



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gachoka v Mwita & 3 others (Environment & Land Case  
E032 of 2023) [2024] KEELC 4575 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4575 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E032 OF 2023**

**BM EBOSO, J**

**JUNE 6, 2024**

**BETWEEN**

**STEPHEN GACHANJA GACHOKA ..... PLAINTIFF**

**AND**

**ANDREW NDUNGU MWITA ..... 1<sup>ST</sup> DEFENDANT**

**GABRIEL MWANGI MUTTA ..... 2<sup>ND</sup> DEFENDANT**

**STEPHEN WAITHAKA MUTTAH ..... 3<sup>RD</sup> DEFENDANT**

**HENRY NJUGUNA MUTTA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff, Stephen Gachanja Gachoka, initiated this suit through a plaint dated 31/8/2023. Together with the plaint, he brought a notice of motion of even date, seeking an order inhibiting dealings in the land register relating to land parcel number Ruiru West Block 1 [Githunguri]/780 [referred to in this ruling as “the suit land”]. In addition, he sought an interlocutory injunctive order restraining the defendants against trespassing on the suit land. The said application dated 31/8/2023 is the subject of this ruling. The defendants opposed the application.
2. The plaintiff’s case is that he is the legitimate proprietor of the suit land, which measures approximately 0.0562 of a hectare. He contends that he acquired the suit land in 1976 through purchase of shares in Githunguri Constituency Ranching Company Limited [referred to in this ruling as “the Company”]. He adds that subsequent to acquiring shares in the company, a balloting exercise was carried out by the company, pursuant to which he was allocated the suit land.
3. It is the plaintiff’s case that he was subsequently issued with “a freehold title” relating to the suit land on 31/3/2008. He adds that in 2014, two persons whom he identifies as Dennis Muchiri Wambui and Francis Mwangi Kinuthia, approached him and offered to assist him convert the title from freehold



to leasehold. He contends that he subsequently gave his original title to the duo. There was no communication from the duo for months, prompting him to report loss of the title at Ruiru Police Post. He adds that he made a second report at Ruiru Police Station on 31/5/2022. It is the plaintiff's case that a search obtained from the Land Registry on 1/7/2022 revealed that his title did not exist. He adds that perusal of records at the Land Registry revealed that the register relating to the suit land had been opened on 17/9/2015 and the land had been registered in the joint names of the four defendants on the same day. He contends that the circumstances leading to the registration of the defendants as proprietors of the suit land is a well-choreographed move aimed at defrauding him.

4. It is the position of the plaintiff that he was at all material times the registered proprietor of the suit land and that he neither sold nor transferred the land to the four defendants. He contests the defendants' title, contending that it was obtained irregularly through a choreographed move aimed at defrauding him. Lastly, the plaintiff contends that unless the above interlocutory orders are granted, "the defendants' illegal proprietorship of the suit property will continue and it will cause a great travesty of justice, irreparable harm and untold prejudice" to him, adding that it will render the suit nugatory.
5. The defendants opposed the application through a replying affidavit sworn on 4/12/2023 by Henry Njuguna Muita (the 4<sup>th</sup> defendant). The case of the four defendants is that they are biological sons of the late Joseph Muita Kiongo who died in November 2008. They contend that their late father was allocated the suit land by M/s Githunguri Constituency Ranching Company Limited after buying shares from one Monica Nyambura Kamanu, adding that Monica inherited the shares from her deceased husband, one Kamomo Mbuthia. They further contend that the plaintiff's claim over the suit land was considered by the company and the company established that they [the defendants] were the legitimate owners of the suit land, after which the company processed the defendants' title.
6. The defendants fault the plaintiff for not joining the Land Registrar and the company as parties to this suit, adding that the application does not meet the threshold for an interlocutory injunction. They urge the court to reject the application.
7. The application was canvassed through written submissions dated 16/2/2024 through M/s Kahindo & Company Advocates. The defendant filed written submissions dated 26/2/2024 opposing the application.
8. I have considered the application, the response to the application and the parties' respective submissions. The single question to be answered in this ruling is whether the application meets the criteria for grant of interlocutory injunctive reliefs.
9. The relevant criteria was outlined in *Giella v Cassman Brown Co Ltd* (1973)EA 358. First, the applicant is required to demonstrate a *prima facie* case with a probability of success. Second, the applicant is required to demonstrate that in the event that the interlocutory relief is not granted, he would stand to suffer injury for which indemnification through award of damages may not be adequate. Thirdly, in the event that the court has doubts on both or either of the above, the application should be disposed based on the balance of convenience. Lastly, at the stage of disposing the plea for an interlocutory injunctive relief, the court does not make conclusive or definitive pronouncements or definitive findings on the key issues in the dispute. Conclusive and definitive findings are reserved for determination after trial.
10. The plaintiff has come to court waving copy of what he calls a freehold title that he contends was issued to him on 31/3/2008. He alleges that he gave the original title to two men, Dennis Muchiri Wambui and Francis Mwangi Kinuthia. The two men had allegedly promised to assist him "convert the title to freehold". He has, however, not presented any evidence relating to the registration that culminated in his proprietorship of the suitland. Neither a certified copy of the relevant land register nor a single



document relating to the registration were exhibited. The land register he exhibited shows that, it was opened in the names of the defendants in 2017.

11. That is not all. Whereas he alleges that he was defrauded his original title by two men whom he identifies, he has elected not to join the two identified men as defendants in this suit. He has also elected not to join the Land Registrar and the company that owned the subdivision scheme as defendants in the suit.
12. On their part, the defendants trace the origin of their title to Githunguri Constituency Ranching Company limited. They have exhibited share certificates, a title deed, a subsequent lease and a subsequent certificate of lease. They have also exhibited a clearance by the company, dated 5/6/2015, authorizing the Land Registrar to issue a title to them.
13. At this interlocutory stage, taking the above circumstances and evidence into account. I do not think the plaintiff has demonstrated a *prima facie* case with a probability of success.
14. Secondly, the court's evaluation of the plaintiff's application in the context of the second limb of the principle in *Giella v Cassman Brown* is that, if indeed the plaintiff had a genuine title to the suit land, he has, for reasons that are known to him, elected not to join as defendants, key parties who should be answering his claim. These are: (i) the two identified men whom he alleges to have given the original title; and (ii) the company that owned the subdivision scheme; and the Land Registrar who is alleged to have issued a duplicate title fraudulently. In their absence, and taking into account the defendant's evidence at this interlocutory stage, the defendants cannot be reasonably be considered to be the people who are exposing the plaintiff to irreparable injury.
15. For the above reasons, the court has no doubt on either the first or the second limbs of *Giella v Cassman*. It is clear to the court that, through his decision not to join, as defendants, key parties who would be answering his claim, the plaintiff has failed to satisfy the first and second limbs of the requirements in *Giella v Cassman Brown Co Ltd (1973)EA 358*.
16. The result is that the application dated 31/8/2023 is rejected for lack of merit. The plaintiff shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6<sup>TH</sup> DAY OF JUNE 2024**

**B M EBOSO**

**JUDGE**

In the Presence of:

Mr Were for the Plaintiff/Applicants

No appearance for the Defendants

Court Assistant: Hinga

