



REPUBLIC OF KENYA



Njoroge & 26 others v County Government of Nakuru & another (Environment & Land Case E042 of 2024) [2025] KEELC 3028 (KLR) (Environment and Land) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3028 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE E042 OF 2024**

MC OUNDO, J

APRIL 3, 2025

BETWEEN

RAHAB THIRA NJOROGE 1ST PLAINTIFF
STEPHEN GITUATHA 2ND PLAINTIFF
PETER KARANJA 3RD PLAINTIFF
MIRRIAM WANJIKU NDIRANGU 4TH PLAINTIFF
DAVID KABURU MUIRURI 5TH PLAINTIFF
ELIZABETH MUTHONI KIARIE 6TH PLAINTIFF
LEAH NJERI MUIRURI 7TH PLAINTIFF
GRACE WAITHIRA MWANGI 8TH PLAINTIFF
ISAIAH KAMORO 9TH PLAINTIFF
STEPHEN NJUNGE NGUGI 10TH PLAINTIFF
RUTH NDUNGU 11TH PLAINTIFF
BENSON MATHENGE 12TH PLAINTIFF
SIMON KIFE 13TH PLAINTIFF
TALEY GATHERU 14TH PLAINTIFF
MARY WAMBUI 15TH PLAINTIFF
GRACE MUTHONI 16TH PLAINTIFF
LUCY NDU'TA 17TH PLAINTIFF
TERESIA NJOKI GATIBARU 18TH PLAINTIFF



MARTHA WAMBUI MWENDE 19TH PLAINTIFF
PERIS WANJIKU GATHUMU 20TH PLAINTIFF
HANNAH WANJIRU GITHIOMI 21ST PLAINTIFF
FRANCIS MAINA 22ND PLAINTIFF
STERAH NJERI NDUNGU 23RD PLAINTIFF
BUNICE WAMUYU 24TH PLAINTIFF
MONCAH GITAU 25TH PLAINTIFF
JOSEPHINE GITHURE 26TH PLAINTIFF
TOMAS LUCENO 27TH PLAINTIFF

AND

COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT
GILGIL NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT
FUND COMMITTEE 2ND DEFENDANT

RULING

1. Before me for determination is a Notice of Motion Application dated 25th September, 2024 brought under the provisions of Order 40 Rule 1, Order 51 rule 1 of the Civil Procedure Rules 2010, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya wherein the Plaintiffs/Applicants sought for interim orders of temporary injunction restraining the Defendants/ Respondents whether by themselves, their servants, agents and/or anyone acting under their authority from dealing, entering, remaining, constructing, selling, alienating, trespassing, interfering, demolishing and/or in any other way dealing with their stalls and kiosks at Karunga Trading Centre within Gilgil township. They also sought for costs of the Application.
2. The said application was supported by the grounds therein as well as the supporting Affidavit dated 24th September, 2024 and sworn by Rahab Thira Njoroge, the 1st Plaintiff/Applicant herein who deponed that in the year 1988, the defunct County Council of Nakuru had allocated them as well as their successors, title kiosks and stalls at Karunga Market with on condition that they develop them within 24 months as per the government's regulation wherein in default, the stalls would be reallocated to other traders who had the capacity to establish them.
3. That subsequently, the Plaintiffs/Applicants had developed their respective plots to avoid reallocation hence the market became their place of operation throughout the year. That they had been paying the rent and rates faithfully to the County Government of Nakuru and its predecessor the Nakuru County Council. However, on 11th September 2024, the Defendant's officials had visited the market and informed them that they would begin to construct a new market to adapt to the growing demand of traders, need for better, modern facilities and for better management systems and therefore for seamless construction process, their market stalls would have to be demolished soon because of the urgency of the project.



