



Humphrey & 2 others v Nzioka (Being Sued as the Legal Administrator of the Estate of Willy Kahore Wanjiku alias Nicholas Nzioka Ndambuki (Deceased)); Konza Mali Limited & 119 others (Interested Parties) (Environment & Land Miscellaneous Case 108 of 2019) [2025] KEELC 621 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 108 OF 2019**

AA OMOLLO, J

FEBRUARY 13, 2025

BETWEEN

**MARGARET WAMAITHA HUMPHREY 1ST PLAINTIFF
JOHN LLOYD KAMAU HUMPHREY 2ND PLAINTIFF
JOSEPH HENRY WANAINA 3RD PLAINTIFF**

AND

**DENNIS KAHORE NZIOKA DEFENDANT
BEING SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF WILLY
KAHORE WANJIKU ALIAS NICHOLAS NZIOKA NDAMBUKI (DECEASED)**

AND

**KONZA MALI LIMITED & 119 OTHERS & 119 OTHERS & 119
OTHERS INTERESTED PARTY**

RULING

1. In this determination are two applications which are both seeking for injunctive orders amongst other orders to wit; the Defendant’s application dated 5th August 2024 and 1st Plaintiff’s application dated 14th October 2024. They have been merged and heard together due to the similarity of the interim reliefs claimed.
2. The 1st Plaintiff’s notice of motion is dated 14th October 2024 and is supported by her affidavit sworn on the same date. It seeks for the following orders;
 1. Spent



2. This Honourable Court be pleased to join the proposed Juvinda Agency Limited as an interested party to the suit and the application herein.
 3. Spent
 4. That pending the hearing and determination of the suit, this Honourable Court be pleased to grant the Applicant/ 1st Plaintiff a temporary injunction restraining the proposed interested party whether by itself, its agents, servants, assigns, successors or otherwise howsoever from interfering, hindering, entering into, occupying, alienating, offering for sale, regularizing, surveying, encroaching or in any way whatsoever interfering or dealing with the suit property.
 5. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue an order of inhibition directing the Land Registrar for Machakos County to bar registration of any transfer, divisions, charge, mortgage, sale and/or any dealing by the proposed interested party with respect to the suit property.
 6. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue an order directing the Land Registrar for Machakos County to rectify the register by cancellation of any title documents issued in respect of any transfer, divisions, charge, mortgage, sale and/or any dealing by the proposed interested party with respect to the suit property.
 7. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue a permanent order of injunction restraining the proposed interested party whether by itself, its agents, servants, assigns, successors or otherwise howsoever from interfering, hindering, entering into, occupying, alienating, offering for sale, regularizing, surveying, encroaching or in any way whatsoever interfering or dealing with the suit property.
 8. That pending the hearing and determination of the suit and the application herein, this Honourable Court be pleased to issue an order of status quo for purposes of preserving the subject matter of the suit property herein, for case management purposes and in a bid to prevent prejudice from being visited against either party in the suit.
 9. That pending the hearing and determination of the suit, this Honourable Court be pleased to order that the 2nd Plaintiff, 3rd Plaintiff and their appointed Juvinda Agency Limited, the proposed interested party herein, do deliver a true account of the proceeds of the sale and regularization of the legal rights and interests over the suit property.
 10. That pending the hearing and determination of the suit, this Honourable Court be pleased to order the 2nd and 3rd Plaintiffs and their appointed agent Juvinda Agency Limited, the proposed interested party, to pay the 1st Plaintiff such money as shall be due and payable from the proceeds of the sale and regularization of the legal rights and interests over the suit property together with interests thereon at court rates from the dates of sale and regularization to the date of payment in full.
 11. That the costs of the application be borne for.
3. The motion was premised on the grounds inter alia; that at all material times, the Estate of Margaret Wamaitha Humphrey is the legal owner of L.R. Number 1504/7, popularly known as Kathangaita situated at Mlolongo Township, Mavoko Sub-County, Machakos County and the land is here-after referred to as “the suit property.”



