



**Century Oil Trading Company Limited v County Government  
of Kiambu & 3 others (Environment & Land Petition  
E014 of 2024) [2025] KEELC 3408 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3408 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION E014 OF 2024**

**JA MOGENI, J  
APRIL 29, 2025**

**BETWEEN**

**CENTURY OIL TRADING COMPANY LIMITED ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN  
DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**THE LAND REGISTRAR, THIKA ..... 3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By Notice of Motion dated 23/1/2025 brought under Articles 2, 3(1), 10, 19, 20, 21, 22, 23, 27 (1) (2) 23, 27 (1) (2), 40, 50, 64, 165 (2) (b) and 258 (2) of *the Constitution* of Kenya, Section 13 of the *Environment and Land Court Act*, Section 24, 25, 26 and 29 of the *Land Registration Act* and Order 40 Rules 1, 2, 3, of the *Civil Procedure Rules* and Sections 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya and all enabling provisions of the law the Applicant seeks orders:-

1. Spent
2. That pending the hearing and determination of this Application, this Hon Court be pleased to issue orders of injunction restraining the Respondent by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation, dealing, disposing trespassing, transferring and/or in any other manner interfering with the Plaintiff's quiet use, occupation and possession of all those parcels of land known as Land Parcel No. Thika Municipality Block 9/1032 and Thika Municipality Block 9/1033.



3. That pending the hearing and determination of the petition, this Honorable Court be pleased to issue orders of injunction restraining the Respondent by themselves, their servants, agents, proxies and/or person exercising authority from them from inhibiting, alienation, dealing, disposing trespassing, transferring and/or in any other manner interfering with the Plaintiff's quiet use, occupation and possession of all those parcels of land known as Land Parcel No. Thika Municipality Block 9/1032 and Thika Municipality Block 9/1033.
4. That the 3<sup>rd</sup> Respondent be compelled to issue to this Court a certified copy of abstract of title in respect to all those parcels of land known as Land Parcel No. Thika Municipality Block 9/1032 and Thika Municipality Block 9/1033.
5. The Respondents do pay for the costs of this Petition.
2. The Application is supported by the grounds on the face of it and the affidavit sworn by Martin Mwangi Gacherua co-director of the Petitioner/Applicant. The Application is unopposed despite the Court having issued directions on the filing of responses when the Counsel of the 1<sup>st</sup> Respondent requested for extending of time on 20/11/2024. The Court granted Counsel Ms Maina 21 days from 20/11/2024 to file their response and scheduled the hearing of the Application on 5/02/2025. The interim orders barring and dealing in the suit properties issued on 25/10/2024 were extended.
3. The Court issued directions on disposal of the Application by way of written submission. I have perused the CTS record and the physical Court file and noted that by the time of writing this Ruling only the Applicant/Petitioner had filed their submissions dated 4/04/2025 which I have considered. The Application therefore is unopposed.

#### **Determination.**

4. I have considered the Applicant's unopposed Application and submissions herein, the authorities cited as well as the applicable law for which I shall determine Application on its merits.
5. I have also perused the pleadings. Briefly this is what is brought out, the Applicant depones that he is the registered owner of all those parcels of land known as Land Parcel No. Thika Municipality Block 9/1032 and Thika Municipality Block 9/1033. However, on diverse dates in February 2024, the 1<sup>st</sup> Respondent made public pronouncements to the effect that the Applicant's property, together with other parcels of land situate in the vicinity were acquired irregularly.
6. Following the public pronouncements, the 2<sup>nd</sup> Respondent visited the Applicant's property and ordered the Applicant's workmen and servants to leave. At the same time on 8/02/2024 the 1<sup>st</sup> Respondent illegally placed restrictions on the Applicant's land.
7. It is the Applicant's contention that the actions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are illegal, irregular and unprocedural. Further that following the action of the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondents have failed to supply the Petitioner with the certified copies of records despite the Applicant paying the requisite fees hence creating an apprehension that the records in the custody of the 3<sup>rd</sup> Respondent and the sanctity of the Petitioner's titles to the land are precarious in light of the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
8. The Applicant avers that the Petitioner's right to property is under sustained and continued infringement and for that the Petitioner seeks this Court's intervention.
9. The Applicant annexed to the Application copies of Certificates of Lease for the suit properties parcels of land known as Land Parcel No. Thika Municipality Block 9/1032 and Thika Municipality Block



9/1033 which were both issued on 29/08/2011. The Applicants also stated that the suit property was previously owned by Faith Wanjiru Maina, Philip Mionki M’Mwereria and Stanley Kiptanui Rop and that this prior proprietors had informed the Applicant/Petitioner that prior to the purchase, the subject properties were part of Land Parcel No. Thika Municipality block/669 and which was later subdivided and the subject properties herein are part of the resultant subdivisions.

