



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELCL CASE NO. E027 OF 2025

EVERYLINE

KANYIRI

MUNENE.....PLAINTIFF

=VERSUS=

NAHASON MBIJIWE M'ARIMI.....1ST

DEFENDANT

KIAMBI ROBERT M'ARIMI.....2ND

DEFENDANT

RULING

1. Falling for determination in this ruling is the plaintiff's application dated 26/9/2025. Through it, the plaintiff seeks: (i) an interlocutory injunctive order restraining the defendants against transferring, selling, disposing of, interfering with, alienating or dealing with land parcel number **Ntima/Ntakira/228** [*hereinafter referred to as "the suit land"*]; and (ii) an interlocutory order staying and/or barring the confirmation of the grant in **Succession Cause No. E236 of 2024** [sic]. The application is

vehemently opposed by the defendants. The key question to be determined in the ruling is whether the application meets the criteria for granting an ordinary interlocutory injunctive order. Before I analyse and dispose the issue, I will outline, in summary, the parties' respective cases.

2. The application was premised on the grounds outlined in the motion and in the applicant's affidavit dated 26/9/2025 and supplementary affidavit dated 19/1/2026. It was canvassed through written submissions dated 21/1/2026, filed by **M/s Daniel & Kenneth Advocates LLP**. The applicant's case is that the suit land, which is currently registered in the name of the defendants' deceased father [the late **Joshua M'Arimi M'Ikiara alias Arimi Ikiara** - *hereinafter referred to as "the late Arimi"*], is held subject to a customary trust in favour of her deceased father [the late **Ntaari M'Ikiara** - *hereinafter referred to as "the late Ntaari"*]. She contends that the suit land was registered in the name of the late Arimi to hold it in trust for the late Ntaari because the latter was a minor at the time of land adjudication and registration. She adds that the late Ntaari's family has been in continuous occupation of the suit land for decades and that the defendants have acknowledged this fact in prior family deliberations. She states that the defendants have maliciously included the suit land in the schedule of free assets in the Succession Cause relating to the estate of the late Arimi and are seeking confirmation orders relating to the said estate.
3. The defendants/respondents opposed the application through a replying affidavit sworn by the 1st defendant on

2/12/2025 and written submissions dated 18/2/2026, filed by **M/s Munene Kirimi & Co Advocates**. The case of the respondents is that the application is predicated on falsehoods. They state that the suit land was demarcated, adjudicated and registered in the name of the late M'Arimi on 7/4/1965 as a first registration following a demarcation exercise that took place in 1956. At that time, the late Ntaari was a married adult man. It is the case of the respondents that the allegation that the late Ntaari was a minor in 1965 is a lie. They emphasize that the late Ntaari was an adult man who married his first wife, **Ciomutunga**, prior to 1955 and their union was blessed with two children, **Kithia M'Rintari** and **Gikunda M'Rintari**. They add that in 1955, the late Ntaari married his second wife, **Jennifer Ntibuka** and the union was blessed with, among others, **Naitore, Everline Kanyiri** [the applicant], **Kanyua** and **Kathure**.

4. The respondents fault the applicant for lying that the late Ntaari's family has in the past resided on the suit land. They state that at all times, the late Ntaari resided on parcel number **Ntima/Ntakira/331** [hereinafter referred to as "**parcel number 331**"], adding that upon their deaths, the late Ntaari and all his deceased children were interred on parcel number 331. They deny ever being approached by the applicant in relation to the suit land.
5. They add that in 2023, the applicant filed fraudulent succession proceedings and applied to have the suit land absolutely devolve to her sister, **Beatrice Naitore**, adding that the succession court dismissed the applicant's

fraudulent petition in December 2024. It is the case of the respondents that the applicant came to the Environment and Land Court after the succession court smoked her out.