4. It is averred that the family of the Defendant is claiming ownership of the suit property based on suspected forged title documents, illegally sub-divided it and sold off the same to unsuspecting members prompting the Estate of Margaret Wamaitha Humphrey to file the present suit.
5. The 1st Plaintiff stated that 2nd and 3rd Plaintiffs who suffer mental disorder through the firm of P. Kibet & Company Advocates wrote to the proposed interested party Juvinda Agency Limited authorizing and mandating it to procure and sell to third parties plots forming part of the suit property. That in the said authority, the firm of P. Kibet & Company Advocates misrepresented that they were duly instructed by the administrator and beneficiaries of the estate of Margaret Wamaitha Humphrey as the vendors.
6. It is the 1st Plaintiff's further contention that the 2nd and 3rd Plaintiffs are persons of unsound mind incapable of appreciating the nature and consequences of sale of the suit property and she shall at the opportune time move the Court to declare the 2nd & 3rd Plaintiffs as persons who are proven mentally disordered. She also avers that the proposed interested party, Juvinda Agency Limited acting on full authority of the mentally ill 2nd & 3rd Plaintiffs have unlawfully and unprocedurally commenced the advertisement, sale, regularization and survey of all plots within the suit property.
7. The 1st Plaintiff argued that the notice published by the proposed interested party advertising the sale, regularization and survey of all the plots is tainted with grave illegalities because the land in question is subject to this ongoing court proceedings which is yet to be determined, hence the publication it goes against the doctrine of lis pendens.
8. Further, that the suit property continues to be sub-divided and subsequently registered by the proposed interested party to unsuspecting 3rd party willing purchasers without the authority and consent of the Applicant and the whole Estate of Margaret Wamaitha.
9. The 1st Plaintiff stated that the proposed interested party, Juvinda Agency Limited should be joined in this suit as an interested party because their presence is necessary to adjudicate effectively and completely the issues in the instant application. That also their presence in the suit and application is necessary to explain to this Court for purposes of clarity and transparency, whether the proven 2nd plaintiff who is mentally ill Administrator of the Estate of Margaret Wamaitha Humphrey, consented and/or is capable of consenting to the Authority giving unlimited powers to sell and receive proceeds of sale and transfer of plots forming the suit property.
10. That Interested Party's presence in this suit is necessary to furnish this Honourable Court with a clear account of all the proceeds of sale received from their illegal sale of plots forming the suit property for the benefit of the proven mentally disordered 2nd and 3rd Plaintiffs and the beneficiaries of the Estate of Margaret Wamaitha Humphrey it will also account for the level and extent on implementation of the authority and instructions. That leaving the proposed interested party out of the suit would result in miscarriage of justice and/or hearing of a separate suit which would be duplication and an abuse of the precious judicial time and resources.
11. She concluded that unless the orders sought in the instant application are granted, the beneficiaries of the Estate of Margaret Wamaitha Humphrey and herself stand to suffer irreparable loss and damage for reason that the advertised and commissioned unlawful actions by the proposed interested party continues to be executed whereas the Applicant has a strong case with high chances of success.



