



REPUBLIC OF KENYA



**Muiruri & 2 others v Baruthi & 2 others (Environment & Land
Petition E006 of 2023 & Environment & Land Case E043 of 2024
(Consolidated)) [2025] KEELC 3429 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION E006 OF 2023 &
ENVIRONMENT & LAND CASE E043 OF 2024 (CONSOLIDATED)**

JM ONYANGO, J

APRIL 30, 2025

BETWEEN

DANIEL KINYANJUI MUIRURI 1ST PETITIONER

SUSAN WAIRIMU MWANGI 2ND PETITIONER

SABINA WANJIRU IRUNGU 3RD PETITIONER

AND

BUNDI BARUTHI 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

COUNTY GOVERNMENT OF KIAMBU 3RD RESPONDENT

RULING

1. What is before me for consideration is the Notice of Motion dated 11th December 2023 amended on 7th March 2024 brought under the provisions of Articles 10, 23, 27, 40,48, 60,165 (6) and 259 of *the Constitution* of Kenya, 2010, Rule 24(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, Section 1A, 1B, 63(e) and 3A of the *Civil Procedure Act*, and Order 40 and 51 of the Civil Procedure Rules,2010 seeking the following orders:

1. Spent

2. That this honourable court be pleased to issue an order of injunction restraining the 1st Respondent herein either by himself, his servants, employees, agents and/or any person working under their instructions from trespassing on, from advertising to sale by public auction, selling, transferring, alienating, disposing, interfering, erecting any structures upon or start to and or continuing any construction and/or dealing with the suit property known,



and referenced as Land Registration Number Jamuhuri Market Stall No. JT 4 and JD, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14 which have since been registered as Thika Municipality/Block 11/863 pending the hearing determination of this Petition.

3. That this honourable court be pleased to issue a Conservatory Order restraining the 2nd and 3rd Respondents herein either by themselves, their servants, employees, agents and/or any other persons working under their instructions from trespassing on, from advertising to sale by public auction, selling, transferring, alienating, disposing, interfering, erecting any structures upon or start to and or continuing any construction and/or dealing with the suit property known, and referenced as Land Registration Number Jamuhuri Market Stall No. JT 4, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14 which have since been registered as Thika Municipality/Block 11/863 pending the hearing determination of this Application.
 4. That this honourable court be pleased to issue a conservatory order restraining the 2nd and 3rd Respondents herein either by themselves, their servants, employees, agents and/or any other persons working under their instructions from trespassing on, from advertising to sale by public auction, selling, transferring, alienating, disposing, interfering, erecting any structures upon or start to and or continuing any construction and/or dealing with the suit property known and referenced as Land Registration Number Jamuhuri Market Stall No. JT 4, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14 which have since been registered as Thika Municipality/Block 11/863 pending the hearing determination of this Petition.
 5. That the Officer Commanding Thika Police Station enforces the Orders 1,2, 3 and 4 above.
 6. That this honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
 7. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of it and supported by the Affidavit of Daniel Kinyanjui Muiruri (the 1st Petitioner/Applicant) sworn on 7th March 2024. He avers that the Petitioners/Applicants are the owners of Land Parcel Number Thika Municipality/Block 11/863 (hereinafter referred to as the suit property).
 3. He further avers that the suit property was initially referenced as Jamuhuri Market Stall No. JT 4 and JD, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14, before being registered as Land Parcel Number Thika Municipality/Block 11/863. He adds that the Applicants acquired the suit properties through letters of allotment issued to them as follows:
 - i. A letter of allotment dated 15th September 1994 issued to Daniel Kinyanjui Muiruri with regards to Jamuhuri Market Stall No. JT 4 and JD;
 - ii. A letter of allotment dated 13th September 1994 issued to James Njoroge Gitau with regard to Jamuhuri Market Stall No. JC.



