



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Gachango v Kihui & 3 others (Land Case E083 of 2024)  
[2025] KEELC 659 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
LAND CASE E083 OF 2024  
BM EBOSO, J  
FEBRUARY 14, 2025**

**BETWEEN**

**JAMES KIHUI GACHANGO ..... PLAINTIFF**

**AND**

**WILFRED GACHANGO KIHUI ..... 1<sup>ST</sup> DEFENDANT**

**DAVID MUNYAMBU NJERI ..... 2<sup>ND</sup> DEFENDANT**

**PETER WAWERU ..... 3<sup>RD</sup> DEFENDANT**

**THE REGISTRAR OF LAND, KIAMBU ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff initiated this suit through a plaint dated 21/5/2024. He sought the following verbatim reliefs against the defendants in the plaint:
  1. That a temporary injunction do issue restraining the defendants by themselves, their servants, shareholders, employees, agents or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the plaintiff's/applicant's peaceful occupation of property known as Chania/Kairi/242 and title numbers Chania/Kairi/1845, Chania/Kairi/1846, Chania /Kairi 1847 situated at Gatundu, Kiambu County pending the inter parties hearing of this application.
  2. That a temporary injunction do issue restraining the defendant by themselves, their servants shareholders, employees, agents or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the plaintiff's/applicant's peaceful occupation of known as title numbers Chania Kairi/242 and the title numbers Chania/



Kairi/1845, Chania/Kairi/1846, Chania/Kairi/1847 situated at Gatundu, Kiambu County pending and determination of this suit,

3. The plaintiff/applicant be declared as the lawful exclusive owner of property known as title number Chania/Kairi/242 situated at Gatundu, Kiambu County pending (sic);
  4. That title number Chania/Kairi/1845, Chania/Kairi/1846, Chania/Kairi/1845 situated at Gatundu be and is hereby cancelled/rectified;
  5. That Officer Commanding Station, Gatundu Police Station to provide assistance to ensure compliance of orders 2 and 3 above
  6. That of the suit be borne by the defendants (sic)
  7. Any other relief the court deems fit to grant
2. Together with the plaint, the plaintiff brought a notice of motion dated 21/5/2024 seeking the following verbatim reliefs:-
1. That this application be certified as urgent, service be dispensed with and the same be heard ex-parte at the first instance.
  2. That a temporary injunction do issue restraining the defendants/respondents by themselves, their servants, shareholders, employees, agents, or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the plaintiff's/applicant's peaceful occupation of property known as Chania/Kairi/242 and title number Chania/Kairi/1845, Chania/Kairi/1846, Chania/Kairi/1847 situated at Gatundu Kiambu County pending the interparties hearing of this application;
  3. That a temporary injunction do issue restraining the defendant/respondent by themselves, their servants, shareholders, employees, agents or otherwise howsoever from selling, leasing, charging, pledging, trespassing, encroaching, evicting, demolishing, conveyance, transfer, arbitrary registration or in any other manner interfering with the plaintiff/applicant's peaceful occupation of known as Title number Chania/Kairi/242 and title numbers Chania/Kairi/1845, Chania/Kairi/1846, Chania/Kairi/1847 situated at Gatundu Kiambu County pending and determination of this suit
  4. The plaintiff/applicant be declared as the lawful exclusive owner of property known as title number Chania/Kairi/242 situated at Gatundu, Kiambu County pending,
  5. That Officer Commanding Station, Gatundu Police Station to provide assistance to ensure compliance of Orders 2 and 3 above
  6. That the costs of the application be borne by the defendant/respondents
3. The above notice of motion dated 21/5/2024 is the subject of this ruling. The application was premised on the grounds set out in the motion and in the plaintiff's supporting affidavit dated 21/5/2024. It was canvassed through written submissions dated 30/10/2024, filed by M/s Githui & Partners Advocates. In summary, the applicant's case is that the 1st defendant is his nephew, born by his late sister, Ruth Wamuu Gachango [hereinafter referred to as "the late Ruth"]. The second and 3rd defendants are third parties who purchased subdivisions out of land parcel number Chania/Kairi/242.
4. The plaintiff contends that land parcel number Chania/Kairi/242, measuring approximately 7.8 acres, devolved to him from their mother, to hold in trust for his siblings. He was accordingly registered



as proprietor of the land and he still holds the original title relating to the land. It is his case that in 1993, his sister, the late Ruth, sued him in Kiambu CMC Civil Case No. 531 of 1993 seeking an order decreeing him to transfer to her 5.10 acres out of Chania/Kairi/242. The said case was heard by the Kiambu Principal Magistrate Court [Hon F Muchemi, as she was then] which subsequently rendered a Judgment on 1/3/1994 in favour of the late Ruth. The Kiambu Principal Magistrate Court decreed him to transfer to the late Ruth 5.1 acres out of land parcel number Chania/Kairi/242.

