



**Karani & 2 others v Karani & 2 others; Murage & another (Intended Defendant)
(Environment and Land Case 5 of 2018) [2025] KEELC 5341 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5341 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE 5 OF 2018**

JM MUTUNGI, J

JULY 17, 2025

BETWEEN

JAMES KARIUKI KARANI 1ST PLAINTIFF

PETERSON KARANI NYAWIRA 2ND PLAINTIFF

JOHN WANJOHI KARANI 3RD PLAINTIFF

AND

MAINA KARANI ALIAS SIMON MAINA KARANI 1ST DEFENDANT

JOHN MURIITHI MUTHII 2ND DEFENDANT

CHRISTOPHER MATHENGE WAHOME 3RD DEFENDANT

AND

PATRICK GITHINJI MURAGE INTENDED DEFENDANT

**LAND REGISTRAR KIRINYAGA THROUGH THE ATTORNEY
GENERAL INTENDED DEFENDANT**

RULING

1. Before me for determination is a Notice of Motion application dated 26th September 2024 brought under Articles 159(2)(b) of *the Constitution*, Sections 1A, 1B, 3A and 3B of the *Civil Procedure Act* and Orders 1 Rule 10(2), and Order 8 Rule 3(5) of the Civil Procedure Rules. The Plaintiffs seek orders to:
 1. Join Patrick Githinji Murage and the Land Registrar, Kirinyaga, as parties to this suit.
 2. Strike out the 2nd Defendant.
 3. Be granted leave to amend their plaint.



4. Secure a temporary injunctive relief against Patrick Githinji Murage over Land Parcel Mwerua/Kagioni/1135;
 5. Restrict any dealings or transfers over the said parcel;
 6. Obtain any further relief the Court may deem just;
 7. Have the costs of the application in the cause.
2. The application is supported by the affidavit of Peterson Karani Nyawira, the 2nd Applicant, sworn on 27th September 2024. He deponed that Land Parcel No. Mwerua/Kagioni/177 was originally held in trust by the 1st Defendant for the family, following the death of Karani Kubunya, the family patriarch, before the conclusion of the adjudication process. A judgment in SRMCC No. 146 of 1989 mandated subdivision, granting 0.5 acres to Agnes Micere, the grandmother of the 2nd Applicant.
 3. He further deponed that the 1st Defendant subdivided the land into various parcels, namely Mwerua/Kagioni/1135, 1136, and 1137, with Mwerua/Kagioni/1135 being earmarked for Agnes Micere. However, this parcel was never transferred to her name. The deponent averred that he and his sister were born and raised and continue to reside on the land where their mother and grandmother are also buried.
 4. The 2nd Applicant further averred that the 1st Defendant unlawfully sold the suit parcel to the 3rd Defendant without their knowledge and/or consent who in turn sold the same to the Intended 4th Defendant. Attempts to register a caution were futile, allegedly due to the refusal of the Intended 5th Defendant, the Land Registrar to accept the caution. The Applicants thus pray for injunctive relief and joinder of the new parties to enable full adjudication of the dispute.
 5. The 1st Respondent filed a Replying Affidavit dated 29th October 2024, opposing the application. He deponed that the Applicants initiated this claim while another case was still ongoing against the same parties being Kerugoya Civil Suit No. 191 of 2012. He stated that the 1st Applicant was ordered to be evicted in that suit and noted that no Appeal was filed against that order. He averred that this suit was res judicata because it involved the same parties and the same subject matter, and a Court of competent jurisdiction had finally determined the issues.
 6. Regarding the joinder of the Land Registrar, he averred that no relief was being sought against the Registrar's Office and that the Applicants did not identify any specific act or omission by the Registrar. Concerning the proposed amendments, the 1st Respondent asserted that the Plaintiffs did not disclose the nature of the intended amendment, making it impossible to evaluate the impact of the amendment on the case. The 1st Respondent further contended that the Plaintiffs were attempting to enforce a decree issued in 2002, which was now barred by statute.
 7. The 2nd Applicant filed a Further Affidavit sworn on 4th November 2024 where he clarified that Kerugoya Civil Suit No. 191 of 2012 involved different parties and different issues from the ones raised in the present suit. He deponed that the 3rd Defendant instituted the suit against the 1st Defendant for a refund of Kshs. 250,000 in relation to a sale agreement and further reiterated that he and his sister reside on the suit land, and the Respondent's attempt to exclude the Land Registrar from proceedings raised suspicion, given the Registrar had not filed any objection to joinder. He asserted that joining all necessary parties and amending the pleadings would assist the Court in determining the real issues in dispute and ensure a just resolution without prejudice to the Respondents.
 8. The 2nd Applicant also filed a Supplementary Affidavit sworn on 22nd November 2024 where he elaborated on the historical background and the nature of the current dispute. He averred that the



