



**Munga & 44 others v Njoroge (Environmental and Land Originating Summons E003 of 2024) [2025] KEELC 1346 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1346 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2024**

**LN MBUGUA, J  
MARCH 19, 2025**

**BETWEEN**

**CHARLES GITAHU MUNGA & 44 OTHERS ..... PLAINTIFF**

**AND**

**JOHN PETER WANJAU NJOROGE ..... DEFENDANT**

**RULING**

1. This ruling relates to two applications, the one dated 18.7.2024 filed by the plaintiffs and the one dated 17.10.2024 filed by the defendant in which each protagonists is seeking orders restraining the opponent from dealing with parcel L.R 2512 (the suit land). For good order and efficient case management, the court will treat the application dated 17.10.2024 as a response to the earlier application of 18.7.2024.
2. The plaintiffs commenced this suit vide an Originating Summons dated 17.7.2024 and amended on 10.2.2025 claiming that they are entitled to the suit property Title measuring 64.73 ha by way of adverse possession. The plaintiffs also filed an application dated 18.7.2024 seeking orders of temporary injunction restraining the defendant from dealing with the suit parcel in any way. They also seek orders to prohibit the defendant from evicting them or demolishing their homes on the suit land and that the OCS Nyahururu police station be directed to ensure compliance with the court order.
3. The application is premised on grounds on the face of the application and on the supporting affidavit of Charles Gitahi, one of the plaintiffs. He contends that the application has been brought on behalf of 44 other plaintiffs who refer to themselves as Gatwikira Squatters SHG who have been living on the suit land for about 40 years as squatters. He contends that the plaintiffs have tremendously developed the land by putting up their homes, water reservoirs, and they even have a public school.
4. The deponent further contends that on 17.5.2024, they received an eviction notice and thereafter, the respondent commenced unlawful evictions and demolitions upon the plaintiffs and their properties.



5. The plaintiffs have also proffered a supplementary affidavit sworn by the same deponent, Charles Gitahi on 12.9.2024. He reiterates that they have been in occupation of the suit land for many years and that the mass evictions and demolitions were unlawful, adding that by August 2024, the defendant had completely demolished and flattened all the developments and the only visible evidence that the plaintiffs have been in occupation of the suit land are the mature tress as well as the graves of their kinsmen.
6. The defendant was to file an application dated 17.10.2024 seeking orders restraining the plaintiffs from any dealings with the suit land and that the OCS Salama police station be directed to implement the order. The application is premised on the grounds on the face of the application and his supporting affidavit. He contends that he is the registered owner of the suit property. He avers that the plaintiffs are Charles, his mother, brother Peter Gitonga and 4 other families who invaded his land in year 2020.
7. That pursuant to discussions involving government officials including the Sub County Commissioner, the plaintiffs left the suit land, so the defendant is the one growing crops on that land.
8. The defendant denies that the plaintiffs are squatters, that instead, they own large parcels of land where they have developed luxurious homes.
9. I have considered all the arguments proffered before this court including the rival submissions. The question falling for determination is; which party deserves restraining orders, keeping in mind that the matter is at the infancy stage.
10. The legal framework governing matters on temporary orders of injunction and interlocutory orders falls under Order 40 of the Civil Procedure Rules. Such orders are issued where the court is satisfied that there is a likelihood of the suit property being wasted or alienated before the suit is heard and determined.
11. Being injunctive/restraining orders, the same shall be weighed against the requisite essentials set out in the celebrated case of *Giella v Cassman Brown* [1973] EA 358 where the conditions for issuance of such orders were set out as follows;

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be 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.”
12. Thus the protagonists are expected to meet the three principles and surmount them sequentially as was stated by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR in the following terms;

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:- (a) Establish his case only at a prima facie level, (b) Demonstrate irreparable injury if a temporary injunction is not granted, and (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86)



If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap frogging" by the applicant to injunction directly without crossing the other hurdles in between."

