



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngirigacha v Ndege & 6 others (Civil Appeal E058 of 2024)  
[2025] KEHC 5461 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5461 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E058 OF 2024  
EM MURIITHI, J  
APRIL 30, 2025**

**BETWEEN**

**CATHERINE WANJIKU NGIRIGACHA ..... APPLICANT**

**AND**

**ANNAH WANGITHI NDEGE ..... 1<sup>ST</sup> RESPONDENT**

**ROBERT KINYUA NDEGE ..... 2<sup>ND</sup> RESPONDENT**

**REGINAH WANGU NDEGE ..... 3<sup>RD</sup> RESPONDENT**

**JUDY WANJIRU NDEGE ..... 4<sup>TH</sup> RESPONDENT**

**JAMES KINYUA NDEGE ..... 5<sup>TH</sup> RESPONDENT**

**PHILIS WAWIRA NDEGE ..... 6<sup>TH</sup> RESPONDENT**

**LEAH WAIRIMU NDEGE ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion dated 20<sup>th</sup> June, 2024 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That the Honourable court be pleased to issue a temporary injunction against the respondents from evicting the applicant from the deceased estate L.R Gichugu/ Settlement/scheme/2807 pending the hearing and determination appeal.
  4. Spent.



5. That the honourable court be pleased to issue an order for the status quo of the deceased estate pending the hearing and determination of this appeal.
  6. That cost of this application be provided for.
2. The application is based on the annexed affidavit of Catherine Wanjiku Ngirigacha setting out the facts of the case.
  3. The applicant's case is that she is one the wives of the deceased herein. That they had a son together with the deceased namely Dennis Murindi Ndege. She lives at L.R Gichugu/Settlement/scheme/2807 and the respondents are threatening to evict her.
  4. She avers that she was dissatisfied with the lower court's ruling and prays that pending this appeal she be allowed to live on the deceased's land. Lastly, the respondents will not be prejudiced in any way.
  5. In response, the respondent on 24<sup>th</sup> July, 2024 filed a Replying Affidavit setting out their case. The respondents aver that the certificate of confirmation of grant that was issued by the court on 7<sup>th</sup> April, 2022 and it has been executed and the parcels of land Registry created as follows:
    - a. Land Reference Number Gichugu /Settlement/Scheme /2808 registered in the names of Ann Wangithi Ndege holding in trust for Dennis Murindi.
    - b. Land Reference Number Gichugu/settiement/Scheme/2807 registered in the names of James Kinyua Ndege and Robert Kinyua Ndege in Equal shares.
  6. The respondents aver that the Applicant now seeks orders even against parties who are not registered as proprietors of the parcels of land and that the Applicant has not shown proof of occupation over Land Reference Number Gichugu/settiement/scheme/2807 and the alleged eviction threats are therefore untrue. Further, the Applicant was not a wife of the deceased Ndege Muridi and the copy of the Eulogy annexed to the supporting affidavit was not the Eulogy of the late Ndege Muridi. A copy of the true Eulogy is annexed. Lastly, that the Applicant did not produce the Eulogy marked "CWN 1" during the hearing at the trial court and it is suspicious why the same was being produced at this stage.

#### **Applicant submissions.**

7. For any court to allow an application of such nature it is usually guided by the principles of *Giella v Cassman Brown* 1973) EA 358 that =
  - i. There is an arguable case.
  - ii. Irreparable loss.
  - iii. If the court is in doubt, then it tilts to the balance of convenience.
8. The appellant submits that she has an arguable case, and her appeal has high chances of success based on the fact that she is a wife to the deceased. She has a child with him and she was also included as a wife in his eulogy.
9. She submits that if evicted and her land sold to a 3<sup>rd</sup> party, she will suffer irreparable loss, as she has been living on the suit property for long, her husband left her and it is only fair her appeal is heard first before any eviction and /or execution of the grant. Lastly, the balance of convenience is in her favour and she therefore deserves the orders sought.



### **Respondent submissions.**

10. On the issue of establishing a prima facie case, the Respondents submit that the Appellant/Applicant has not established a prima-facie case with a probability of success. Further, they submit that the certificate of confirmation of grant that was issued by the Honourable court on 7<sup>th</sup> April 2022 was duly executed.
11. It is the Respondent's submission that the Appellant/Applicant is now seeking orders against parties who are not registered as proprietors of the parcel of land. Further, the Appellant/Applicant has not shown proof of occupation over Land Reference Number Gichugu/settlement/scheme/2807 'and therefore cannot claim that there are eviction threats.
12. It is the Respondent's humble submissions that the Applicant/Appellant was not a wife of the deceased Ndege Murindi and the copy of the Eulogy annexed in her supporting Affidavit was not the copy of the Eulogy of the late Ndege Muridi. The Respondents have in the replying affidavit annexed a copy of the Eulogy for the late Ndege Murindi.
13. On whether the applicant will suffer irreparable harm that cannot be compensated by damages, the Respondents submit that the Appellant/Applicant has not demonstrated how they are likely to suffer irreparable harm that cannot be compensated by way of damages.
14. The respondent submits that the burden of proving the balance of convenience lies on the Appellant/Applicant and it is the Respondents submissions that the Appellant/Applicant has not demonstrated whether the same tilts in her favour.