Defendant's Application

12. The Defendant filed the notice of motion dated 5th August 2024 supported with an affidavit and further affidavit sworn by himself on 5th August 2024 and 11th November 2024 respectively. The application is seeking for the following orders;
 1. Spent
 2. Spent
 3. That there be a temporary injunction restraining the Plaintiffs/ Respondents by themselves, their agents, servants or anyone claiming under them from subdividing" selling, transferring, developing and or dealing with all that property known as Land Reference Number 1504/7 Mlolongo" pending hearing and determination of the suit.
 4. That the Title documents for land Reference Number 1504/7 Mlolongo held by the parties herein be deposited in court for custodial keeping pending the hearing and determination of this suit.
 5. That costs be provided for.
13. The motion was based on the grounds inter alia; that the Defendant/Applicant is in this suit by virtue of being the legal administrator of the estate of Willy Kahore Wanjiku Alias Nicholas Nzioka Ndambuki (deceased), having recently substituted the deceased Defendant. He avers that Land Reference Number 1504/7 Mlolongo forms part of the Estate of Willy Kahore Wanjiku Alias Nicholas Nzioka Ndambuki (Deceased) which he has a legal mandate to preserve and administer.
14. That despite the ownership of the suit property having not yet been determined by this court, the Plaintiffs /Respondents have taken quick deliberate steps to alienate the suit property. That with the instant application ongoing, the 2nd and 3rd Plaintiffs/Respondents went ahead to file another matter in a subordinate court seeking orders allowing them to survey and subdivide the suit property under police supervision.
15. The Defendant deposes that on 1st of June 2024 the Plaintiffs/Respondents advertised the suit property for sale on a local daily newspaper and authorized a 3rd party to subdivide and sell the suit property on their behalf. On 31st July 2024 the Plaintiffs/Respondents further requested for security assistance from Mlolongo Police station during a planned survey and subdivision exercise on the said property.
16. That the intended subdivision is bound to create 3rd party rights which will prejudice the determination of the issue of ownership and therefore render this suit an academic exercise noting that survey activities have already commenced with surveyors already on the suit property. The Defendant stated that if the subdivision and sale is to occur, he will be restrained from recovering the piece of land that legally belongs to the Estate he is mandated to preserve and administer.

1st Plaintiff's Replying affidavit

17. The 1st Plaintiff sworn a replying affidavit dated 18th November 2024 affirming that the Estate of Margaret Wamaitha Humphrey is the rightful owner of the disputed suit property. That the Defendant's family claims ownership based on allegedly forged documents, leading to filing of this case. Despite this issue being in court, Juvinda Agency Limited, under alleged misrepresentation by P. Kibet



- & Company Advocates, was authorized to sell portions of the property, even though the Administrator of the Estate, the 2nd Plaintiff, is mentally incapacitated and unable to give legal consent.
18. The 1st Plaintiff highlighted that both the 2nd and 3rd Plaintiffs are of unsound mind thus incapable of managing the estate or authorizing transactions involving the suit property. She stated that medical reports confirming their mental incapacity, reinforces that the authorization granted to Juvinda Agency Limited is invalid, thus the advertised sale, regularization, and/or subdivision of the suit property by Juvinda Agency Limited are illegal, as they exploit the mental condition of the Plaintiffs and disregard the ongoing court case.
 19. The 2nd & 3rd Plaintiffs / Respondents opposed the Defendant's motion vide grounds of opposition dated 22nd October 2024 and a Replying Affidavit sworn by John Lloyd Kamau Humphrey on 22nd October 2024.
 20. The grounds of opposition states that the application is incompetent, misconceived and an abuse of the process of Court. That it lacks merit, made in bad faith with a malicious intention to delay solutions to the illegalities created by the activities of the deceased Defendant hence it should be dismissed.
 21. That no fresh survey is contemplated by the Respondents/Plaintiffs, save that it has become necessary to formalize an illegal survey, sub-division and subsequent fraudulent sale of plots on the suit property after the deceased Defendant (the Applicant's father) grabbed the suit property in 2010, sanctioned illegal survey and sub-division of the suit property into several plots and obtained money from the unsuspecting members of the Public in a purported sale of plots.
 22. That the Respondents have executed sale agreements with the alleged illegal occupants mostly the 1st-100th Interested parties (from whom the Applicant's father obtained money) to legalize their ownership of plots and that the terms of the sale agreements require the Respondents' to conduct survey and formalize sub-division by placing beacons on each plot and to process Title Deeds for each plot.
 23. They stated that save for where the homestead is located and an area leased to the garage owners, the rest of the suit property was sub-divided and sold by the Applicant's father, and as such, there is no more land to sub-divide as alleged by the Defendant. They aver that fear of a likely emergence of 3rd party rights is unfounded because the 1st to the 100th Interested Parties among many others already represent 3rd party rights and the intended formal survey is being undertaken to meet contractual obligations.
 24. The 2nd and 3rd Plaintiffs stated that the proprietary interest expressed by the Defendant/Applicant in the suit property is founded on Crime and that a claim of ownership by the Defendant/Applicant's father was the subject of criminal investigations that culminated in the criminal charges being pressed against the said Nicholas Nzioka Ndambuki Alias Willy Kahore In Mavoko Criminal Case No.747 of 2012.
 25. In the replying affidavit the 2nd Plaintiff/Respondent asserted that the suit property had already been surveyed, subdivided, and sold after the Defendant's deceased father unlawfully seized it in 2010. He further contends that the Defendant/Applicant's claim to the property is based on fraud. He alleges that the suit property was wrongfully included in the Defendant's petition for a Grant of Letters of Administration, despite not being listed in the original schedule of assets.
 26. Additionally, the 2nd Plaintiff/Respondent argued that the Defendant has failed to produce a valid title deed to substantiate his claim. In response to concerns over the involvement of Juvinda Agency, the 2nd Plaintiff justifies their appointment, stating that the agency is assisting in the formalization of ownership for those who recognize Margaret Wamaitha Humphrey as the rightful owner.