4. That none of them had been aware of the proposed new market nor had they been involved in the decision making of the construction, and neither had they been consulted on the issue of demolition of the market stalls that had been in existence for more than 2 decades.
5. That the officials did not present them with a plan of how the proposed market would be allocated to the members an issue which could result in chaos, injustice and corruption. That further, the Defendants had failed to make provision for re-allocation or compensation to the traders to enable them continue with their businesses which was their only source of livelihood.
6. That subsequently, the Defendants' decision to upgrade the market without the input of the members of the market had been irregular, illegal, and un-procedural for want of public participation and also averse *the Constitution*. That accordingly, the court was their last port of call for protection of their rights. That it was thus in the interest of justice that the orders sought herein be granted since they would suffer substantial loss were the same were not granted.
7. In response and in opposition to the Applicants' Application, the 2nd Respondent filed its Replying Affidavit dated 20th November, 2024 sworn by Miriam Naini, the 2nd Defendant's Fund Manager who deponed that the said Application was frivolous, vexatious, lacked merit and should be dismissed in the first instance with costs. That the said application did not raise any cause of action against it for which they sought to have the 2nd Respondent's name struck out from the pleadings.
8. That Gilgil Constituency was one of the 11 constituencies of Nakuru County. That the 1st Respondent was established under *the Constitution* wherein its functions are prescribed under Part 2 of the Fourth Schedule of *the Constitution* and Section 5 of the County Government Act, 2012. That on the other hand, the 2nd Respondent was established under the National Government Constituency Development Fund Act, 2023 and its functions provided under Section 11 of the National Government Constituency Development Fund Regulations, 2010. That indeed, the function of constructing and/or developing markets did not fall within its functions, but within the functions of the 1st Respondent.
9. That it had been the defunct County Council of Nakuru that had allocated the Applicants and their successors title kiosks and stalls at Karunga Market as evidenced from the Applicants' annexure "RTN 2". That further, the conditions upon the allocation had been issued by the 1st Respondent as evidenced in the Applicant's annexure "RT 003". That as stated by the Applicants, they had paid rent and rates to the County Government of Nakuru and the defunct Nakuru County Council. That it had not been their officials who had visited the market and neither were they mandated to present any plans on construction of a market, provide for re-allocation or compensation for traders or even provide public participation for traders within markets.
10. That since no cause was alluded to them, there ought to be no orders issued against the 2nd Respondent as the actions/inactions alleged did not fall within the 2nd Respondent's function. That it was thus in the interest of justice that the Applicant's application dated 24th September, 2024 be dismissed with costs.
11. The 1st Defendant/Respondent did not participate in the instant Application.
12. Directions were issued for the disposal of the Application by way of written submissions wherein only the Plaintiffs/Applicants complied and filed their submissions thereby raising two issues for determination;
 - i. Whether the Plaintiffs/Applicants are entitled to an order of temporary injunction pending the hearing and determination of the suit.