- iii. A letter of allotment dated 13th September 1994 issued to James Njuguna Mwangi with regard to Jamuhuri Market Stall No. JF.
 - iv. A letter of allotment dated 8th August 2006 issued to Benson Kariuki Mwangi and later transferred to Susan Wairimu Mwangi with regard to Jamuhuri Market Stall No. JA 38.
 - v. A letter of allotment dated 13th September 1994 issued to Ruth Nyambura Kamau with regard to Jamuhuri Market Stall No. JB.
 - vi. A letter of allotment dated 13th September 1994 issued to Peter W Ruthiru with regard to Jamuhuri Market Stall No. JE 14.
4. He deposes that the Applicants have been paying ground rent and land rates over the suit property for more than two decades. He contends that the 1st, 2nd and 3rd Respondents have unlawfully trespassed onto the suit property and further represented themselves as owners thereof.
 5. The 1st Applicant further contends that in a breach of the established norms of operation, on 6th December 2023, the 1st Respondent accompanied by National Government Administrative Officers, National Police Service, the Chief and Assistant Chief raided and destroyed homes and businesses belonging to about 1500 families at Jamuhuri Market in Thika West Municipality. He adds that during the raid, the Applicants' tenants were brutally beaten by the police, household goods and construction materials were burnt, destroyed and stolen, leaving many tenants homeless and causing the Applicants' enormous economic loss.
 6. He claims that the 1st Respondent conspired with the 2nd and 3rd Respondents to fraudulently obtain the title to the suit property. He further claims that the 1st Respondent filed ELC Civil Case No. 346 of 2010 against the Applicants at the Nairobi High Court, claiming ownership of the suit property. However, the suit was dismissed on 16th May 2017. The 1st Respondent filed an appeal against the said order, which was also dismissed on 5th February 2021. He adds that the 1st Respondent subsequently filed ELC Case No. 411 of 2017 at the Thika ELC Court over the suit property against persons unknown to the Applicants, where he obtained a judgment in default. He maintains that the Respondents' actions have curtailed the Applicants' right to property under Article 40 of *the Constitution*.
 7. The 1st Applicant is apprehensive that the 1st Respondent shall cause further demolitions and developments to commence on the suit property and/or subdivision and transfer of the suit property unless the injunctive reliefs are granted. He is further apprehensive that the 1st Respondent will try to tamper with the records at the Land Registry to cover up his fraudulent activities.
 8. In opposing the application, the 1st Respondent filed a Replying Affidavit sworn by him on 6th February 2024, where he claims that the Petitioners filed the following multiple suits and applications relating to the subject matter in this suit, a fact they have mischievously failed to disclose to this court: (i) Applications dated 27th September 2022 and 30th October 2022 in Thika ELC 411 of 2011; and (ii) Thika MCLE Case No. E113 of 2023 was filed by the 3rd and 5th Petitioners together with others who are not parties to this suit. The 1st Respondent was a Defendant in the said suit.
 9. He contends that the Applicants, through their evidence, have confirmed that the dispute in the suit relates to stalls allocated to them by the defunct Municipal Council of Thika at Jamuhuri Market within Thika Town. He further contends that the allocation of an undeveloped space in a market does not amount to the allocation of land. He faulted the Petitioners for failing to demonstrate the relevance of the documents annexed to their application with regard to the allocation of the suit property.



10. He explains that Jamuhuri Market is located across the road from Land Parcel Number Thika Municipality Block 11/863 (the suit property). He further explains that the Petitioners were not relevant parties in Thika ELC Case No. 411 of 2017 because they were simply tenants of the 3rd Respondent, whose property (Jamuhuri Market) is distinct from the suit property. He stated that he only demolished buildings that were on the suit property upon following the due legal process. He further stated that the process of demolition had already been carried out therefore it would serve no purpose to grant the orders sought in this application.
11. He avers that the allegation against him of tampering with the records at the land registry is ‘ridiculous’, given that he is not the custodian of the said records.

Submissions

12. The application was canvassed by way of written submissions.
13. The Applicants filed their submissions dated 21st March 2024, while the 1st Respondent filed his dated 3rd May 2024.

