estate of Wainaina Kinuthia (Deceased) as per annexure “SNW1”.
12. He deposed that Parcel Number Kiambu/Munyu/560 and the suit parcel Kiambu/Munyu/559 were subdivisions from the parcel land number Kiambu/Munyu/160 owned by Wainaina Kinuthia as per annexure “SNW2” which is a copy of the Green Card. That both parcels 559 and 560 were fraudulently dealt with by a person known as Jacob Kimani Mwangi who ended up being registered on both parcels as per annexure “SNW3” which are copies of the Green Cards.
13. According to the Defendant, the Court has already cancelled the illegal documents he processed in the Chief Magistrate’s Court at Thika Succession Cause No. 198 of 1991 in the Matter of the Estate of Wainaina Kinuthia to obtain his registration of Land Parcel No. Kiambu/Munyu/560 as per annexure “SNW4” which is the Court order.
14. That the ELC Court in Thika ELC No. 113 of 2022 issued an order relating to the other related land parcel that was a subdivision of the land Kiambu/Munyu/160 owned by Wainaina Kinuthia (deceased) and rejected the attempts to evict the Defendant from the lands which orders are annexed as “SNW5”.
15. Therefore, the Defendant avers that the allegations by the Plaintiffs/Applicants that the case could be a boundary dispute between parcels Kiambu/Munyu/560 and 559 is a fraudulent scheme to deceive the Court and evict the Defendant from the suit lands. Since boundary disputes should be referred to the Land Registrar in case there is a bona fide dispute.



16. That infact title to the suit land parcel No. Kiambu/Munyu/559 was also fraudulently obtained by the same person and should be cancelled together with all resultant subdivisions.
17. The Defendant averred that he was the lawful owner of parcel No. Kiambu/Munyu/559 a subdivision of land parcel number Kiambu/Munyu/160 owned by Wainaina Kinuthia (deceased). That the Plaintiffs/Applicants have not exhibited their Application to Land Board, LCB Consent and transfers as proof of their titles.
18. He further depones that the DCI Kiambu is investigating the transactions relating to the suit land Kiambu/Munyu/559 and 560 which are subdivisions of land parcel number Kiambu/Munyu/160 as per annexure "SNW6". Further that the Plaintiffs did not do due diligence since the Defendant has been in constructive possession of the suit land for more than 12 years and he currently resides on a house in the land as stated by Plaintiffs.
19. That since the Plaintiffs have never had possession of the suit property, they should not seek interlocutory order to evict him before the case is heard. Further that since he has been in occupation for 12 years the claim by the Plaintiffs is statutorily time barred.
20. Further more the Defendant avers that the purported vendors Elizabeth Wangari Mwangi and Kiriko Investments are not joined in the case and are necessary parties if the sales to the Plaintiffs were genuine and not fraudulent.
21. That infact the land was filed at the ELC Court Thika yet the value of the land was more than Ksh 20,000,000 and also the 30th Plaintiff has no locus to sue and be sued and its actions of purchase and sale of land business was ultra vires the registration at the Ministry of Culture for Self Help Project.
22. He therefore prays for dismissal of the suit.
23. On 27/05/2025, the parties were directed to file brief submissions to the Notice of Motion Application.
24. At the time of writing this Ruling only the Plaintiff had filed written submissions dated 19/08/2025. I have considered the same in writing this Ruling.

Analysis and Determination

25. The application is premised on the grounds that the Plaintiffs are the registered owners of the Suit Properties, having purchased the mother parcel, Kiambu/Munyu/559, from Kiriko Investments. They contend that the Defendant has encroached upon their land, occupied a house therein, and is depleting the land's value through unauthorized quarrying.
26. Conversely, the Defendant opposes the application, asserting that the Suit Properties originated from a fraudulent subdivision of Kiambu/Munyu/160, an estate belonging to the late Wainaina Kinuthia. He claims to be a co-administrator of the said estate and argues he has been in constructive possession for over twelve years. He further challenges the locus standi of the 30th Plaintiff and the jurisdiction of the Court regarding the pecuniary value of the subject matter.
27. Having considered the pleadings, the affidavits, and the submissions filed herein, the following issues emerge for determination:
 - i. Whether the Applicants have established a prima facie case with a probability of success.
 - ii. Whether the Applicants stand to suffer irreparable injury which cannot be adequately compensated by an award of damages.



