



**Mwangi & another v Nairobi City County; Nairobi Land Registrar & another (Interested Parties)
(Environment & Land Case E407 of 2024) [2025] KEELC 4525 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 4525 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E407 OF 2024**

JG KEMEI, J

APRIL 8, 2025

BETWEEN

LOIS NYAMBURA MWANGI 1ST PLAINTIFF

SHARPE AUTO SERVICES LTD 2ND PLAINTIFF

AND

NAIROBI CITY COUNTY DEFENDANT

AND

NAIROBI LAND REGISTRAR INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

(In respect of the Plaintiffs' application dated 2/10/24)

1. What is before the Court is the motion brought by the Plaintiffs and filed on the 2/10/24 seeking orders THAT:
 - a. a temporary injunction be issued ex-parte in the first instance, restraining the Defendant/ Respondent by itself, its agents, servants, legal representatives and/or administrators and any other person whether body legal or natural from interfering, trespassing, entering, demolishing or dealing in whatsoever manner with all that property known as L.R.No.7747/3/2 (Block 2712) (Plot No.67) located off Academy Road in Karen pending the hearing and final determination of the main suit.
 - b. the OCS Langata Police Station to enforce the Orders in (2) and (3) above.
 - c. costs of this application be provided.



2. The application is premised on the grounds on the face of the application and the supporting affidavit of Lois Nyambura Mwangi the 1st Applicant sworn on even date.
3. In the main she averred that she is the registered legal owner of the suit land L R No 7747/3/2 (BLOCK 2712) (Plot No 67) (hereinafter called the suit land) located off Academy Road in Karen.
4. That she and her late husband John Nahashon Kiriri Mwangi purchased the mother title being parcel No 7747/3 (IR No 8686) measuring 10.4 acres from one Kathleen Firmin in 1984 and obtained a title thereon.
5. Come 1995, the couple caused the mother title to be subdivided into LR No 7747/3/1-
16. That they surrendered parcel 7747/3/1 measuring 0.0893 ha to the Government of Kenya and retained the remaining parcels being LR 7747/3/2-16 now comprising Blocks 2700-2714. That plot No 67 sits on L.R No 7747/3/2 also known as Block 2712 and is owned by the 1st Plaintiff.
6. That on 1/7/23 she entered into a lease agreement with the 2nd Plaintiff over plot No 2712 (plot 67) as per the lease agreement dated the 16/5/23 annexed thereto. She averred that the 2nd Applicant lives in an old house constructed in 1900s on the suit land.
7. The gist of her complaint is that the Respondent vide an enforcement Notice dated the 24/9/24 claims that there is an illegal development of structures without approval; illegal conversion of use of the property to a garage without development permission from the Respondent and lastly that the suit land is public property.
8. The 1st Applicant has refuted any of the grounds cited in the enforcement notice on the basis that the suit land is private land, it houses an old house, no conversion of use has been undertaken nor any development is being carried out on the land. That the enforcement notice is ill advised, illegal null and void and a disguised ploy by the Respondent to grab her land notwithstanding that it holds a legitimate title to the property as well as the dwelling house thereon hence the filing of the suit and the application seeking injunctive orders.
9. On the 7/10/24 the Court granted interim orders of injunction restraining the respondents from interfering with the suit land in any manner pending the hearing and determination of the application.
10. Opposing the application, the Respondent through the Replying Affidavit of Geoffrey Cheruiyot sworn on 4/12/24. He introduced himself as the Director of Geographic information system (GIS) at the Nairobi City County. That the suit land is a resultant subdivision of the mother parcel LR No 7747/3. That one of the conditions for the subdivision of the mother parcel into 14 plots in 1993 was inter alia the surrender of plot No 7747/3/2 which is the suit property and reserved for public purposes. That according to the Town planning committee minutes the suit land was therefore surrendered to the Respondent in order to put up a health centre. That the approved subdivision plan and scheme for LR 7747/3/3-16 measured 0.2 ha each which parcels, the 1st Applicant sold to third parties. That at no time was the suit land allocated to the 1st Plaintiff for residential use or any other such user.
11. It conceded issuing the enforcement notice dated the 24/9/2024 against the applicants to stop any further development on the property, remove any illegal developments and avail compliance documents to the Respondent within 14 days. That instead of complying with the notice the applicants filed this suit in a rush with unclean hands. That unlike Block 7211 and 7213, the 1st Applicant has not tabled any evidence in support of her ownership of the suit land LR No 7747/3/2 (Block 7212) or plot 67 thus failing to demonstrate to the Court any prima facie case for the



establishment of any legal or equitable interest in the suit property and accuses the 1st Applicant of being on a fishing frenzy to grab public land.