27. He dismissed the Defendant's fears that the ongoing survey would create 3rd Party rights, asserting that such rights already exist due to past fraudulent transactions by the Defendant's father.

Submissions

28. In support of the application, the Defendant and 1st Plaintiff filed submissions dated 11th November 2024 and 18th November 2024 respectively while in opposition, the 2nd and 3rd Plaintiffs/Respondents filed submissions dated 19th November 2024.
29. The Defendant submitted that the court has both statutory and inherent powers to grant a temporary injunction under Section 3A of the Civil Procedure Act and Order 40, Rule 1 of the Civil Procedure Rules.
30. That the principles for issuing injunctions, as set out in *Giella v. Cassman Brown* [1973] EA 358, require the Applicant to establish a prima facie case, demonstrate the potential for irreparable harm, and show that the balance of convenience favors the injunction.
31. The Defendant submits that the disputed property has been improperly surveyed and subdivided by the Plaintiffs/Respondents and that allowing further dealings before the final determination of ownership could render the suit futile.
32. In support of the necessity of interim orders to maintain the status quo and prevent injustice, the Applicant cited the case of *Kenya Commercial Finance Co. Ltd v. Afraha Education Society* [2001] eKLR, *Joseph Siro Mosioma v. Housing Finance Company of Kenya Ltd & 3 Others* [2008] eKLR and *Patricia Njeri & 3 Others v. National Museum of Kenya* [2004] eKLR.
33. The Defendant further argues that the 2nd and 3rd Plaintiffs/Respondents have acted in bad faith by attempting to enforce their claims through irregular means, including seeking police assistance and obtaining questionable court orders.
34. That evidence presented shows that they have appointed an agent to sell portions of the disputed land, indicating an intention to dispose of the property before ownership is determined thus, without court intervention, the final ruling may become redundant, as the land could be fully transferred to third parties.
35. That to prevent further unauthorized dealings, the Defendant proposed that all title documents be placed under court custody until the matter is resolved and that granting the preservatory orders would ensure that the legal rights of all parties, including affected third parties, are protected until the case is concluded.
36. On the issue of costs, the Applicant submits that the 2nd and 3rd Plaintiffs/Respondents should bear the costs of the application, as their actions have necessitated unnecessary litigation and in support cited the case of *Joseph Oduor Anode V Kenya Red Cross Society* [2012] EKLR.
37. The 1st Plaintiff submitted that the application has met the legal requirements for a temporary injunction as established in *Giella vs. Cassman Brown and Nguruman Limited vs. Jan Bonde Nielsen*, asserting that the ongoing ownership dispute creates a prima facie case, and that irreparable harm will occur if the injunction is not granted.
38. That evidence has been provided showing that Juvinda Agency Limited, appointed by the 2nd and 3rd Plaintiffs, is actively altering the status of the suit property despite the pending suit which actions violate the Doctrine of Lis Pendens and could cause irreversible damage, affecting not only the Defendant but also the estate's beneficiaries and interested parties. The Plaintiff also submitted that