- iii. In whose favor the balance of convenience tilts.
28. The threshold for the grant of a temporary injunction was settled in the locus classicus case of *Giella -vs- Cassman Brown & Co. Ltd* [1973] EA 358. The Applicant must first demonstrate a prima facie case. In *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, the Court of Appeal defined a prima facie case as:
- “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.”
29. The Plaintiffs have exhibited Title Deeds for the resultant subdivisions and a Sale Agreement (Annexure AMN1). Under Section 24 and 26 of the *Land Registration Act*, a Certificate of Title is held to be conclusive evidence of proprietorship. However, the Defendant has raised grave allegations of fraud, asserting that the root of the title Parcel 559 was obtained through the cancellation of succession proceedings.
30. While the Court cannot determine the validity of the titles at this interlocutory stage, the existence of registered titles in the names of the Plaintiffs creates a presumptive legal right. The Defendant’s claim of long-term possession of 12 years and the allegations of fraud are matters for trial. For the purpose of this application, I find that the Plaintiffs have established a prima facie case based on their status as registered owners.
31. The second principle is that an injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury. The Applicants deponed that the Defendant is cutting down trees and mining stones.
32. If the Defendant is allowed to continue mining stones and cutting trees, the substratum of the suit property will be permanently altered. Money cannot regrow a forest overnight or replace the earth moved in mining. I am satisfied that the threat of waste constitutes irreparable harm.
33. Where the Court is in doubt, it decides the case on the balance of convenience. The Defendant claims he resides on the property and has been there for over a decade. However, the Plaintiffs hold the legal paper title.
34. To allow the Defendant to continue active commercial extraction of stones (mining) on land he does not hold title to, while the suit is pending, would be a greater injustice to the registered owners. However, the prayer to evict him from the house at this stage is premature, as eviction is a final remedy that should follow a full trial.
35. The purpose of a temporary injunction is to preserve the substratum of the suit. The Applicant must establish a prima facie case with a probability of success and not present a frivolous case. In the case of *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 Others* (2016) eKLR, the Court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the Court makes a determination as to which party will suffer the



greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.”

36. The Defendant challenged the locus standi of the 30th Plaintiff. This Court notes that even if the 30th Plaintiff, a Self-Help Group were found to lack capacity, the 1st to 29th Plaintiffs are natural persons with individual titles who have a clear right to sue. On jurisdiction, Section 13 of the *Environment and Land Court Act* grants this Court unlimited jurisdiction to hear disputes relating to land administration and management, regardless of the value.

37. I have considered the application, the submissions by Counsel and find that the application has merit. I find that the Applicants have met the threshold for the grant of a temporary injunction, specifically to preserve the status quo and prevent waste and I therefore allow the application as prayed with the following specific orders:

- i. An order of temporary injunction is hereby issued restraining the Defendant, his servants, and/or agents from alienating, cutting down trees, mining stones, or committing any further acts of waste on Land Parcels No. Kiambu/Munyu/3319 to 3353 pending the hearing and determination of the main suit.
- ii. The prayer for an order to restrain the Defendant from occupying the house is hereby declined at this stage; however, the Defendant is prohibited from making any structural alterations or additions to the said house until the suit is concluded.
- iii. The OCS Ngoliba Police Station is directed to ensure compliance with the order regarding the cessation of mining and tree-felling activities.
- iv. Parties are referred to the Deputy Registrar for Pre-trial Conference on 28/05/2026.
- v. Costs of this application shall be in the cause.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 11TH DAY OF MAY, 2026.

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MOGENI J

JUDGE

In the presence of:

Ms. Kiarie holding brief for Ndung'u Mwaura for the Plaintiff

Defendant – Absent

Mr. Melita - Court Assistant

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MOGENI J

JUDGE

