



**Mugweru & another v Muchai & 5 others (Environment & Land Case E033 of 2024) [2024] KEELC 13947 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13947 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E033 OF 2024  
BM EBOSO, J  
DECEMBER 16, 2024**

**BETWEEN**

**LOISE WAIRIMU MUGWERU ..... 1<sup>ST</sup> PLAINTIFF**

**RUTH WANJIRU MUGWERU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FRANCIS NJAGWI MUCHAI ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET WANJIRU KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**LUCY WAITHIRA KAMAU ..... 3<sup>RD</sup> DEFENDANT**

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED .... 4<sup>TH</sup>  
DEFENDANT**

**THE LAND REGISTRAR, RUIRU LAND REGISTRY ..... 5<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Falling for determination in this ruling is the plaintiffs notice of motion dated 29/2/2024, through which they seek an interlocutory injunction restraining the defendants against constructing on, letting, cultivating or in any other manner interfering with land parcel number Ruiru West Block 1 (Githunguri) /1483, pending the hearing and determination of this suit. The plaintiffs contend that they seek the above order in their representative capacity as the administrators of the estate of the late Simon Mugweru Wathirwa.
2. The case of the plaintiffs is that land parcel number Ruiru West Block 1 (Githunguri) /1483 [referred to in this ruling as “the suit land”] belongs to the late Simon Mugweru Wathirwa [referred to in this ruling as “the deceased”] who acquired it from M/s Githunguri Constituency Ranching Company



- in the 1960s. They contend that the defendants colluded and caused the suit land to be registered in the name of Margaret Wanjiru Kamau [the 2nd defendant] in 2002 and Margaret Wanjiru Kamau subsequently transferred the land to Lucy Waithira Kamau in 2017. It is the case of the plaintiffs that they learnt of the 1st defendant's illegal possession and trespass onto the land in 2020.
3. The plaintiffs contend that the sale agreement dated 23/9/1993 which the 1st defendant relies on as evidence of sale of the suit land to him by the deceased, and the cheque which the 1st defendant is relies on as evidence of payment of purchase price to the deceased bear "glaring fraud". They contest the sale. They add that the succession cause relating to the estate of the deceased, to wit, Succession Cause No 525 of 1997 is pending hearing and determination.
  4. The 1st defendant opposed the application through a replying affidavit dated 12/3/2024. His case is that he purchased the suit land from the deceased in 1993 at a purchase price of Kshs 130,000 through a sale agreement dated 23/9/1993. He paid the agreed purchase price through a cheque dated 23/9/1993. He adds that the payment was done at National Bank of Kenya, Harambee Avenue Branch, and was "seen over" by the deceased's daughter who worked at the Bank at the time. It is the 1st defendant's case that upon acquiring the land from the deceased, the deceased caused the 4th defendant to issue to him a share certificate. He contends that he took possession of the land in 1993 and erected semi-permanent rental houses on it. He subsequently transferred the land to the 2nd defendant in 2002. In 2017, the 2nd defendant transferred the land to the 3d defendant. Lastly, the 1st defendant states that the deceased was introduced to him by his son, Mr Weru, with whom he schooled in Baptist High School, Karatina in 1974.
  5. The 3rd defendant filed a replying affidavit dated 11/3/2024 opposing the application. Her case is that she is the registered proprietor of the suit land, adding that she acquired the suit land from the 2nd defendant. She adds that the plaintiffs' claim is statute-barred under the law. It is her case that she would be prejudiced if she was enjoined against completing her ongoing development.
  6. The 4th defendant opposed the application through a replying affidavit sworn on 15/3/2024 by its Chairman, Mr John Maina Mburu. Its case is that the suit land was held by the deceased under Ballot No 1483. The deceased sold the suit land to the 1st defendant in 1993 and the company issued share certificate No 5346 dated 23/9/1993 to the 1st defendant. The 4th defendant exhibited the relevant internal register.
  7. The court has considered the application, the response to the application and the parties' respective submissions. The single issue to be determined in this ruling is whether the application under consideration meets the criteria for grant of an interlocutory injunction. The relevant criteria was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown* [1973] EA 358. First, an applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the plea for interlocutory injunction is declined, he would stand to suffer damage that may not be indemnifiable through an award of damages. Lastly, should the court have doubt on the applicant's satisfaction of either of the above two requirements, the application is to be decided based on the balance of convenience. Suffice it to state that our superior courts have, in a line of decisions emphasized that at the state of disposing a plea for interlocutory injunction, the court do not make definitive or conclusive pronouncement.
  8. The applicants came to this court in their alleged capacity as the administrators of the estate of the late Simon Mugweru Wathirwa. They contend that the estate is still the subject of succession in Succession Cause No 525 of 1997. They did not, however, exhibit a certified copy of a valid grant conferring in them the locus standi to initiate proceedings on behalf of the estate. Without that evidence, they cannot be said to have demonstrated their locus standi.



9. Secondly, the applicants contend that they learnt about “illegal possession and trespass” on the land in 2020. They have exhibited photographs of ongoing construction bearing a massive development of over six floors of multiple apartments nearing completion. They have not explained why they did not approach this court in 2020 or at the commencement of the development which is now nearing completion.
10. Thirdly, the suit land falls within a subdivision scheme. The owner of the subdivision scheme is Githunguri Constituency Ranching Company Ltd. The company has stepped forward and has unequivocally stated that the deceased sold the suit land to the 1st defendant and caused the 1st defendant to be issued with a share certificate consequent to the sale.
11. Fourthly, the 1st defendant has exhibited a sale agreement dated 1993 and a cheque for Kshs130,000 dated 23/9/1993. The plaintiffs contend that the Directorate of Criminal Investigations [the DCI] has been seized of their complaint but there is no evidence to suggest that the DCI found merit in their complaint. The totality of the foregoing is that the plaintiffs have not satisfied the first limb of *Giella v Cassman Brown*.
12. On the second and third limbs, the interlocutory evidence indicates that grant of an injunction in the manner contemplated by the plaintiffs would prejudice the 3rd defendant whose massive development is at the tail-end. The balance of convenience does not favour grant of an injunction at this point and in the manner contemplated by the plaintiffs.
13. For the above reasons, the application dated 29/2/2024 is rejected. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF DECEMBER 2024**

**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr Wachira for the 4th Respondent

Ms Suna for the 1st and 3rd Defendant

Ms Mwema for the plaintiff

Court Assistant: Hinga

