



**Land and Housing Cooperative Society v Disow & another (Environment & Land Case E043 of 2024) [2025] KEELC 3473 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3473 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E043 OF 2024**

**NA MATHEKA, J**

**APRIL 30, 2025**

**BETWEEN**

**LAND AND HOUSING COOPERATIVE SOCIETY ..... PLAINTIFF**

**AND**

**ADAN GURE DISOW ..... 1<sup>ST</sup> DEFENDANT**

**MUMIN ALI MAHOW ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application is dated 3<sup>rd</sup> June 2024 and is brought under Sections 3, 3A & 63 of the [Civil Procedure Act](#), Order 40 Rule 1, 2 & 4 Civil Procedure Rules 2010 seeking the following orders;
  1. This application be certified as urgent and service hereof be dispensed with in the first instance.
  2. Pending the full hearing and determination of this application this Honorable Court deems it fit to issue a temporary injunction restraining the Defendants by themselves and/or their agents; employees, servants or anyone claiming any under them from trespassing, remaining, constructing, excavating, occupying, leasing, letting out, selling, charging, transferring, auctioning, granting or registering any rights otherwise interfering with the Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No.31107 and all resultant parcels that is, TITLE NO. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130 including any act or omission that would lead to his detriment.
  3. Pending the full hearing and determination of this application this Honorable Court deems it fit to issue a temporary injunction restraining the Registrar Of Title/chief Land Registrar by themselves and/or their assignees, nominees, agents, or anyone claiming any under them from transferring, granting or registering any rights otherwise interfering with the Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273



as well as LR No. 31107 and all resultant parcels that is, Title No. Mavoko Municipality Block89/2 To Title No. Mavoko Municipality Block89/130 including any act or omission that would lead to his detriment.

4. Pending the full hearing and determination of this suit this Honorable Court deems it fit to issue a temporary injunction restraining the Defendants by themselves and/or their agents, employees, servants or anyone claiming any under them from trespassing, remaining, constructing, excavating, occupying, leasing, letting out, selling, charging, transferring, auctioning, granting or registering any rights otherwise interfering with the Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No. 31107 and all resultant parcels that is, Title No. Mavoko Municipality Block89/2 To Title No. Mavoko Municipality Block89/130 including any act or omission that would lead to his detriment.
  5. Pending the full hearing and determination of this suit this Honorable Court deems it fit to issue a temporary injunction restraining the Registrar Of Title/Chief Land Registrar by themselves and/or their assignees, nominees, agents, or anyone claiming any under them from transferring, granting or registering any rights otherwise interfering with the Plaintiff's and its members' parcels of land known as LR 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No. 31107 and all resultant parcels that is, Title No. Mavoko Municipality Block89/2 To Title No. Mavoko Municipality Block89/130 including any act or omission that would lead to his detriment.
  6. Costs be in the cause.
2. It is supported by the annexed affidavit of Jotham Kirima Inoti and the grounds that the Plaintiff is legal and equitable owner of the suit property parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No.31107 and all resultant parcels that is, Title No. Mavoko Municipality Block89/2 To Title No. Mavoko Municipality Block89/130 but 1<sup>st</sup> and 2<sup>nd</sup> Defendant has illegally, unlawfully and unprocedural trespassed. That there is a real and imminent risk of the Defendants disposing, selling and auctioning Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR. No. 20871 IR 76273 as well as LR. No. 31107 and all resultant parcels that is, Title No. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130. The Defendants are hell bent of undertaking illegal and unlawful auction of the suit property Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No. 31107 and all resultant parcels that is, TITLE NO. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130 and thus there is an urgent need for this Honourable Court to stay the same. The Plaintiff is apprehensive, fearful and afraid that if the Defendants illegally and unlawfully trespass and develop the suit property Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No. 31107 and all resultant parcels that is, TITLE No. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130 this application and suit which has high chances of success shall be rendered moot.
  3. The Plaintiff believes that in the interests of justice there should be a stay of any auction, sale, development and/or transfer of the suit property Plaintiff's and its members' parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well No. 31107 and all resultant parcels that is, TITLE NO. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130 pending the hearing and determination of his application and suit.



4. This court has considered the application and the submissions therein. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* [1973] EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012* [2014] eKLR where the Court of Appeal held that;  
  
in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates 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.
5. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.
6. Consequently, the Plaintiff ought to, first, establish a prima facie case. The Plaintiff/Applicant submitted that they have established a prima facie case. In the case of *Mrao Ltd v First American Bank of Kenya Ltd* [2003] EKLR in which the Court of Appeal gave a determination on a prima facie case. The court stated that;  
  
“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
7. In support of their application, the Plaintiff states that they are the legal owners of the suit property parcels of land known as LR No. 20870 IR 80679 and LR No. 20871 IR 76273 as well as LR No.31107 and all resultant parcels that is, TITLE NO. Mavoko Municipality Block 89/2 TO TITLE NO. Mavoko Municipality Block 89/130
8. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR provides an explanation for what is meant by irreparable injury and it states;  
  
“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.
9. The Plaintiffs submitted that 1<sup>st</sup> and 2<sup>nd</sup> Defendant has illegally, unlawfully and unprocedural trespassed. That there is a real and imminent risk of the Defendants disposing, selling and auctioning Plaintiff’s and its members’ suit parcels of land.
10. Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] EKLR which defined the concept of balance of convenience as:  
  
“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance



of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer."

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting".

11. In the case of Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 2 others [2016] eKLR, the court dealing with the issue of balance of convenience expressed itself thus;

"Where any doubt exists as to the Applicants' right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies."

12. The Plaintiff/Applicant contends that the balance of convenience tilts in his favour that the Plaintiffs' right to ownership of the suit properties by virtue of the fact that the Defendants produced a title dated 2022 but no explanation of how they purchased the property and no proof of payment. That they have been in open continuous and uninterrupted occupation and the Defendants will suffer no prejudice.

13. The decision of Amir Suleiman v Amboseli Resort Limited [2004] eKLR where the learned judge offered further elaboration on what is meant by "*balance of convenience*" and stated;

"The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice."

13. The Defendants stated that they are the lawful registered owners of LR No. 20870 (deed plan No. 211352) having been allocated the same on 13<sup>th</sup> May 1998. On the 1<sup>st</sup> September 2022 they were issued with a certificate of title for the property. They attached copies of the title and search. They maintain that since allocation they have enjoyed exclusive ownership and quiet possession over the suit property until the filing of this suit. That the boundary wall was erected way back in 2022.

14. Bearing this in mind, I am convinced that there is a lower risk in not granting orders of temporary injunction than granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the Plaintiff's claim. I have also not had the opportunity to interrogate the Defendants' documents.

15. In Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another [2019] eKLR where the court in deciding on an injunction application stated;

"circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold



in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to grant a temporary injunction to restrain such acts...”

16. Consequently, I find that this application is not merited and is dismissed with costs. Parties are advised to comply with orders 11 and fix this matter for hearing.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF APRIL 2025.**

**N.A. MATHEKA**

**JUDGE**

