



**Swaleh v Swaleh & 4 others (Land Case E010 of 2024)  
[2025] KEELC 1301 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1301 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
LAND CASE E010 OF 2024  
FM NJOROGE, J  
MARCH 18, 2025**

**BETWEEN**

**ABUBAKAR MOHAMED SWALEH ..... PLAINTIFF**

**AND**

**ABDULRAHIM MOHAMED SWALEH ..... 1<sup>ST</sup> DEFENDANT**

**ABDULWAHID ABDULRAHIM MOHAMED ..... 2<sup>ND</sup> DEFENDANT**

**RABIABAI HASHAM NURMOHAMED ..... 3<sup>RD</sup> DEFENDANT**

**GHALIB AHMED ALWY ..... 4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR LAMU ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed a notice of motion application dated 28/10/2024 seeking an order that the 1<sup>st</sup> – 4<sup>th</sup> Defendants be restrained from interfering with the quiet enjoyment of the property known as Lamu/ Block 1/310 (hereinafter referred to as “the suit property”) pending the hearing and determination of the suit, and also sought to be awarded the costs of the application.
2. The application which was premised on section 1A, 1B, 3A and 63 (c) of the *Civil Procedure Act* and Order 40 Rule 1 of the *Civil Procedure Rules*, is based on the grounds appearing at its foot and supported by the affidavit sworn by the Plaintiff.
3. The Plaintiff narrated that he purchased the suit property from the 3<sup>rd</sup> Defendant vide an agreement dated 16/3/1992 for a consideration of Kshs. 780,000/-. He averred that upon signing of the agreement, he took possession thereof, conducted renovations and put tenants in place. The Plaintiff explained that upon payment of the first Kshs. 50,000/- the 3<sup>rd</sup> Respondent handed over to him the title deed which he in turn handed over to his brother, Abdulrahim Mohamed Swaleh (deceased) for safe keeping; that when the 4<sup>th</sup> Defendant was appointed an attorney for the 3<sup>rd</sup> Defendant, he has since



resorted to threaten the said tenants with eviction threats and even disconnecting electricity within the premises. The Plaintiff is apprehensive that the Defendants will evict his tenants and take over his property.

4. The only response filed was by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. They filed a replying affidavit sworn by Ghalib Ahmed Alwy, the 4<sup>th</sup> Defendant, on 16/12/2024. The 4<sup>th</sup> Defendant stated that the 1<sup>st</sup> Defendant is deceased, hence proceeding with the matter before he is substituted would be improper. He deposed that at no time did the 3<sup>rd</sup> Defendant enter into an agreement for sale with the Plaintiff and that the said sale agreement is forged. The 4<sup>th</sup> Defendant stated that the Plaintiff has never been in occupation of the suit property as alleged but that he illegally and forcefully caused tenants to enter the suit property in the year 2012. The 4<sup>th</sup> Defendant asserted that the suit property is currently registered in the name of the 3<sup>rd</sup> Defendant and the Plaintiff has no rights whatsoever. He urged the court to dismiss the application with costs.
5. Parties failed to attend court when the application came up for hearing on 17/2/2025, directions could therefore not be issued. Be that as it may, I will proceed to determine the application on merit.

### **Analysis**

6. The principles in granting interlocutory injunctions are well settled. Order 40 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -
  1. Where in any suit it is proved by affidavit or otherwise-
    - a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
    - b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

7. The Court of Appeal in *Charter House Investment Ltd v Simon K. Sang and Others*, Civil Appeal No. 315 of 2014 observed as follows:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right, even where irreparable injury is likely to result to the applicant. It is a matter of sound Judicial discretion, in the exercise of which the Court balances the conveniences of the parties and the possible injuries to them and to third parties. In the Giella Case (supra) the Predecessor of this Court laid down the principle that for one to succeed in such an application, one must demonstrate a prima facie case with reasonable prospect of success, that he stands to suffer irreparable damage which cannot be compensated for by an award of damages and that the balance of convenience tilts in his favour.”



8. It is also trite that the established conditions are sequential in that the second condition can only be addressed if the first one is met. The Court of Appeal in *Kenya Commercial Finance Co. Ltd v Afraba Education Society (2001) 1 EA 86* held as follows:

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”

9. It is pertinent therefore to first establish whether the Plaintiff has made out a prima facie case with a probability of success? In the case of *Mrao Ltd v First American Bank of Kenya and 2 others* [2003] eKLR a prima facie case was described as follows:

“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.”

10. In the instant case, the Plaintiff claims to have purchased the suit property from the 3<sup>rd</sup> Defendant. He annexed a copy of an agreement for sale dated 16/3/1992 and several leases between himself and third parties, over the suit property. While the 4<sup>th</sup> Defendant claims that the agreement is a forgery, I am satisfied that the material presented by the Plaintiff warrants a rebuttal from the Defendants. There are serious allegations being raised by both parties which cannot be wished away at this stage. Therefore, to ensure that the substratum of the suit is preserved it is prudent that the status quo is maintained pending the hearing and determination of the suit on merit.

11. The outcome is that the notice of motion dated 28/10/2024 is hereby allowed as prayed in prayer no (b) thereof pending the hearing and determination of the present suit. The costs of the motion shall be in the cause.

12. In order to expedite the hearing of this suit I hereby issue the further orders as follows:

- a. By the inherent power of the court under section 3A of the *Civil Procedure Act*, it is hereby ordered that the prevailing *status quo* regarding the suit land shall be observed by all parties without exception, in that no person shall interfere with the land in any manner other than that for which it has been used for before the date of this order and no further interference with the title shall be had or registered until the hearing and determination of the suit;
- b. Ghalib Ahmed Alwy shall file an affidavit within 14 days demonstrating that the 1<sup>st</sup> defendant Abdulrahim Mohamed Swaleh is indeed deceased and the date of his demise;
- c. The hearing of the present suit shall be expedited and any party found guilty of deliberate delay shall be sanctioned by this court as appropriate including by way of paying costs as the court shall assess;
- d. The plaintiffs are hereby granted 14 days from today within which to file and serve any supplementary trial bundle, lists, witness statement they may wish to file duly paginated and indexed;
- e. The defendants shall within 28 days from today file and serve their trial bundle lists, witness statement they may wish to file duly paginated and indexed;



- f. All parties shall ensure that their witness statements are drafted with reference and elaboration on their exhibits, with exhibits duly numbered, in such manner that they will simply adopt them at the hearing with minimal or no extra comments and be cross-examined thereon;
- g. This suit shall be listed for a mention on 7/4/2025 to ascertain compliance and for issuance of a hearing date.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 18<sup>TH</sup> DAY OF MARCH 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

