



**Meli v Land Registrar, Mombasa Land Registry & 4 others (Environment & Land  
Petition E009 of 2024) [2025] KEELC 1319 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1319 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION E009 OF 2024  
SM KIBUNJA, J  
MARCH 19, 2025**

**BETWEEN**

**SHADIA MOHAMED KIPKORIR MELI ..... PETITIONER**

**AND**

**LAND REGISTRAR, MOMBASA LAND REGISTRY ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**STRATEGIC UREMBO SACCO SOCIETY LIMITED T/A STRATEGIC  
DEPOSIT TAKING SACCO LTD ..... 3<sup>RD</sup> RESPONDENT**

**HAIDER SULAYMAN BADAWI ..... 4<sup>TH</sup> RESPONDENT**

**JEPHYS AUCTIONEERS ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The petitioner moved the court through the notice of motion dated 9th April 2024 seeking for the following orders:
  1. “Spent.
  2. Spent.
  3. That the Honourable court be pleased to issue an order of injunction restraining the respondents, their agents, servants, assigns and/or any other person whatsoever from selling, advertising for sale, offering as security and/or evicting the interested party and her children from all that property known as C.R 62863/1 (Apartment No. 5, 5TH FLOOR ON SUBDIVISION NUMBER:16900) original number 8822/3 SECTION I MAINLAND NORTH pending hearing and determination of the Petition filed herein.
  4. That the costs of this application be borne by the Respondents.”



The application is based on the fifteen (15) grounds on its face and supported by the affidavit of Shadia Mohamed Kipkorir Meli, petitioner, sworn on 9th April 2024. It is the petitioner's case inter alia that the suit property is matrimonial property where she has lived with her two minor children, whose father is the 4<sup>th</sup> respondent; that the said premises was declared matrimonial property in Mombasa Kadhi's Petition No. 184 of 2021; that there is a fraudulent scheme by the 3<sup>rd</sup> and 4<sup>th</sup> defendant, in collusion with the 5<sup>th</sup> defendant to sell the suit property, and render the appeal proceedings in Mombasa H.C. Family Appeal No. 30 of 2022 nugatory; that the document alleged by the 3<sup>rd</sup> and 4<sup>th</sup> respondents to have been signed by her giving spousal consent for the suit property to be charged was found by the DCI to be a forgery; that the notices of eviction issued by the 5<sup>th</sup> respondent on 20th March 2024 and the conspiracy to auction the suit property by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents is aimed at rendering the High Court Family Appeal No. 30 of 2022 nugatory; that the 1<sup>st</sup> respondent in collusion with the 3<sup>rd</sup> and 4<sup>th</sup> respondent removed a caution she had registered without giving her notice, and proceeded to register a charge dated 17th April 2021 in favour of the 3<sup>rd</sup> respondent; that the suit property was used as security and she never gave consent; that she put the caution after her divorce to the 4<sup>th</sup> respondent in 2021, and when the 4<sup>th</sup> respondent tried to evict her, but she obtained injunctive reliefs vide three rulings in ELC MIS. App. 56 OF 2021; that the auction is being used as means of punishing her for divorcing the 4<sup>th</sup> respondent and filing a child maintenance suit against him; that under the doctrine of lis pendens, the respondents should be restrained from disposing or otherwise dealing with the suit property.

2. The application is opposed by the 3<sup>rd</sup> respondent through the replying affidavit of Jared Matwetwe Ondwari, chief executive officer, sworn on 28th October 2024, inter alia deposing that the petitioner and the 4<sup>th</sup> respondent are bonafide members of the 3<sup>rd</sup> respondent; that the 4<sup>th</sup> respondent applied for a loan facility of Kshs.5,700,000 and offered the suit property as collateral security; that through their advocates Messrs. Mutete John and Company Advocates, a legal charge was created and attached to it was a spousal consent sworn on 23rd April 2020; that the loan facility was for a family business which involved the petitioner and hence she was a direct beneficiary; that the petitioner was once a beneficiary of a loan facility of Kshs. 750,000 around 26th February 2019 and that the 3<sup>rd</sup> respondent would usually process the loan of the petitioner, and the 4<sup>th</sup> respondent processed it with speed as they were senior members; that the 4<sup>th</sup> respondent serviced his loan once until he lost his job due to Covid 19, which forced his employer to close the Mombasa office where he was employed; that sometime in 2021 he visited the offices of the 3<sup>rd</sup> respondent to explain the challenges he was facing in repaying the loan, and on 5th October 2021, the 4<sup>th</sup> respondent wrote to them requesting that the suit property be sold as he was unable to pay for his loan; that upon the request they instructed the 5<sup>th</sup> respondent to carry out inspection and valuation of the suit property; that the 5<sup>th</sup> respondent later reported that they had visited the suit property, but the petitioner had refused to vacate, and they instructed their advocates to file ELC Misc 56 of 2021 for eviction orders, which was dismissed by the court while stating that such orders should be sought in a substantive suit; that in Kadhi's Court Petition 184 of 2021, the Kadhi made an award in favour of the petitioner despite having found that she had made minimal or almost no contribution; that this petition is in the nature of an appeal from the Kadhi's case and that the charge registered on the suit property is not affected by any claims of beneficial interest by the petitioner; that the petitioner gave spousal consent and that her allegation that she never gave consent is an after thought; that the petitioner falsely obtained a report from the D.C.I without asking them for documents to compare the signature of the petitioner with the one in the spousal consent; that the signature in the spousal consent is the same as the ones the petitioner signed when she applied for loan facilities; that the petitioner's only claim to the suit property is Kshs. 700,000, which they are ready to pay her; that this application is an abuse of the court process as division of matrimonial



property had already been pronounced in the Kadhi's case and that this court is not sitting on appeal to determine ownership of the suit property.