### **Issue.**

15. Whether injunction pending hearing of the appeal should be granted.

### **Analysis.**

16. The Court has considered the application, the affidavit in support and in opposition, and the rival submissions. The sole issue that arise for determination is whether the applicant has met the threshold for grant of temporary injunction pending hearing and determination of the appeal herein.
17. Order 42 Rule 6(6) provides for the grant of injunction pending appeal as follows:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

18. The principles for grant of temporary injunction pending appeal are settled. In the case of Patricia Njeri & 3 Others v National Museum of Kenya [2004] eKLR, the court (Visram, J. as he then was) isolated the following principles for exercise of the discretion to grant of temporary injunction pending appeal:

“The discretion must, however, be “exercised judicially and not in whimsical or arbitrary fashion.” This discretion is guided by certain principles some of which are as follows:

- (a) The discretion will be exercised against an Applicant whose appeal is frivolous (See Madhupaper International Limited v Kerr (1985) KLR 840 (cited in Venture Capital ). The Applicant must state that a reasonable argument can



be put forward in support of his appeal (J. K. Industries v KCB (1982 – 88) KLR 1088 (also cited in Venture Capital)

- (b) The discretion should be refused where it would inflict greater hardship than it would avoid (See Madhupaper supra).
- (c) The Applicant must show that to refuse the injunction would render his appeal nugatory (See Butt v Rent Restriction Tribunal [1982] KLR 417 (cited also in Venture Capital ).
- (d) The Court should also be guided by the principles in Giella v Cassman Brown & Company Ltd [1973] EA 358 as set out in the case of Shitukha Mwamodo & Others [1986] KLR 445 (also cited in Venture Capital ).”

19. In the case of Giella v Cassman Brown [1973] EA 358, the court stated the conditions for grant of interlocutory injunctions:

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

- 20. In the present application, the appellant seeks to have a temporary injunction against the respondents seeking to have them restrained from evicting her from the deceased estate LR Gichugu/Settlement/Scheme/2807 pending the hearing of this appeal.
- 21. The applicant has stated that she has a prima facie case in that she is a wife of the deceased Murindi and they got a son together. The respondents filed a succession case and failed to include her yet she was a wife of the deceased. Her case is that the respondents went ahead and awarded her minor son with a property and put themselves as trustees of the appellant's son but completely failed to award the appellant with any property.
- 22. The appellant was aggrieved and she filed summons for revocation of grant but the Summons were dismissed, hence the appeal.
- 23. On the issue as to whether the Appellant/Applicant shall suffer irreparable injury should the temporary injunction not be granted, it was held in Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR the court stated that:

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

- 24. The applicant has argued that she lives on LR Gichugu/Settlement/Scheme/2807 and is the deceased who settled her there. However, the respondents want to evict her.
- 25. The respondent submits that the Appellant/Applicant has not shown proof of occupation over Land Reference Number Gichugu/settlement/scheme/2807 and therefore cannot claim that there are eviction threats. On a balance of probabilities, the Court accepts it as more probable than not that the



appellant is in occupation of the suit property or part thereof as there would otherwise be no point in pursuing a prohibitory injunction to restrain here eviction if she was not on the suit land.

26. In any event, there is irreparable injury in the prospect of loss of her share of the suit property by disposal in the meantime making her appeal, if successful, nugatory.
27. The Court will seek to balance the rights of the appellant who is appealing the judgment of the trial court to decision of a higher court and the right to enjoyment of the fruits of the judgment in the trial court.
28. The Court agrees with the applicant that the status quo must be maintained and if she on the suit land she must not be evicted therefrom pending hearing of the appeal. As there is dispute as to whether she lives on the deceased's land, the Court shall order that the status quo to be maintained is the state of things prevailing as at the date of this ruling.
29. On the question of balance of convenience, the Court is mindful that the suit property should not be further transferred as to take them out of reach of the applicant, if she is successful at her appeal. On the other hand, the Respondents who have titles registered in their names will not suffer much prejudice if the status quo as regards their registration is maintained pending hearing and determination of the appeal.

#### **Orders.**

30. Accordingly, for the reasons set out above, the Court finds merit in the application for injunction pending appeal dated 20/6/2024 and it is granted in terms of Prayers nos. 3 and 5 thereof.
31. For clarity and avoidance of doubt, this order of the Court does not authorize entry and or occupation, possession, re-possession or re-occupation of the any suit land or portion(s) thereof by the appellant, or otherwise grant any mandatory injunction of any kind with regard to the suit property.
32. The costs of the application shall abide the outcome of the appeal.

Order accordingly.

**DATED AND DELIVERED THIS 30TH DAY OF APRIL 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms Kimotho for the Appellant.

Ms. Otieno for Mrs Makworo for the Respondent.

