



**Muthiani v Amunga & another (Environment & Land Case  
E095 of 2024) [2025] KEELC 3217 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3217 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT & LAND CASE E095 OF 2024**

**AY KOROSS, J  
APRIL 8, 2025**

**BETWEEN**

**LUISAH NTHUKI MUTHIANI ..... PLAINTIFF**

**AND**

**GEOFFREY AMUNGA ..... 1<sup>ST</sup> DEFENDANT**

**ELIJAH OMOYO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling seeks to determine the notice of motion dated 28/10/2024 that the plaintiff filed. It seeks several reliefs from this court some of which are spent and the residual prayers for determination are: -
  - a. A temporary injunction be issued restraining the defendants whether acting in person, by proxy, through their agents, servants, employees or any other person acting at its behest, from trespassing, engaging in construction/fencing and/or interfering in any other way with un-surveyed residential plot no. 368 Athi River, pending hearing and determination of this suit.
  - b. The OCS Mlolongo police station be ordered to assist in the full compliance of the orders granted, for purposes of maintaining peace and order.
  - c. Costs for this motion be provided for.
2. The motion is supported by the grounds set out on the body thereof and the supporting affidavit sworn by the plaintiff on the instant date.
3. In a brief summation of the grounds and depositions, she asserted that she was the legitimate owner of an un-surveyed residential plot No. 368 Athi River (“suit property”) as demonstrated by the letter of allotment issued on 2/03/1995.



4. She further averred the defendants had wantonly trespassed onto the suit property to the extent of excavating soil and erecting a foundation for a concrete wall fence.
5. She maintained all efforts to restrain the defendants from encroaching and/or trespassing on the suit property including reporting the unlawful actions at Mlolongo Police Station had been futile. Hence, she urged this court to grant the reliefs sought.
6. Despite service, the defendants did not oppose the motion and it was canvassed by counsel Mr. Okiror's oral submissions that he made on 30/1/2025 whereby he urged the court to grant the reliefs sought.
7. This court has carefully considered the motion, its grounds, affidavits, and parties' rival submissions. In cognition, the following issues arise for determination: -
  - a. Whether the plaintiff has met the legal threshold to warrant the grant of injunctive orders.
  - b. What orders should be issued?

### **Analysis and Determination**

8. These two issues shall be handled together. Order 40 Rule 1 of the [Civil Procedure Rules](#) confers this court with jurisdiction to grant an injunctive relief by stating 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 orders.”

9. Although this court exercises discretion in considering applications for injunctive relief, it exercises judicious discretion based on the law, material and evidence.
10. Utmost, an applicant has to meet the threshold of the 3 tests which are *inter alia*, establish a *prima facie* case; demonstrate irreparable injury, and that the balance of convenience tilts in her favour.
11. The tests for the grant of temporary injunction were well settled in the case of *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358 which were similarly restated in the case of [Nguruman Limited v. Jan Bonde Nielsen & 2 Others](#) [2014] eKLR in the following words: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a *prima facie* level,
- (b) demonstrate 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.”

12. When determining an interlocutory application such as the one before this court, the court has to be careful not to prejudice a party by making conclusive findings of fact or law on substantive issues that are the preserve of trial as was stated by Ringera, J (as he then was) in [Airland Tours & Travel Limited v. National Industrial Credit Bank](#) Nairobi (Milimani) HCCC No. 1234 of 2002.
13. The 1<sup>st</sup> test to establish is whether the plaintiff has a *prima facie* case and the definition of the term was defined by the Court of Appeal decision of [Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others](#) [2003] KLR as follows:-

“In civil cases a *prima facie* case 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 to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
14. In this case, the plaintiff has tendered a copy of the alleged letter of allotment of the suit property which ostensibly shows she is the suit property’s allottee and in this court’s humble view, she has a *prima facie* case.
15. Nevertheless, even if the plaintiff appears to have a *prima facie* case, there is a challenge as the defendants have allegedly trespassed onto the suit property, dug trenches, excavated soil and erected a foundation for a fence.
16. The photographs tendered to the court also seem to suggest there is a temporary house erected on the suit property. Given these circumstances, it follows the court cannot injunct what has already happened.
17. In this court’s humble view, if it were to grant orders of temporary injunction when it appears the defendants are in occupation, this court would principally be evicting the defendants from the suit property.
18. Put another way, it would be issuing an order of mandatory injunction. See the Court of Appeal decision of [Lucy Wangui Gachara v Minudi Okemba Lore](#) [2015] KECA 277 (KLR).
19. In arriving at this, this court adopts the rendition in [Stanley Kirui v. Westlands Pride Limited](#) (2013) eKLR which stated: -

“...the court cannot injunct what has already happened. I will be guided by the findings in case of [Mavoloni company Ltd v Standard Chartered Estate Management Ltd](#), Civil Appeal No. 266 of 1997 (1997) LLR 5086, where the court held that “an injunction cannot be granted once the event intended to be injuncted has been overtaken by events.”

Similar findings were held in the case of [Esso Kenya Ltd v Mark Makwata Kiya](#), Civil Appeal No. 69 of 1991 where it was stated

“an injunction cannot issue to restrain an event that has taken place.”



20. On the premises, it is the considered view of this court that it would be superfluous to consider the other 2 tests.
21. In the situation of this case where there is a need to protect the substratum of the suit property, this court finds the appropriate order that suffices in the circumstances of this case is the maintenance of the status quo.
22. Before this court concludes, it must mention that this is a civil matter and in the absence of extremely special circumstances, it is inappropriate for a civil litigant to seek assistance from the police at an interlocutory stage since any default of the orders of this court can adequately be handled under the *Civil Procedure Act* and its Rules.
23. For the findings and reasons herein stated above and in addressing the issue (b), the court hereby issues the following final orders: -
  - a. That pending the hearing and determination of this suit, an order of status quo that is prevailing on un-surveyed residential plot no. 368 Athi River shall be maintained and status quo means that from the date of issuance of this ruling, there shall be no further constructions, fencing, interference or development on the un-surveyed residential plot no. 368 Athi River by either of the parties, their proxies, agents, servants, employees and/or any other person acting on their behalf.
  - b. Costs shall be in the cause.
  - c. Matter shall be mentioned for pretrial directions on 2.10.2025.

It is so ordered.

**DELIVERED AND DATED AT MACHAKOS THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Okiror for the plaintiff/applicant.

N/A for defendant.

Ms Kanja Court Assistant.

