



**Regeru v Vaghjiyani Enterprises Ltd & 6 others (Environment & Land Case E039 of 2024) [2025] KEELC 3437 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3437 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E039 OF 2024**

**JM ONYANGO, J  
APRIL 30, 2025**

**BETWEEN**

**PETER NJOROGE REGERU ..... PLAINTIFF**

**AND**

**VAGHJIYANI ENTERPRISES LTD ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KIAMBU ..... 3<sup>RD</sup> DEFENDANT**

**CABINET SECRETARY LANDS HOUSING AND PHYSICAL  
PLANNING ..... 4<sup>TH</sup> DEFENDANT**

**DIRECTOR GENERAL PHYSICAL AND LAND USE PLANNING .... 5<sup>TH</sup>  
DEFENDANT**

**DIRECTOR OF LAND ADMINISTRATION ..... 6<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY-GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated 23rd April, 2024 seeking an order of temporary injunction to restrain the defendants, their servants, agents or persons claiming under or through them from fencing, excavating, constructing or otherwise interfering with land parcel number Muguga/Gitaru/1042 (hereinafter referred to as the suit property) pending the hearing and determination of the suit herein.
2. The grounds upon which the application is based are contained in the Notice of Motion and the Applicant’s supporting affidavit sworn on 23rd April 2024. In the said affidavit, the Applicant averred that he was the registered proprietor of the suit property originally known as Muguga/Gitaru/487/85.



3. He stated that sometime in 2016, the 3rd Defendant/Respondent entered the suit property and fenced it, prompting him to file ELC Case No. 1411 of 2016 against them at the Environment and Land Court in Nairobi. He further averred that the 2nd Respondent purported to cancel his title to the suit property vide Gazette Notice No.6862 dated 17th July 2017, and as a result, he amended his plaint in the aforementioned suit to enjoin them as defendants. The ELC Court in Nairobi heard the suit and delivered its decision, where it ordered that Gazette Notice No.6862 be cancelled and further made a declaration that the suit property belonged to the Applicant. He added that the said suit was pending execution of the decree of the court.
4. He claimed that the 3rd Respondent entered the suit property and started excavating the soil and digging trenches in readiness for the construction of affordable housing for the 2nd Respondent. He further claimed that he wrote a demand letter to the Respondents through his advocates. However, the said Respondents ignored his demand, prompting him to file this suit.
5. He annexed a copy of the green card to the suit property, a copy of the Gazette Notice No 6862, a copy of the Further Amended Plaint, Judgment, Decree and a Judicial Review Application No. E001 of 2023 seeking enforcement of Decree in ELC Case No.1411 of 2016 by way of an order of mandamus, photographs depicting the suit property and the demand letter dated 14th February 2024.
6. The application was resisted by the 3rd Respondent through the Replying Affidavit of Waithira Waiyaki, a County Advisor at the office of the County Attorney for the 3rd Respondent herein sworn on 3rd July 2024. She deponed that two suits relating to the suit property were pending before the court. She contended that an Application for Review of Judgment was pending at the Nairobi ELC Court in ELC Case No.1411 of 2016. She added that Judicial Review Application Number E001 of 2023 (Peter Njoroge Regeu vs The National Land Commission & Another) was scheduled for mention on 29th July 2024.
7. She argued that the annexure containing pleadings in Judicial Review Application No. E001 of 2023 ought to be struck out for being in violation of Section 106 (B) 4 of the *Evidence Act*.
8. She stated that the Applicant had not adduced any evidence that depicted the actions by the 3rd Respondent that he complained about. She added that this application was frivolous, vexatious and an abuse of the court process.
9. In the Supplementary Affidavit sworn by John Kiarie Njuguna, the Applicant's counsel, on 29th August 2024, he contended that the Application for Review of Judgment filed by the 3rd Respondent in ELC Case No.1411 of 2016 was dismissed with costs on 9th August 2024.
10. None of the parties had filed their written submissions at the time of writing of this ruling.
11. The only issue for determination is whether the Applicant has met the conditions for the grant of a temporary injunction.
12. In order for the court to exercise its discretion in granting injunctive relief, the applicant must meet the conditions set out in the case of *Giella vs Cassman Brown & Company Ltd* 1973 EA 358 which are as follows:

“First, the applicant must show that he has 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 damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.”



13. In the case of *Mrao vs First American Bank of Kenya Limited (2003)* eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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.”

14. The first question I must determine is whether the Applicant has a prima facie case with a probability of success. The Applicant has annexed a copy of the green card to the suit property, which depicts him as the registered proprietor of the suit property. The Applicant also annexed the judgment and the decree issued in Nairobi ELC No. 1411 of 2016, in which the court entered judgment in his favour against the 2nd and 3rd Respondents. The court in the said suit issued a permanent injunction restraining the 2nd and 3rd Respondents either by themselves or through their agents, servants or any person claiming through them, from entering the suit property or in any way interfering with the Applicant’s quiet use of the suit property. The 1st, 4th, 6th and 7th Defendants were not party to the said suit.

15. None of the parties has provided any evidence to show that the said order has been set aside. The 3rd Respondent averred that there was a pending application for review of the said judgment pending before the Nairobi ELC Court. However, the Applicant annexed the ruling dated 9th August 2024, through which the court (Mboya J) dismissed the said application. This means that the 3rd Defendant is in violation of the decree of the court issued in ELC case No. 1411 of 2016.

16. As was stated in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others 2014* eKLR:

“The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”

17. On the material placed before the court, I am persuaded that the Applicant has established a prima facie case with a probability of success.

18. With regard to irreparable loss, the Applicant averred that his land was invaded by the 3rd Respondent, who excavated it in preparation for the affordable housing project. If the construction is to take place, it would cause the Applicant irreparable loss. The Applicant annexed photographs of the suit property depicting the excavated area and the trenches dug.

19. The test for irreparable loss is defined in Halsbury’s Laws of England, Third Edition Volume 21, P.352 as follows:

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”



20. This court finds that the actions by the Respondents would lead to the Applicant suffering irreparable loss if the injunctive relief is not granted.
21. Turning to the question of the balance of convenience, the Applicant has demonstrated that he has been inconvenienced by the Respondents' unlawful activities on his land and therefore the balance of convenience tilts in his favour.
22. In the final analysis, I am of the view that the Applicant has satisfied the conditions for the grant of a temporary injunction. Consequently, I find merit in his application and I grant it and make the following orders:
  - a. A temporary injunction is hereby granted restraining the Defendants/ Respondents either by themselves, their servants, agents or persons claiming under or through them be restrained from fencing, entering, excavating, constructing or otherwise interfering with all that parcel of land known as Muguga/gitaru/1042 pending the hearing and determination of the suit herein.
  - b. The costs of the 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:

1. Mr Njuguna for the Plaintiff/ Applicant
2. Mr Mararo for the 3rd Defendant
3. Mr. Kahara for the 1st Defendant

Court Assistant: Hinga