13. I have keenly perused the material so far presented before this court including the pleadings of the parties. At paragraph 2 in the supplementary affidavit in support of the Amended Originating Summons sworn by Charles on 10.2.2025, he contends that;

"Subsequent to filing the Originating Summons dated 17/7/2024 on 18/7/2024 the respondent between 23/7/2024 and 27/7/2024 with the help of goons and a battery of armed police officers without any colour of right caused the unlawful mass evictions of the petitioners from the suit land"

14. While at paragraph 18 in his supporting affidavit to the application dated 18.7.2024, Charles depones as follows;

"The respondent through his agents, servants and or employees on or about end of June 2024, began forceful evictions of the forty five (45) individuals and their families residing on the suit land under the supervision of uniformed police officers, which caused the illegal eviction of forty one (41) individuals out of the forty five (45) individuals in occupation, which is a clear abuse of state machinery and breach of the plaintiffs rights guaranteed in *the constitution.*"

15. Further at paragraph 5, 6, and 8 in the supplementary affidavit of Charles dated 12.9.2024, he contends as follows;

"Respondent caused unlawful mass demolitions and illegal evictions to pave way for his farming exploits which he began mid that year. That as at the beginning of August 2024, the respondent had completely demolished and flattened the developments made on the arable portion of land for farming and that the only visible developments that have remained on the suit land to signify squatters occupation are the trees planted and nurtured by the applicants"

16. From the foregoing information availed by the plaintiffs, it emerges that they were evicted either before the suit was filed or immediately thereafter. Either way, the plaintiffs were evicted and according to them, only the trees are visible on the land. It follows that their prayer "restraining the defendant from forcefully evicting them and or demolishing their homes is unfounded".

17. Of great importance is the prayers sought by the plaintiffs in their amended originating summons where they seek orders interalia;

"An eviction order, directing the defendant to give vacant possession of title grant No. L.R No. 2512 measuring 64.73 hectares failure to which the defendant be removed from the said title grant No. L.R No. 2512 at his own costs.



The OCS Nyahururu Police Station be directed to ensure compliance with this court's order”

18. It is clear beyond peradventure that granting the orders sought by the plaintiffs at this stage would be tantamount to granting a major relief at the interlocutory stage. In the case of Daniel Atibu Jasimba v Ainea Sandanyi Magana [2013] eKLR, the court had this to say in respect of a prayer relating to a major relief;

“Since the Plaintiff's suit is for eviction of the defendant from the said residence, such an injunction will amount to granting a major relief in the suit without the benefit of a hearing”.

19. In the case of Cyanamid Co. v Ethicon Ltd [1975] 1 ALL ER 504; [1975] A.C 396 HL cited in Tritex Industries Limited & 3 others v National Housing Corporations & another [2014] eKLR, it was held that;

“It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial”

20. I find that the nature and extent of occupation of the suit land is a question to be dealt with in a full trial and not in interlocutory applications. In the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR, the court stated that in establishing whether an applicant has a prima-facie case, the court does not hold a mini trial and must not examine the merits of the case closely.

21. This far, it suffices to note that the plaintiffs have admitted that the land is currently being used by the defendant as from mid year 2024. Thus, it is the plaintiffs who should be restrained from interfering with the suit property.

22. The defendant has also claimed that the plaintiffs are not squatters and that they own large tracts of land. To this end, he has availed several title documents bearing the names of some of the persons listed in the list of squatters including Teresia Munga, Peter Munga and Stephen Chege. The plaintiffs have not denounced those titles.

23. Finally, I find that there is no tangible evidence to demonstrate that Charles Munga was given authority to file the suit and the application by 44 Others. To this end, I pose the question; Who are these 44 Others?. It is pertinent to note that the list of the squatters availed in the application dated 18.7.2024 contains only 35 persons. Further, the list is nothing but a list with names and numbers. There is nothing to show that the persons listed therein gave Charles the mandate to file the suit by way of appending their signatures to their names and identity cards. The only signature and identity card availed is that of the deponent in the various affidavits who is Charles Gitahi.

24. In the end, I proceed to give the following orders;

1. The Application dated 18.7.2024 is hereby dismissed with costs to the defendant. Since the 44 other plaintiffs have not been identified to the satisfaction of this court, the said costs shall personally be paid by Charles Gitahi Munga.
2. The Application dated 17.10.2024 is allowed with a rider that the suit land shall not be sold. No costs shall be awarded in this application as the court treated the same as a response to the earlier application



3. The suit is to be heard on priority basis.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19TH DAY OF MARCH 2025  
THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Ndungu Maina and Kimaru Kibuchi for Plaintiff

Kimathi for defendant

Nancy Mwangi – Court Assistant