12. Vide the Replying affidavit sworn by Brian A Ikol sworn on 29/11/24, the 2nd Interested Party contended that it is not privy to how the 1st Applicant acquired proprietary interest in the property as it does not concern itself with private property and that the applicants have not established any cause of action against it in the suit property which in his own view is private land. That the current suit against it is brought in bad taste and is a waste of judicial time as the property is outside its mandate in law.
13. The 1st Applicant filed a supplementary affidavit sworn on the 18/12/24 in which she reiterated the contents of her earlier averments and impugned the validity of the Town planning Committee Minutes on the grounds that they were neither signed by the Chairman nor the Secretary nor certified as a true copy of the same. That either no structural plans have been adduced in support of the surrender of the suit land, moreso, when neither the 1st Applicant and her husband were present during the said meeting.
14. The 1st Applicant explained that its subdivision approval was given in 1994 by the Director of City Planning and Architecture and that one of the conditions specified in the location plan is that the subplot being the suit land was reserved for development of a health clinic by the owners and not as a surrender to the respondent. She denied acceptance of any surrender of the suit property to the respondent. She stated that even if a surrender was to be a condition for approving the subdivision plan aforesaid, it would have been implausible and untenable to surrender land that had a house and bigger in size than what was to be retained. In addition, she added that she surrendered plot No 7747/3/1 as an access road to the Government and not the suit land. That the suit land subsists in the mother title which is annexed to the application and certified by the Land Registrar and marked as LNM-9
15. Parties have filed written submissions which I have read and considered.
16. Having considered the application, the affidavit evidence and the rival submissions the key issue for determination is whether the application has merit.
17. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010 is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;

“ 1. 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 Respondents 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 Respondents 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”.



18. The principles that guide the Court in determining an application of such nature are found in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows: -
 - a. First the Applicant must show a prima facie case with a probability of success.
 - b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
19. Has the Applicant established a prima facie case with a probability of success? A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR 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.”
20. In this case the 1st Applicant has led evidence and demonstrated to the Court that she and her late husband were/are the owners of the mother title out of which subdivisions yielded parcels 7747/3/2 (Block 7212 or plot 69) and others which they have since sold to third parties. The 1st Applicant averred that the suit land remained in the mother title post the subdivision as shown by entry No 45 of the said title. That what was surrendered to the Government was plot No 7747/3/1 as an access road and not the suit land. She added that one of the conditions for subdivision was that the owners would utilize the suit land for the development of a health clinic/centre but not as a public land. She retorted that it is not possible for them to have surrendered the suit land which in her view was developed with an old colonial house and was larger in size.
21. The Respondent insists that the suit land was surrendered to the Government for a public utility purpose which is health centre. The Respondent tabled unsigned and uncertified minutes and plans purporting to have approved the surrender. The Respondent however did not table any surrender document(s) in support of the alienation of the suit lands to the Respondent or to the Public.
22. Having said that the Court is cognizant that for an application for interlocutory injunction like this one before Court, the Court is not required to make final findings of contested facts as the Court should only weigh the relative strength of the party’s cases. See the case of *Mbuthia Vs Jimba credit Corporation Ltd* (1988) eKLR
23. From the evidence on record the Court is satisfied that the 1st Applicant was the registered proprietor of the mother title then and by dint of section 26(1) of the *Land Registration Act*, it is deemed to be the absolute and indefeasible owner subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate. The question whether the suit land was surrendered or not is a question best left to the trial Court to take evidence and determine on merit.
24. It suffices that at this stage the Court is satisfied that the 1st Applicant has demonstrated a prima facie case.
25. With respect to the second limb of the irreparable harm, it is to be noted that if the orders are not granted and the Respondent is allowed to enforce its notice the house on the land will be demolished thus changing the character of the suit land by the time the suit is heard. Besides land is capable of



being valued and a figure attached to it. I find that any damage to be suffered by the applicants can be compensated in monetary terms and therefore an injunction would not lie on this ground.

26. It is not in dispute that the ownership of this land is contested by both parties and having said that I am guided by the provisions of Order 40 Rule 1 of the CPR read together with Section 3A of the CPA, that justice will be served if the suit land is preserved pending the hearing and determination of the suit so that each party will Evidently, the balance of convenience favours the preservation of the suit land pending the hearing and determination of the suit.
27. In the end the application is allowed in the following terms;
- a. a temporary injunction be and is hereby issued restraining the Defendant/Respondent by itself, its agents, servants, legal representatives and/or administrators and any other person whether body legal or natural from interfering, trespassing, entering, demolishing or dealing in whatsoever manner with all that property known as L.R.No.7747/3/2 (Block 2712) (Plot No.67) located off Academy Road in Karen pending the hearing and final determination of the main suit.
 - b. The OCS Langata Police Station to enforce the Orders in (a) above, if found necessary.
 - c. Each party to bear their own costs of the application.
28. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF APRIL 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI JUDGE

Delivered Online in the presence of:

1. Maranga for the Applicants
2. NA for the Defendant
3. Ms Mochoge HB Ms Wanjiro for the 1st Interested Party
4. Ms Mwanyika for the 2nd Interested Party
5. CA- Ms Yvette Njoroge