6. The respondents contend that the late M'Arimi acquired the suit land alongside parcel number **Kiirua/Naari/990** and that the suit land was bequeathed to **Jacob Kirai M'Arimi** who has always resided on it.
7. The court has considered the application and the response to the application. The two reliefs sought in the application are in form of injunctive orders. Consequently, the key question to be answered in the ruling is whether the application under consideration meets the criteria for granting an ordinary interlocutory injunctive order.
8. The relevant criteria was outlined by the Court of Appeal for East Africa in the case of **Giella vs Cassman Brown & Co. Ltd (1973) EA 358**. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is expected to demonstrate that he would stand to suffer irreparable injury/damage that may not be adequately indemnifiable through an award of damages if the interlocutory injunction is declined. Thirdly, should the court have doubt on both or either of the above two requirements, the application is to be disposed based on the balance of convenience.
9. Over the years, our superior courts have developed an additional principle relating to pronouncements that should be avoided at the stage of disposing a plea for interlocutory injunction. As a general principle, definitive or conclusive

pronouncements should not be made on the key issues in the dispute at the stage of disposing an interlocutory application. Definitive and conclusive pronouncements on key issues are to be reserved to be made in the judgment or other final disposal of the case.

- 10.** The Court of Appeal defined a prima facie case in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Civil Appeal 39 of 2002)*** as follows:

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is 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.”

- 11.** Does the application under consideration meet the above criteria? First the case of the applicant is that the suit land, which was registered in the name of the late M’Arimi in 1965 as a culmination of land demarcation and adjudication, is held subject to a customary trust in favour of the late Ntaari. She is seeking reliefs on behalf of the estate of the late Ntaari. She has, however, not exhibited a duly issued grant under the law of succession, empowering her to initiate the present suit on behalf of the late Ntaari. At this stage, she has not demonstrated that she had the locus standi to initiate and maintain this suit.

- 12.** Secondly, the applicant seeks the above injunctive interlocutory orders against a background where she approached the succession court in relation to the estate of the late Ntaari and sought a confirmation orders vesting the suit land in the name of her sister, **Beatrice Naitore**, as the absolute proprietor. On scrutinizing the petition, the succession court dismissed the petition and closed the file in December, 2024. The applicant has not told the court at what point the suit land became trust property whereas in 2024 she sought to have the whole of it devolve to her sister as an absolute proprietor. She is content faulting the succession court for holding that the suit land did not form part of the free assets of the late Ntaari. As a matter of interlocutory observation, a perusal of the extract of the land register which the applicant exhibited supports the view which the succession court took because the suit land was (and/is) registered in the name of M'Arimi and was not available for distribution as a free asset of the late Ntaari.
- 13.** Thirdly, at this interlocutory stage, the applicant has not demonstrated that the suit land belonged to her late father and that they have all along occupied it. On their part, the respondents are emphatic that the late Ntaari occupied parcel number Ntima/Ntakira/331 and that him and all his deceased children were buried on parcel number 331 upon their demise.
- 14.** Fourthly, the applicant alleged that the suit land was registered in the name of M'Arimi to the exclusion of Ntaari in 1965 because the latter was a minor at that time. Despite the respondent contesting the above allegation and

asserting that the late Ntaari was an adult married man in 1955 and in 1965, the applicant did not bother to tender interlocutory evidence demonstrating that, indeed, the late Ntaari was a minor in 1955 or in 1965. Lastly, the suit land has been in the name of the late M'Arimi for the last 60 years. The applicant has not explained why the late Ntaari never bothered to end the alleged trust. The totality of the foregoing is that the applicant has not demonstrated a prima facie case with a probability of success.

- 15.** Has the applicant demonstrated the likelihood of irreparable damage that may not be indemnifiable through an award of damages? I do not think so. In the absence of clear demonstration of *locus standi*; and given the preceding background that is littered with falsehoods presented to the succession court by the applicant, I do not think the applicant has demonstrated that she has a legitimate interest in the suit land anchored on a trust and that she stands to suffer irreparable damage in the event the interlocutory injunction is declined.
- 16.** Similarly, the balance of convenience does not favour granting injunctive orders to a litigant who has, not too long ago, gone to a court of law to secure succession orders on the basis of a sharply contrasting set of facts relating to ownership and devolution of the very suit land.
- 17.** The result is that the application dated 26/9/2025 is rejected and dismissed for lack of merit. In tandem with the general principle on costs – that costs follow the event, the applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT MERU THIS 11TH DAY
OF MAY, 2026.**

**B M EBOSO [MR]
JUDGE**

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