Applicants’ Submissions

14. Counsel for the Applicants submitted that the Applicants obtained absolute ownership of the suit property referenced as Land Registration Number Jamuhuri Market Stall No. Jt 4, Jamuhuri Market Stall No. Jc, Jamuhuri Market Stall No. Jf, Jamuhuri Market Stall No. Ja 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE which have since been registered as Thika Municipality/block 11/863.
15. Counsel further submitted that the 1st Respondent had illegally trespassed and further laid claim over the suit property upon fraudulently obtaining title to the same with the help of the 2nd and 3rd Respondents.
16. Counsel for the Applicants identified two issues for determination, namely:
 - i. Whether the Petitioners/Applicants have met the threshold for grant of an order of injunction against the 1st Respondent, their servants, employees, agents and/or any other persons working under their instructions.
 - ii. Whether the Petitioners/Applicants have met the threshold for grant of an order of conservatory order against 2nd and 3rd Respondents their servants, employees, agents and/or any other person working under their instructions.
17. On the first issue, counsel for the Applicants submitted that the Applicants had demonstrated that they had a prima facie case. Counsel relied on the case of *Mrao vs First American Bank of Kenya Limited & 2 Others* [2003]KLR to buttress his submission. Counsel further submitted that the Applicants had a legal right to the suit property established under Article 40 of *the Constitution* of Kenya 2010, given that they had demonstrated that they are bona fide allottees of the suit property and that the title deed issued to the 1st Respondent by the 2nd Respondent was fraudulently acquired.
18. Counsel further relied on the decision in the case of *Rukaya Ali Mohamed vs David Gikonyo Nambachia & Another Kisumu HCCA. 9/2004* cited in *Ali Mohamed Dagane vs Hakar Abshir & 3 Others* [2021]eKLR, where the court stated that once an allotment letter is issued and the allottee meets the conditions therein, then the land in question is no longer available for allotment. Counsel contended that neither the allotting authority nor the Respondents had challenged the Petitioners/Applicants’ allotment letters. He argued that any person who purported to have obtained title to the



- suit property without revocation of the allotment letters to the Applicants must have obtained the same unlawfully.
19. On whether the Petitioners/Applicants shall suffer irreparable harm that cannot be compensated by an award of damages, counsel for the Applicants contended that the 1st Respondent had already destroyed several properties on the suit property and that he continued to dig deep trenches, causing irreparable harm. Counsel added that the harm caused by the 1st Respondent could not be compensated by an award of damages, given that fundamental human rights had been violated in the process of demolition.
 20. Regarding the balance of convenience, counsel relied on the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018]eKLR where the court defined the concept of balance of convenience. Counsel argued that the inconvenience the Applicants were suffering was greater compared to that of the Respondents, given that they had caused damage to the suit property by digging the trenches.
 21. On whether the Petitioners/Applicants had met the threshold for grant of a conservatory order against the 2nd and 3rd Respondents, counsel submitted that conservatory orders are ordinarily aimed at preserving the substratum of the matter pending the determination of the main issues in the dispute. Counsel relied on the cases of Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014]eKLR and Board of Management of Uhuru Secondary School vs City County Director of Education & 2 Others [2015]eKLR, where the court summarised the principles for the grant of conservatory orders.
 22. Counsel contended that the Applicants had satisfied the prima facie test. Counsel further contended that the Applicants had a legal right to the suit property emanating from the letters of allotment and that the title deed recently issued to the 1st Respondent by the 2nd Respondent was acquired and issued fraudulently. He added that the allotting authority, the 1st, 2nd and 3rd Respondents, had not challenged the Applicants' allotment letters; therefore, any person who purported to obtain title to the suit property without revocation of the previous letters or issuance of new allotment letters obtained the same unprocedurally.
 23. Counsel submitted that there was a real danger that the Applicants would suffer prejudice as a result of the violation of their right under Article 40 of *the Constitution* if the conservatory order is not issued. Counsel further submitted that the suit property was significantly occupied by members of the public occupying the suit property as tenants of the Applicants. He added that they warranted recognition and protection.
 24. On costs, counsel relied on the principle that costs follow the event. Counsel contended that this application is merited therefore, it should be allowed and the Applicants awarded costs thereof.
 26. The 1st Respondent filed submissions dated 3rd May 2024 in opposition to the application. Counsel for the 1st Respondent identified the issues for determination as follows:
 - a. Whether the Applicants have met the threshold for grant of an order of injunction against the 1st Respondent;
 - b. Whether the Applicants have established, demonstrated and/or proved the requisite ingredients to warrant the grant of conservatory orders sought; and
 - c. What orders should the court make on costs.
 27. . On the first issue, counsel relied on the case of Giella vs Cassman Brown [1973] EA 358 as reiterated in the case of Shem Ondlenga & 7 Others vs Town Council of Ogembo [2010]eKLR, where the court stated the principles that guide the court on whether or not to grant injunctive orders.