10. Further that the prior proprietors had filed a suit against the 1<sup>st</sup> Respondent Thika MCCC 694 of 2009 where the Court upheld the prior proprietors’ ownership and sanctity of title as seen through the copy of Judgment annexed and marked as ‘MMG3’. At the same time ELC Case No 69 of 2020 was also determined in favour of the prior proprietors for Land Parcel No. Thika Municipality Block 9/1109 as seen via the annexed copy of Judgment marked as ‘MMG4. T’.
11. At the same time the Applicant has annexed copies of official search which show that as at 22/06/2022 the Applicant is the registered owner of the suit property.
12. I am aware that at this stage, the Court is only required to determine whether the Applicant is deserving of the orders sought, and that the Court is not required to determine the merit of whether the Applicant herein has demonstrated that they have a genuine and arguable case or not. So I will only address myself to whether the Applicant deserves the injunctive orders prayed for.
13. The celebrated case of *Giella v Cassman Brown* [1973] EA 358 sets out conditions for the grant of an interlocutory injunction as follows:-
  - a. Is there a serious issue to be tried (prima facie case)
  - b. Will the Applicant suffer irreparable harm if the injunction is not granted?
  - c. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").
14. On the first issue as to whether the Applicants in this matter have made out a prima facie case with a probability of success, I am guided by the case of *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] KLR 125, where 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.”
15. From my perusal of the documents filed by the Applicant/Petitioner herein annexed being Leases, Certificates of Lease, the Copies of the Judgments of the Courts, rate receipts and searches, I am of the view that the Applicant has established a prima facie case. Section 26 (1) of the [Land Registration Act](#), is a point of reference in view of the fact that Applicant/Petitioner has been in occupation of the suit properties. At the same time the Application before me is unopposed. Further, the Applicant having sought an injunction they have asked the Court to consider restraining the Respondents from interfering with the suit properties in the ways herein above enumerated, or taking possession of the same, so as to preserve the suit properties pending the hearing and determination of the Petition. I do find that indeed the Applicant has established a prima facie case.
16. On whether the Applicant would suffer irreparable harm if the injunction is not granted, I have noted that the 1<sup>st</sup> Respondent placed restrictions on the Applicant’s land on 8/02/2024. At the same time the Applicant has averred that on diverse dates in February 2024 the 2<sup>nd</sup> Respondent made public pronouncements to the effect that the Applicant’s property was acquired illegally. The Applicant



- alleges that the 2<sup>nd</sup> Respondent even went further and visited the suit properties and ordered the Applicant's workmen and servants to vacate the premises.
17. Given the alleged visit to the suit property by the 2<sup>nd</sup> Respondent, it is normal that the Applicant is apprehensive that they would suffer irreparable harm if the injunction was not granted. In *Nguruman Limited v Jan Bonde Nielsen and 2 Others* (2014) eKLR the Court of Appeal had observed as follows on irreparable injury:
- “... An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy ... 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.”
18. I will also rely on the decision of the Court in the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR where in explaining the meaning of irreparable injury it held as follows:
- “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.”
19. In the case of *Paul Gitonga Wanjau v Gatbuthi Tea Factory Company Ltd & 2 Others* [2016] eKLR, the Court observed as follows on the issue of balance of convenience:
- “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.”
20. There having been no contestation that the Applicant has been in occupation of the suit properties, I am convinced that there is a lower risk in granting orders of temporary injunction than not granting them, pending the hearing of the suit on its merits. This is especially so in view of the history of the suit property, the Court needs to have an opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the registration of title in the name of the Applicant as well as hearing the Respondents' evidence on the allegations of fraud.
21. Subsequently, I am convinced that if orders of temporary injunction are not granted in the instant suit, the suit properties might be in danger of being dealt in the manner set out in the Application as apprehended by the Applicant. From the averments of the Applicant, the 2<sup>nd</sup> Respondent having



threatened the workers of the Applicant and the 1<sup>st</sup> Respondent having placed an inhibition on the suit properties, I find that there is real danger of the Applicant suffering irreparable harm.

22. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* eKLR (supra), the Court defined the concept of balance of convenience as follows:

“The meaning of balance of convenience tilts favor 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 Plaintiff’s’ to show that the inconvenience caused to them be greater than that which may be caused to the defendant’s inconvenience be equal, it is the Plaintiff who suffer.”

23. In other words, the Applicant 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.

24. It is clear that the properties are registered in the name of the Applicant. The Applicant has laid a stake on them by virtue of the payments made for payment of rent and rates and the fact the search shows that the Applicant is the registered owner. Thus the balance of convenience tilts in the Applicant’s favour.

25. Consequently I find the Application has merit and allow prayer 3 thereof. The costs of the Application is awarded to the Applicant.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA MICROSOFT TEAMS ON THIS 29<sup>TH</sup> DAY OF APRIL, 2025.**

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**MOGENI J**

**JUDGE**

In the presence of:

Mr. Njoroge for the Applicant/Petitioner

Ms. Maina for the 1<sup>st</sup> Respondent

2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents – Absent

Melita - Court Assistant

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**MOGENI J**

**JUDGE**