Applicants filed this suit in pursuit of the enforcement of the Judgment issued in SRMCC No. 146 of 1989, which the 1st Defendant had allegedly defied. He stated that the dispute involved more than just Land Parcel No. Mwerua/Kagioni/1135, but also Parcels Nos. 1136 and 1137, all of which originated from the original trust land. He added that the 1st Defendant sold his share (Parcel No. 1134) and had now turned to disposing of the rest of the trust land in disregard of the interest of the beneficiaries entitled to the land. He further stated that efforts to resolve the matter amicably had failed despite recommendations from the Deputy County Commissioner, who recommended revocation of titles issued in contravention of the 1989 Court order. He maintained that joining the Intended Defendants and allowing the amendment would ensure a comprehensive determination of the entire dispute.

9. The Court on 26th February 2025 directed that the application be canvassed through written submissions. The Applicants filed their written submissions dated 13th March 2025. They submitted that the two Intended Parties Patrick Githinji Murage and the Land Registrar, Kirinyaga ought to be joined to the suit as their participation would assist the Court in obtaining all relevant and necessary information for effective adjudication of the dispute. They noted that all parties, including the intended parties, were duly served with the application, and only the 1st Respondent opposed the joinder.
10. The Applicants further submitted that the suit has not proceeded to full hearing, and no party would suffer prejudice if the Court were to grant them leave to amend the plaint. On the issue of locus standi, the Applicants submitted that the 2nd Applicant, with the consent of some beneficiaries of the estate of the late Agnes Micere, had filed an application in Kerugoya High Court Succession Cause No. E007 of 2025 seeking Letters of Administration ad Litem to regularise representation in this suit.
11. In response to the argument that the suit was res judicata, the Applicants submitted that the claim must be strictly proved, and that the 1st Respondent ought to have raised it by way of a formal Preliminary Objection, which he did not do. They maintained that Kerugoya Civil Suit No. 191 of 2012 did not involve the same parties or issues as the current suit, and that the previous case was based on a refund of purchase price arising from a sale agreement unlike the present claim, which is rooted in a customary trust where the Plaintiffs claim to be entitled as beneficiaries.
12. On the issue of temporary injunction, the Applicants argued that they had demonstrated a prima facie case with a likelihood of success, and that the 2nd Applicant and his sister who reside on the land with their families risked being rendered destitute if injunctive relief was not granted. They emphasized that this would constitute irreparable harm, especially given the burial of family members on the land and their long-term occupation and possession of the suit land.
13. In support of the prayer for injunction, they relied on the following authorities:
 1. *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 – which lays down the foundational three-part test for interlocutory injunctions.
 2. *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court reaffirmed that an Applicant must satisfy all three conditions: prima facie case, irreparable harm, and balance of convenience.
 3. *Onyango v Lessonet (ELC E002 of 2020)* [2022] KEELC 2224 (KLR) which reaffirmed the application of the *Giella* principles in land disputes involving possession and potential eviction.
14. The 1st Respondent filed his written submissions dated 28th February 2025, asserting that the case was res judicata because it involved the same subject matter and parties as in Kerugoya CMCC 191 of 2012. The 1st Respondent argued the Applicants were in effect using this case as an Appeal against the orders



issued by the Magistrate's Court on 26th January, 2021 without filing a formal Appeal. Additionally, the 1st Respondent pointed out that the Applicants are attempting to litigate on behalf of a deceased person's estate without having obtained a grant of letters from the Court, and therefore lacked legal standing (*locus standi*) to do so. The Respondent further contended that the prayer for a temporary injunction had not satisfied the threshold established in the precedent setting case of *Giella v. Cassman Brown & Co. Ltd (1973) EA 358* for grant of temporary injunction. He contended that the Applicants had not demonstrated any irreparable loss they would suffer, as they had not appealed the lower court's orders. Finally, he contended that the Applicants were trying to enforce a decree issued over 12 years ago, which is now unenforceable.

15. I have considered the Notice of Motion application, the Replying Affidavit, the Applicants' Further and Supplementary Affidavits, and the parties' written submissions. The following issues arise for determination:
1. Whether the suit is *res judicata*
 2. Whether the Applicants have *locus standi*
 3. Whether the intended parties should be joined to the suit
 4. Whether the Applicants should be granted leave to amend the Plaintiff.
 5. Whether a temporary injunction should issue.