5. The applicant adds that Chania/Kairi/242 was subsequently subdivided on the basis of the decree and orders obtained by the late Ruth in Kiambu CMC Civil Case No 531 of 1993. It is the applicant's case that the late Ruth wilfully misled the Court in Kiambu CMC Civil Case No. 531 of 1993 that he [the applicant] had withheld title documents relating to the suit land. He adds that he was aware of the decree and the subsequent orders in Kiambu CMC Civil Case No. 531/1993 and he instructed his advocate to lodge an appeal against the decisions. He later learnt that his advocate died.
6. The applicant further contends that in 2023, the 1st defendant initiated Gatundu SPMC Misc E&L Case No. E005/2023 against him in which he obtained an order vacating a restriction which he (the applicant) had placed against one of the subdivisions, namely, Chania/Kairi/1847, adding that the respondents have commenced to mark boundaries following orders issued in Gatundu SPMC Misc. E&L Case No. E005/2023.
7. The applicant adds that the late Ruth failed to serve him with or notify him about the application that led to the issuance of subdivision orders and the subsequent orders of the Court. He adds that him and his siblings stand to lose should the subdivision process and demarcation proceed. He contends that he is apprehensive the respondents will continue to destroy his structures on the land. He seeks the above orders.
8. The 1st, 2nd and 3rd defendants filed a replying affidavit dated 17/9/2024 and a notice of preliminary objection dated 17/9/2024. He subsequently requested the Court to treat the grounds in the preliminary objection as grounds of opposition. In addition, he filed written submissions dated 4/11/2024.
9. The case of the three defendants/respondents is that subdivision of Chania/Kairi/242 was done pursuant to a decree and orders of the Kiambu Chief Magistrate Court issued in Kiambu CMC Civil Case No. 531/1993. They further contend that if the applicant was aggrieved with the decree or any of the orders issued in Kiambu CMC Civil Case No. 531/1993, he had the right of appeal but he elected not to exercise that right, adding that the applicant's right of appeal is now statute-barred. They add that the applicant's claim is res judicata and an abuse of the process of the Court. They urge the Court to reject the application.
10. The Court has considered the application dated 21/5/2024, the response to the application, and the parties' respective submissions. The Court has also considered the relevant legal frameworks and jurisprudence. The key issue that falls for determination in this ruling is whether the application meets the criteria for grant of an interlocutory injunction. I will be brief in my analysis and disposal of the issue. Before I do that, I will make brief observations/remarks on the prayers in the plaint and in the application.
11. The prayers in the plaint and in the application appear to be replicated. I do not understand why a plaintiff would, in the plaint, pray for: (i) a temporary injunction pending the interpartes hearing of the application (sic); and (ii) a temporary injunction..... pending the determination of the suit. Secondly the Court has not comprehended the basis upon which the applicant is, at this interlocutory stage, inviting the court to issue a final order declaring the plaintiff as the lawful owner of the suit land. This



is a relief that can only be granted at the stage of final disposal of the case. The Court will restrain itself from saying more on the framing/drafting of the prayers.

12. Does the application satisfy the criteria for grant of an interlocutory injunction? The relevant criteria was outlined 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. Thirdly, should the court have doubt on both or either of the above two the application should be disposed based on the balance of convenience.
13. Over the years, our superior courts have developed an additional principle relating to pronouncements that should be made 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 the key issues are to be reserved to be made in the judgment or other final disposal of the case.
14. The plaintiff/applicant has invited the Court to grant him interlocutory injunctive orders because he is aggrieved by the decree and orders made in Kiambu CMC Civil Case No. 531/1993. Implementation of the said decree and orders culminated in the subdivision of Chania/Kairi/242. Parcel number Chania/Kairi/1567 was created as a subdivision out of Chania/Kairi/242 and vested in the late Ruth. It does appear from the materials placed before Court that parcel number Chania/Kairi/1567 was subsequently subdivided into Chania/Kairi/1854; 1846; and 1847.
15. The applicant is similarly aggrieved by the decision of the Gatundu SPM Court and wants the court to issue an injunction.
16. The applicant moved this Court by way of an original suit initiated through a plaint. What is before this Court is not an appeal against the Judgment or any of the orders made in Kiambu CMC Civil Case No. 531/1993. What is before this Court is, similarly, not an appeal against the decision made in Gatundu SPMC E&L Case No E005/2023. The applicant wants this Court to exercise its original jurisdiction to injunct the further implementation of a decree issued and substantially implemented/enforced in Kiambu CMC Civil Case No. 531/1993. Without being definitive or conclusive, in my pronouncements, looking at the evidence and pleadings that are before Court, it would appear the proper mechanism for challenging the decree and orders issued in Kiambu SPMC Civil Case No. 531 of 1993 and Gatundu SPMC Misc. E&L Case No. E005 of 2023 is the appeal mechanism. Put differently, based on the availed pleadings and evidence, I do not think the plaintiff/applicant has made out a prima facie case at this point.
17. On irreparable damage, the impugned decree was issued in 1994 and subsequently implemented vide subsequent orders of the Kiambu Senior Principal Magistrate Court issued by Hon Njuguna on 10/5/2001. A title relating to Chania/Kairi/1567 was subsequently issued to the late Ruth on 24/12/2009. The title was closed on subdivision into three parcels on 19/7/2022. All the above happened between 1994 [when the Judgment was rendered] and 2022 [when the 1st defendant subdivided parcel number Chania/ Kairi/1567]. The plaintiff/applicant elected to do nothing. In the circumstances, I doubt that at this point, he can be said to have demonstrated any element of irreparable damage.
18. The balance of convenience favours orderly administration of justice and respect for the dispute resolution mechanisms established by the Country's laws. The law provides an appeal mechanism through which the applicant may ventilate grievances he may have against the Judgment/Decree and other orders of the Lower Courts.



19. For the above reasons, this Court comes to the conclusion that the application dated 21/5/2024 does not meet the criteria for grant of an interlocutory injunction. The application is rejected. In tandem with the principle in Section 27 of the Civil Procedure Act, the applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2025**

**B M EBOSO [MR]**

**JUDGE**

**In the Presence of**

Ms Monyangi holding brief for Mr Githui for the Plaintiff

Mr Muturi Njoroge for the Defendant

Mr. Tupet – Court Assistant