28. . On whether the Applicants had established a prima facie case, counsel submitted that they had not been able to establish a prima facie case given that the allocation of the stalls did not amount to the allocation of land and, as such, did not confer title.
29. Counsel further submitted that a perusal of the allotment letters revealed that the stalls, though allocated to the Applicants, remained the property of the council and the Applicants were only but tenants of the council. Counsel added that payment of the ground rent and land rates did not confer ownership of the suit property to the Applicants. He added that payment of the same was simply a condition for the allocation of the stalls. Counsel argued that the only documents annexed by the Applicants pertained to the allocation of stalls, which could not amount to the allocation of land.
30. Counsel stated that the Applicants had also not provided any evidence to rebut the 1st Respondent's assertions that their stalls were located opposite the road from the 1st Respondent's land (suit property) on which the eviction exercise was carried out.
31. On the second limb, counsel submitted that the Applicants did not produce any evidence of the alleged demolitions done by the 1st Respondent. Counsel further submitted that in the absence of documentary evidence, the Applicants had failed to demonstrate how they would suffer irreparable loss if the injunction is not granted.
32. Lastly, counsel argued that the balance of convenience tilted in favour of dismissing this application since the Applicants had neither shown that any demolition was carried out by the 1st Respondent nor proved ownership of the stalls. He added that the Applicants had not demonstrated the irreparable loss they were likely to suffer that could not be compensated by an award of damages.
33. It was his conclusion that the application did not meet the threshold for grant of an interlocutory injunction as it had failed to meet any of the conditions laid out in the Giella case (supra).
34. . On the second issue, counsel relied on the decision in the cases of Gitarau Peter Munya vs Dickson Mwenda Githinji & Another [2015]eKLR and Abdullahi Omar Said vs County Government of Mombasa [2021]eKLR.
35. . Counsel reiterated that the Applicants had not established a prima facie case given that they had not established the connection between the stalls and the 1st Respondent's parcel of land. Counsel contended that the Applicants did not show that their stalls were demolished, therefore, they did not have an arguable case. Counsel further contended that the Applicants were unlikely to suffer irreparable loss, having failed to demonstrate ownership of the suit property. Counsel added that the Applicants had not rebutted that the 1st Respondent's parcel of land was distinct from the stalls.
36. . Counsel argued that it was against public interest to grant the orders sought because it would greatly prejudice the 1st Respondent, the legal owner of the suit property. Lastly, counsel submitted that the Applicants had not met the criteria to warrant the grant of conservatory orders.
37. . In conclusion, counsel urged the court to find that this application is without merit and proceed to dismiss it with costs.

Analysis and Determination

38. Having considered the issues raised in the application and the rival submissions, the main issue for determination is whether the application is merited.



39. The law on temporary injunction is provided under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 as follows:

“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.”