Whether the suit is *res judicata*

16. The 1st Respondent argues that this suit is *res judicata*, having been previously determined in *Kerugoya CMCC No. 191 of 2012*. He contends that the subject matter and parties are substantially the same, and that the Applicants particularly the 1st Applicant, James Kariuki are effectively relitigating a matter that a competent Court had finally determined.
17. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya provides that: -
- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
18. The prerequisite factors before the *res judicata* principle can apply are conjunctive as clarified in the Case of *IEBC v Maina Kiai & 5 Others [2017] eKLR*, where the Court of Appeal held that:-
- “Thus, for the bar of *res judicata* to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms: The suit or issue was directly and substantially in issue in the former suit. That former suit was between the same parties or parties under whom they or any of them claim. Those parties were litigating under the same title. The issue was heard and finally determined in the former suit. The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
19. The Applicants argue that the previous suit involved different parties and was basically a buyer versus seller dispute between the 3rd Defendant and the 1st Applicant regarding a refund of purchase price.



20. Whereas the 1st Applicant, James Kariuki Karani was a party in Kerugoya CMCC No. 191 of 2012 as a Defendant, the Court has not had the benefit of perusing the pleadings and/or the Judgment in the said suit to ascertain what issues were raised and determined by the Court in the suit; as they were not furnished by the parties. The 1st Applicant asserts in the said earlier suit, the issues related to refund of purchase price and did not touch on beneficial ownership and/or customary trust which is the main issue in the instant suit. The 2nd and 3rd Applicants were definitely not parties in the earlier suit and they have distinct claims as against the Defendants and would not in any event be barred by the doctrine of res judicata. In the premises it is my determination that the 1st Respondent has not demonstrated that the doctrine of Res judicata would be applicable in the instant case and I disallow the objection on this ground.

Whether the Applicants have Locus Standi

21. The 1st Respondent argues that the Applicants lack locus standi as they purport to litigate on behalf of the estate of Agnes Micere Karani without a grant of Letters of Administration.
22. Locus standi is the right to bring an action before the Court. Locus standi is defined in Black's Law Dictionary, 9th Edition, page 1026 as:-
- “The right to bring an action or to be heard in a given forum.” In the case of Alfred Njau and Others ..Vs.. City Council of Nairobi (1982) KAR 229, the Court held that:-
- “The term Locus Standi means a right to appear in Court and conversely, to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings.”
23. The Applicants have argued that they should not be blocked from litigation as they have applied for Letters of Administration in the Succession Court. Where a party brings a suit on behalf of a deceased person's estate, they must be clothed with legal authority through a grant of Letters of Administration. A grant of Letters obtained after the suit has been instituted cannot however cure a defect of lack of capacity as at the time of filing the suit.
24. The suit land, though earmarked for Agnes Micere by a Court order and in SRMCC No. 146 of 1989, was never registered in her name and therefore does not form part of her free property. Thus, the claim is not strictly under succession law but is anchored in customary trust, under which the Applicants claim beneficial interest as descendants and long-term occupants of the trust land.
25. This distinction is significant. A claim of beneficial interest based on a customary trust can be brought by persons who have a legitimate interest in the land, even in the absence of formal representation of the estate. The Supreme Court in *Isack M'Inanga Kiebia v Isaaya Theuri M'Lintari & Another* [2018] eKLR recognized the enforceability of customary trusts under Kenyan Law and set out a criteria of who qualifies to institute a claim under customary trust and the Applicants easily qualify to be persons who can claim under customary trust.
26. In the present case, the 2nd Applicant and his sister have claimed that they were born and reside on the suit land. They argue that their mother and grandmother are buried on the said suit land. If proved, this occupation and family lineage gives them sufficient interest to claim a customary trust. I find that the Applicants, have locus standi to maintain this suit on their own behalf.



Whether the intended parties should be joined to the suit

27. The Applicants seek to join Patrick Githinji Murage, the current registered owner of Mwerua/Kagioni/1135, and the Land Registrar, Kirinyaga. The 1st Respondent opposed the joinder of the Land Registrar but did not contest the joinder of Patrick Githinji.

28. Under Order 1 Rule 10(2) of the Civil Procedure Rules, the Court may add a party to a suit whose presence is necessary to enable the Court to effectively and completely adjudicate upon and settle all questions involved. The full text of the Rule provides as follows: -

The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

29. Under Order 1 Rule 3 of the Civil Procedure Rules, a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows: -

All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.

30. In the Case of Civicon Ltd v Kivuwatt Ltd & 2 Others [2015] eKLR, the Court of Appeal held that joinder is proper where the presence of a party would assist in determining the real issues in dispute and avoid multiplicity of suits.