granting a temporary injunction would be the lesser risk, preserving the property's status quo until the court determines ownership.

39. Regarding the Defendant's request to have the title documents deposited in court, the 1st Plaintiff opposes this measure, arguing that an interim injunction would be sufficient to prevent further illegal transactions and that instead, the Defendant has the option to register a caution or restriction at the Lands Office to protect the suit property.
40. The 2nd and 3rd Plaintiffs/Respondents in opposition submitted that they had engaged the Interested Parties, particularly those who had purchased plots from the late Margaret Wamaitha Humphrey, to formalize their proprietary interests. That the Court had encouraged an amicable settlement and subsequently referred the matter to mediation. However, given the progress made in the negotiations, the parties deemed the mediation process unnecessary and sought the Court's intervention to finalize the regularization of ownership.
41. That over 100 Interested Parties have since committed to legalizing their ownership, with agreements signed and deposits made towards the purchase price. That the process included formal surveying, beacon placement, allocation of title numbers, and issuance of valid title deeds to the buyers.
42. They submit that the Defendant/Applicant has sought an injunction to halt this process, arguing that the Plaintiffs' actions have adversely affected his interests yet the Defendant has no valid proprietary claim over the disputed property because the father had fraudulently acquired and subdivided the land, selling it to unsuspecting members of the public without proper documentation.
43. In addressing the principles governing the grant of an injunction, the 2nd and 3rd Plaintiffs argued that the Defendant has failed to establish a prima facie case and in support cited the case of Dr. Simon Waihero Chege vs Paramount Bank of Kenya Ltd.Nairobi(Milimani)HCCC No.360 of 2001.
44. The 2nd and 3rd Plaintiff also cited the case of Pius Kipchirchir Kogo vs Frank Kimeli tenai (2018) Eklr to submit that on a balance of convenience, denying the injunction would better serve the interests of justice because the Plaintiffs have contractual obligations to the Interested Parties who have committed to legalizing their ownership, and any delay caused by the injunction could lead to financial losses and potential legal disputes.
45. That the inconvenience caused to the Interested Parties and the Plaintiffs far outweighs any potential inconvenience to the Defendant, thus the Defendant has not met the legal threshold for an injunction.

Analysis and determination:

46. I have considered the grounds made in support of the two applications constituted in affidavits and the submissions as well as the replying affidavits and their accompanying annexures, grounds of opposition challenging the grant of the orders sought.
47. After assessment of the facts presented, supported by the evidence tendered it is discernible that both the Defendant's and the 1st Plaintiff's application are seeking for preservation of the suit property. The task placed upon this court is to determine whether or not they have met the criteria set out in the judicial decision of Giella Versus Cassman Brown (1973) EA 358 for the grant of an order of temporary injunction pending the hearing and determination of this suit.
48. There are 120 Interested parties whose interest are tied to the conclusive determination of the ownership dispute of the suit property. The Applicants have accused the 2nd and 3rd Plaintiffs in engaging in activities on the suit property that are likely to have effect on the outcome of this suit. Infact, the said 2nd and 3rd Plaintiffs have not denied appointing a 3rd party to survey or undertake



what they refer to as regularize the illegal subdivisions. The 1st Plaintiff and the Defendant refers to an advertisement place in the local dailies inviting prospective buyers to purchase the suit property.