3. The learned counsel for the petitioner and 3<sup>rd</sup> & 5<sup>th</sup> respondents filed their submissions dated 20th November 2025 and 3rd February 2025 respectively, which the court has considered.
4. The following are the issues for determination by the court:
  - a. Whether the petitioner has met the threshold for a temporary injunction to issue at this stage.
  - b. Who bears the costs?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon and come to the following findings:
  - a. On the principles to be considered in applications for temporary injunctions, both counsel have cited the case of *Giella versus Cassman Brown & Company Limited* among others. In the case of *JAN BOLDEN NIELSEN v HERMAN PHILLIPUS STEYA ALSO KNOWN AS HERMANNUS PHILLIPUS STEYN & 2 OTHERS (2012) eKLR* the court held as follows:

“I believe that in dealing with an application for an interlocutory injunction, the court is not necessarily bound to the three principles set out in the *Giella Vs Cassman Brown* case. The court may look at the circumstances of the case generally and the overriding objective of the law. In *Suleiman vs Amboseli Resort Ltd (2004) e KLR 589 Ojwang Ag. J (as he then was) at page 607* delivered himself thus: -

“.....counsel for the defendant urged that the shape of the law governing the grant of injunctive relief was long ago. In *Giella Vs Cassman Brown*, in 1973 cast in stone and no new element may be added to that position. I am not, with respect, in agreement with counsel in that point, for the law as always kept growing to greater levels of refinement, as it expands to cover new situations not exactly foreseen before. Justice Hoffman in the English case of *Films Rover International* made this point regarding the grant of injunctive relief (1986) 3 All ER 772 at page 780-781: - “A fundamental principle of...that the court should take whichever course appears to carry the lower risk of injustice if it should turnout to have been “wrong”....”

Traditionally, on the basis of the well accepted principles set out by the Court of Appeal in *Giella versus Cassman Brown* case, the court has had to consider the following questions before granting injunctive relief:

- i. Is there a prima facie case....
- ii. Does the applicant stand to suffer irreparable harm...
- iii. On which side does the balance of convenience lie?

Even as those must remain the basic tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The Court in responding to prayers for interlocutory injunctive relief, should always opt for the lower rather than the higher risk of injustice.....”

- b. The learned counsel for the 3rd and 5th respondents' has submitted inter alia that as the suit property is registered in the name of the 4th respondent, and the Kadhi's court has determined the issue of matrimonial property, the petitioner is only entitled to Kshs.700,000, and no injunction should issue. On the other hand, the learned counsel for the petitioner



has submitted inter alia that in view of the issues raised by the petitioner for determination, injunction order should issue. In the case of Mrao Ltd versus First American Bank of Kenya Ltd (2003) eKLR, the Court of Appeal stated as hereunder;

“A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

From the facts so far presented to the court, the suit property in question is registered in the name of the 4th respondent, and it is factual that a charge dated 17<sup>th</sup> April 2021 was registered against the title. The prayers sought in the petition are inter alia for a declaration that the petitioner’s right to matrimonial property have been violated, as well as the right to fair administrative action, whereby she was not given notice on removal of caution, which was registered on 31st May 2021. In the court’s opinion, the petitioner has established a prima facie case, with a probability of success, and there is need to safeguard the suit property as the petition is heard and determined.

- c. On the test of irreparable harm, the court has referred to the decision in the case of Said Almed versus. Mannasseh Benga & Another [2019] eKLR where the court held that:

“Where it is clear that the defendant’s act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it. Support for this view is to be found in the Court of Appeal decision in the case of Aikman vs Muchoki (1984) KLR 353.’ See the case of Joseph Mbugua Gichanga vs Co-operative of Kenya Ltd (2005) eKLR.”

The 3rd respondent has deposed that it was ready to compensate the petitioner with Kshs.700,000 as pronounced through the kadhi’s court judgment. The counsel for the petitioner has however submitted that the suit property has sentimental value to the petitioner, and the 3rd to 5th respondents have previously thrown her and her two minor children out of the property, leaving them destitute, and unless injunction order is issued, they are likely to do so again. The court is satisfied that the petitioner will likely suffer irreparable harm, if the injunction order is not issued. It is also in the best interest of the two minor children that the order be issued to allow them continue remaining in the suit property as the petition is heard and determined. The balance of convenience also tilts towards issuing the order sought.

- d. That though ordinarily costs follow the events unless where otherwise ordered, and though the petitioner is successful in her application, I am of the view that justice will be served better by an order that the costs in the application abide the outcome of the petition.

6. From the foregoing determinations, the court finds the petitioner’s notice of motion dated the 9<sup>th</sup> April 2024 has merit and is allowed as prayed and the following orders issued:

- a. That an order of temporary of injunction restraining the respondents, their agents, servants, assigns and/or any other person whatsoever from selling, advertising for sale, offering as security and/or evicting the petitioner and or her children from all that property known as C.R 62863/1 (Apartment No. 5, 5Th Floor On Subdivision Number:16900) original number



8822/3 Section I Mainland North pending the hearing and determination of the petition filed herein.

b. That the costs of this application abide the outcome of the petition herein.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 19<sup>TH</sup> DAY OF MARCH 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Petitioner : M/s Nyaboke

Respondents : M/s Ambetsa For 1<sup>st</sup> And 2<sup>nd</sup> Respondents

Mr. Getange for 3<sup>rd</sup> and 5<sup>th</sup> Respondents

Shitemi – Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