40. The conditions for the grant of applications for injunctions were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (supra), where the court expressed itself in the following terms:

“Firstly, 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.”

41. Further in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, the court reiterated that: -

“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.

Whether the Applicants have established a prima facie case

42. The court shall examine whether the Applicants have fulfilled this first limb to determine whether the court shall put into consideration the rest of the requirements. The case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* (supra) defined a prima facie case as follows;

“A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in 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."

43. A close perusal of the affidavit in support of the application dated 11th December 2023 and the Applicant's submissions reveals that the Applicants adduced copies of letters from the Municipal Council of Thika allocating to them stalls located at Jamuhuri Market. The letters show that the Applicants were to meet the following conditions:
- i. That the allottee shall develop the stall using materials and design similar to the recently developed stalls under the third urban project.
 - ii. That the stall shall become the property of the Council and the allottee shall be a council tenant.
 - iii. That the allottees shall pay the determined rent to the council on a monthly basis taking into account basic construction cost.
 - iv. That the allottees shall not transfer the stall without the consent of the council.
44. . The Applicants contended that they abided by the set conditions. They also annexed receipts for payment of land rate and ground rent issued by the Kiambu County Government. A further perusal of the court record shows photographs of the demolitions carried out at the suit property annexed on the notice of motion dated 15th December 2023.
45. The evidence placed before this court by the Applicants shows that they have a prima facie case. I will therefore consider the second limb.
46. The Applicants produced photographs depicting the demolition of their buildings by the Respondents. In response, the 1st Respondent contended that the demolition occurred on his property and not on the Applicants' land, which he stated was located opposite his. The Applicants stated that they are apprehensive that the 1st Respondent will cause further demolitions, forcefully occupy the suit property, tamper with the records at the land registry and cause them emotional distress by preventing them from peacefully developing or occupying their land. This court is in agreement that if the Respondents are allowed to commit the aforementioned acts, then the Applicants would indeed suffer irreparable harm.
47. . The balance of convenience favours preserving the suit property pending hearing and determination of the suit. This court finds that the Applicants have met the threshold espoused in the case of *Giella vs Cassman Brown* (supra). Similarly, this court finds that the Applicants have met the threshold for the grant of conservatory orders. I therefore find merit in the application dated 7th March 2024 and allow it in the following terms:-
- a. A temporary injunction is hereby issued restraining the 1st Respondent herein either by himself, his servants, employees, agents and/or any person working under their instructions from trespassing on, from advertising to sale by public auction, selling, transferring, alienating, disposing, interfering, erecting any structures upon or start to and or continuing any construction and/or dealing with the suit property known, and referenced as Land Registration Number Jamuhuri Market Stall No. JT 4 and JD, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14 which have since been registered as Thika Municipality/ Block 11/863 pending the hearing determination of this Petition.



- b. A conservatory order is hereby issued restraining the 2nd and 3rd Respondents herein either by themselves, their servants, employees, agents and/or any other persons working under their instructions from trespassing on, from advertising to sale by public auction, selling, transferring, alienating, disposing, interfering, erecting any structures upon or start to and or continuing any construction and/or dealing with the suit property known and referenced as Land Registration Number Jamuhuri Market Stall No. JT 4, Jamuhuri Market Stall No. JC, Jamuhuri Market Stall No. JF, Jamuhuri Market Stall No. JA 38, Jamuhuri Market Stall No. JB and Jamuhuri Market Stall JE 14 which have since been registered as Thika Municipality/ Block 11/863 pending the hearing determination of this Petition.
- c. The Officer Commanding Thika Police Station enforces the Orders 1,2, 3 and 4 above.
- d. Costs of this application shall be in the cause.

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

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J. M ONYANGO

JUDGE

In the presence of:

Mr Angelo Mukuei for the 1st, 2nd and 3rd Petitioners

Miss Mwaluko for Mr Kiroko for the Plaintiff in ELC E043/24

Miss Mugo for Mr Karanja for the 1st Respondent

Court Assistant: Hinga