49. These activities of regularising the so called illegal sub-divisions and sale by the deceased Defendant ought to have been done with consent of all the parties to this suit. I say so because the ownership of the suit land has not been determined either in favour of the Plaintiffs or the Defendant. To make it worse, it appears that the three (3) Plaintiffs are not speaking from the same page as the activities of the regularization and or survey did not involve the 1st Plaintiff. That is evidence of prima facie case and it is therefore prudent for this court to restrain all the parties under this suit from subdividing, selling, transferring, developing and or dealing with the suit property until this case is heard and determined.
50. With regard to a prayer by the Defendant seeking that the title documents for suit property held by the parties herein be deposited in court for custodial keeping pending the hearing and determination of this suit, it did not come out clearly from the pleadings in support of orders as to the exact person who is holding the original Title Deeds/documents in respect to the suit property. In addition, I am not certain that the ELC Civil Registry has provision for keeping custody of documents like we have in the Criminal Registry System for storage of bond documents. Therefore, I am hesitant to grant such an order.
51. Given that there was already an attempt made at advertising the suit property and or survey it is imperative that I grant prayer 5 of the 1st Plaintiff's application for registration of the inhibition on the title to remain in force until the dispute is determined. This is necessary to preserve the records of title at the lands office from interference so that whoever wins is not frustrated while executing the resulting decree.
52. The 1st Plaintiff also asked the Court to join the proposed Juvinda Agency Limited as an interested party to the suit because its presence is necessary to adjudicate effectively and completely the issues in the instant application. That they will explain to this Court for purposes of clarity and transparency, whether the 2nd Plaintiff consented or/and is capable of consenting to the Authority giving unlimited powers to sell and receive proceeds of sale and transfer of plots forming the suit property. The 2nd and 3rd Plaintiffs have admitted in the replying affidavit instructing this 3rd party to act on their behalf to regularize and or survey the plots of the suit property.
53. The general rule in the impleading of parties requires, the joinder of all necessary parties where possible. The test here was enunciated by Nambuye, J (as she then was) in Joseph Njau Kingori v Robert Maina Chege & 3 others [2002] eKLR where it was held that:

“...Necessary parties who ought to have been joined are parties who are necessary to *the Constitution* of the suit without whom no decree at all can be passed. Therefore, in case of a defendant two conditions must be met:

- (1) There must be a right to some relief against him in respect of the matter involved in the suit.
- (2) His presence should be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit being one without whom no decree can be made effectively and one whose presence is necessary for complete and final decision on the questions involved in the proceedings. A proper party is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation which interest will be recognizable in the Court of law being an interest, which the Court



will enforce. A person who is only indicated or commercially interested in the proceedings is not entitled to be added as a party.”

54. Consequently, the 2nd and 3rd Plaintiffs having owned up to the activities that were being done by the party sought to be joined, I do not see the necessity to join the proposed party Juvinda Agency Limited. Further, the pleadings in this suit have not been amended that would result to a decree being issued against the said proposed party. It is also not the proposed party’s duty to appear in court to confirm that indeed the 2nd and 3rd Plaintiffs suffers from a mental disorder. That remains a duty on the 1st Plaintiff who is making the allegation in accordance to section 107 and 109 of the Evidence Act, Cap 80 of the Laws of Kenya.
55. Lastly, the 1st Plaintiff also asked the Court to direct the 2nd and 3rd Plaintiffs to render accounts of the monies received following sale of portions of the suit property. The said Plaintiffs have denied selling so I would not make any such orders for now. If during the future proceedings in this case, there is evidence led of any such sale, this court can be moved appropriately.
56. In light of the foregoing, the court does grant order in terms of prayer 3 sought in the Defendant’s application; and prayers’ 4, 5, 6 and 8 in the 1st Plaintiff’s application. Cost be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

A. OMOLLO

JUDGE

