



**Ndungu v Njoki & 4 others (Environment & Land Case
88 of 2024) [2025] KEELC 3249 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3249 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 88 OF 2024**

JM ONYANGO, J

APRIL 3, 2025

BETWEEN

PATRICK MAINA NDUNGU PLAINTIFF

AND

WILLY KIHARA NJOKI 1ST DEFENDANT

HEZEKIAH KARIUKI MWANGI 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

DIRECTOR OF SURVEY 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion dated 30th May 2024 seeking an order of temporary injunction to restrain the 1st and 2nd Respondents, their agents, servants or whosoever acting on their behalf from entering, trespassing, developing, charging or transacting or dealing in whatever manner with L.R No. 1126/53 (hereinafter referred to as the suit property) pending the hearing of the main suit.
2. The application is predicated on the grounds set out in the Notice of Motion and the Plaintiff/Applicant's supporting affidavit sworn on 30.5.2024. In the said affidavit, he depones that he is the registered owner of the suit property having purchased the same from Kangaita Coffee Estates Limited and he has been in possession of the suit property since 2009.
3. However, sometime in 2024 he learnt from his neighbor that there was a case in Milimani Chief Magistrate's court where the suit property was among the properties in dispute and the 1st Respondent was claiming to be the owner of the suit property. The 1st Respondent in turn purported to sell the suit property to the 2nd defendant. The Applicant fears that given the strange turn of events, the 2nd Respondent may proceed to deal with the suit property in a manner that is prejudicial to his interests.



4. The application was opposed by the 2nd Respondent through his Replying affidavit sworn on 1.11.2024. He depones that he does not know the Applicant and that he bought the suit property together with other properties from the 1st defendant. It is his averment that at the time he bought the suit property, the Applicant was not in possession and he fenced the same and constructed a semi-permanent structure thereon.
5. He further depones that when he started fencing the suit property, one Daniel Karue Mwikia tried to interfere with him and he sued him in Milimani CMCC No. 4539 of 2023 where he obtained temporary injunctive orders.
6. He depones that if the plaintiff claims to be the owner of the suit property he should have applied to be joined in the case at Milimani Chief Magistrate's court.
7. By a Supplementary affidavit sworn on 16th December 2024 the Applicant depones that he bought the suit property from Kangaita coffee Estates Limited and the said company has never disputed the fact that he owns the suit property. He further depones that the Applicant lacks the capacity to file this case as he is not an administrator of the estate of James Kanyotu.
8. The Application was canvassed by through written submissions. The Applicant filed his submissions dated 3rd October 2024 through the firm of Gatumuta & Co Advocates. In the said submissions, learned counsel submitted that the suit property is in danger of being alienated unless the 1st and 2nd Respondents are restrained by an injunctive order. He relied on the case of Giella v Cassman Brown & Company Limited (1973) E.A 358.
9. On the other hand, the 1st Defendant/Respondent filed his submissions dated 31.10.2024 through the firm of Ruiru Njoroge & Associates. He submitted that the Applicant had not satisfied the conditions laid down in the case of Nguruman Limited v Jan Bonde Nielson (2014) eKLR. It was his contention that the Plaintiff had failed to establish a prima facie case with a probability of success.
10. Counsel further submitted that this suit is sub-judice as the Plaintiff has informed the court that there is another suit in Milimani where the suit property has been mentioned.
11. Having considered the application and replying affidavit as well as the rival submissions the following issues arise for determination
 - (i) Whether the suit is sub-judice
 - (ii) Whether the Applicant is entitled to an order of temporary injunction.
12. The conditions for the grant of applications for injunctions were settled in the celebrated case of Giella v Cassman Brown & Company Limited (1973) E A 358, 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.”



13. In order to determine whether the application meets the required threshold, the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR where the court held 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.”

14. The case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123 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.”

15. The applicant has annexed a copy of a title deed and transfer form showing the suit property was transferred to him by the directors of *Kangaita Coffee Estates Limited* on 21st December 2014. He has also deponed that he has been in possession of the suit property since he bought it in 2009. He has therefore established that he has a prima facie case with a probability of success.

16. As to whether he has demonstrated that he will suffer irreparable loss if the order of injunction is not granted, the Plaintiff has expressed his fear that the Defendant might alienate the suit property or deal with it in a manner that is inconsistent with the Plaintiff’s rights. I must admit that the Plaintiff has not demonstrated that he will suffer irreparable loss. However, if the suit property is sold before the suit is heard and determined, the substratum of the suit would be destroyed. In the circumstances I have to determine the application based on the balance of convenience.

17. In the case of *Virginia Edith Wambui vs Joash Ochieng Ougo Civil Appeal No. 3 of 1987* eKLR, the Court of Appeal held that;

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial.”

18. In view of the foregoing, and guided by the above-mentioned authorities I am inclined to order that the status quo obtaining as at the date of this order be maintained pending the hearing and determination of this suit.

19. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 3RD DAY OF APRIL 2025.



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J. M ONYANGO

JUDGE

In the presence of:

Ms Njoki for Mr Gatumuta for the Applicants

Mr. Ruiru for the 1st Defendant/ Respondent

Mr Kamande for the 2nd Defendant

Court Assistant: Hinga