“Again, the power given under the Rules is discretionary, which discretion must be exercised Judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience, and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the Court may allow the joinder of a party as a Defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the Plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

31. The Court in Joseph Njau Kingori v Robert Maina Chege & 3 Others (2002) eKLR formulated the guiding principles in considering whether to allow joinder of an Intended Party as follows: -

1. “He must be a necessary party.
2. He must be a proper party.



3. In the case of the defendant there must be a relief flowing from that Defendant to the Plaintiff.
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”
32. In the present case, the official search shows that Patrick Githinji is the current registered proprietor of the suit parcel. Any determination on the validity of the sale or the existence of a customary trust over the parcel will necessarily affect his interests. He is thus a necessary party. The Land Registrar, of necessity would be required to give effect to any orders that the Court may issue affecting the land in question. Though the joinder or non joinder of the Land Registrar would materially not affect the conduct of the suit his joinder could be useful as he is the custodian of the Land Records and his presence could facilitate the production of any necessary documents.

Whether leave to amend the Plaintiff should be granted

33. The Applicants seek leave to amend their Plaintiff to reflect the correct parties and incorporate developments that may have occurred since the filing of the suit.
34. Order 8 Rules 3 of the Civil Procedure Rules provides for amendment of pleadings with leave of Court as follows: -
1. Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the Court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
35. Order 8 Rule 5 of the Civil Procedure Rules on amendment of pleadings provides:-
1. For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the Court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.
 2. This rule shall not have effect in relation to a judgment or order.
36. In the Case of *Bosire Ogero v Royal Media Services* [2015] eKLR, the Court held that amendments should be freely allowed where they are necessary for determining the real issues in controversy, provided they do not prejudice the opposing party. The Court held that:
- “In *Bullen Leak and Jacobs Precedents of Pleadings*, 12th Edition page 127 titled “amendment with leave to amend” “it is stated that the power to grant or refuse leave to amend a pleading is discretionary and is to be exercised so as to do what justice may require in the particular case, as to costs or otherwise. The power may be exercised at any stage of the proceedings and accordingly amendment may be allowed before or at the trial or after trial or even after judgment or an Appeal. As a general rule, however, the amendment is sought to be made, it should be allowed if it is made in good faith and if it will not do the opposite party any harm, injury or prejudice him in some way that cannot be compensated by costs or otherwise.”
37. The draft Amended Plaintiff dated 25th November 2024 annexed to the Supplementary Affidavit of the 2nd Applicant introduces the new party and reflects additional prayers sought by the Applicants. It does not fundamentally alter the cause of action or introduce a new claim. It is my finding that the



amendments are necessary and were made in good faith and I exercise my discretion to grant leave to amend the Plaintiff.

Whether a temporary injunction should issue

38. The Applicants seek an injunction to preserve Mwerua/Kagioni/1135, pending hearing and determination of the suit. They argue that they have resided on the land since birth, and their mother and grandmother are buried there. The 1st Respondent has sold the land without their consent, and eviction looms.
39. The test for granting an interlocutory injunction was well established in the case of *Giella v Cassman Brown* [1973] EA 358 and refined in the case of *Nguruman Ltd v Jan Bonde Nielsen* [2014] eKLR: The factors/conditions to consider are:-
1. Establishment of a prima facie case;
 2. Proof of irreparable harm that cannot be compensated by an award of damages;
 3. Where in doubt, the balance of convenience.
40. On the first limb, the Applicants have demonstrated that they have been in occupation of the suit land being ancestral land and have pleaded a claim based on customary trust. They have annexed evidence of a 1989 Court order allocating the land to their grandmother. The dispute, as framed, raises legitimate legal and factual questions deserving of trial.
41. On the second limb, eviction of the Applicants would displace the Applicants from the land together with their families and that would occasion irreparable loss/injury which would not be compensable in damages.
42. As regards the final limb, the Respondents have not shown what prejudice they would suffer if the status quo is preserved. The Applicants, on the other hand, face the risk of losing their only known home. It is my finding that all three limbs required to be demonstrated for grant of a temporary injunction have been satisfied and an order of temporary injunction is merited.

Final orders

1. The suit is not res judicata.
2. The Applicants have locus standi to institute the suit.
3. Patrick Githinji Murage and Land Registrar are ordered to be joined as the 4th and 5th Defendants respectively.
4. The Plaintiffs are granted leave to amend and file and serve the Amended Plaintiff within 21 days from the date of this Ruling; and that the Defendants will have liberty to amend their respective defences.
5. A temporary injunction is hereby issued restraining the 4th Defendant or his agents from dealing with land parcel No. Mwerua/Kagioini/1135 in any manner adverse to the Plaintiffs occupation and possession, pending the hearing and determination of the suit.
6. The Costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY OF JULY 2025.

J. M. MUTUNGI



ELC JUDGE