- ii. Whether costs ought to issue.
13. On the first issue for determination, they submitted in the affirmative to the effect that they had satisfied the pre-requisites for the grant of injunctive order. They placed reliance in a combination of decisions in the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR to submit that they had demonstrated that they had a prima facie case with a probability of success on the basis that they were the rightful and lawful allottees of the allocated market plots which included the lock-ups established inside the Karunga Trading Centre, as well as the kiosks outside the market.
 14. That they had established a prima facie case with a high probability of success wherein the Defendants/ Respondents had attempted to demolish the market without conducting public participation, without coming up with a mode of compensation for the demolition of their market stalls/kiosks as well as the failure to have a strategy in place of how the new market stalls would be shared amongst them. That indeed, the market stalls/kiosks were their source of livelihood and the Defendants/ Respondents' intention of demolishing the same without coming up with a compensation scheme would render them and their families destitute.
 15. Reliance was hinged in the decided case of *ABE Semi Bvere v The County Assembly of Tana River & others* [2021] eKLR to submit that public participation was one of the national values and principles of good governance that bound all state organs, state officers, public officers and all persons. That pursuant to the provisions of Section 115 of the County Government Act, 2012, Public participation in the county planning processes was mandatory to be facilitated through mechanisms in part VIII of the Act.
 16. That the Defendants/Respondents' actions were in breach of Article 10 of *the Constitution* of Kenya, 2010 which mandated them to carry out public participation so as to inform the public of what was to be expected and also to put steps in place to ensure that the overall effect was minimal. That in the case herein, nothing had been done and the Defendants/Respondents actions had amounted to an ambush.
 17. On the second limb for the grant of temporary injunction, they submitted that they would suffer irreparable injury that could not be adequately compensated by an award of damages were the Court not grant the injunctive orders sought. That their source of livelihood would be curtailed by the planned demolition since the Defendants/Respondents had not given them an alternative location to conduct their business, now that the new construction was underway.
 18. That since they had demonstrated that they had been paying their rates and rents since the year 1998 without fail, thus it had been imperative and in the interest of justice and fairness that the Court grants them an order of temporary injunction restraining the Defendants/Respondents from in any way interfering with their stalls and kiosks at Karunga Trading Centre within Gilgil Township.
 19. Lastly, that were they not granted the injunctive order sought, the inconvenience caused to them would be greater than that which would be caused to the Defendants/Respondents if the injunction was granted but the suit was ultimately dismissed. Reliance was placed in the decided case of *Bryan Chebii Kipkoech v Barnabas Tuitoek Bargoria & another* [2019] eKLR. Further reliance was placed in the decided case of *Robert Mugo wa Karanja v Ecobank (Kenya) Limited & another* [2019] eKLR to submit that the inconvenience they would suffer was great hence the balance of inconvenience lay in their favour. That they had merited the conditions for the grant of an order of temporary injunction, pending the hearing and determination of the instant suit in a bid to ensure that the status quo was preserved.



20. Lastly they referred to the Judicial Hints on Civil Procedure, 2nd Edition, (Nairobi) Law Africa 2011 at page 101 to urge the Court to direct that the Defendants/Respondents bear the costs of the Application.

Determination.

21. The celebrated case of *Giella vs Cassman Brown* [1973] EA 358 sets out conditions for the grant of an interlocutory injunction as follows: -
- i. Is there a serious issue to be tried (prima facie case)
 - ii. Will the Applicants suffer irreparable harm if the injunction is not granted;
 - iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").
22. On the first issue as to whether the Plaintiffs/Applicants in this matter have made out a prima facie case with a probability of success, I am guided by the case of *Mrao vs 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.”
23. The Court has been moved under a Certificate of Urgency, by the Applicants, to issue temporary injunction against the Respondents. At this stage, the Court is only required to determine whether the Applicants are deserving of the Orders sought. The Court is not required to determine the merit of whether the Applicants herein have demonstrated that they have a genuine and arguable case or not.
24. The issue that arise for determination herein is therefore whether an interim order of injunction should issue against the Respondents.
25. I have considered the Applicants’ application, its opposition, and its submissions, the law as well as the authorities therein cited. The Applicants herein sought for injunctive orders against the Respondents restraining them from interfering with their current occupation of stalls and kiosks at Karunga Trading Centre within Gilgil township.
26. In response to the said application, while the 2nd Defendant/Respondent deponed that the instant Application should be dismissed for being frivolous, vexatious, lacking merit and failing to disclose any cause of action against it, there was no response from the 1st Defendant/Respondent. It should be noted that the 2nd Defendant/Respondent did not oppose the substance of the Application but rather their joinder in the instant suit and neither did they comply with the court’s directions to have the Application disposed of through written submissions, thus as it stands, the instant Application is unopposed. Nonetheless, I shall proceed to make a determination based on its merits.
27. The Plaintiffs/Applicants herein have alleged that in the year 1988, the defunct County Council of Nakuru had allocated them and their successors title kiosks and stalls at Karunga Market on condition that they each develop their respective allocations within 24 months as per the government’s regulation. That they had complied as per the engineer’s specifications wherein they had also been paying the rent and rates faithfully to the County Government of Nakuru and its predecessor the Nakuru County Council.



28. That despite this, on 11th September 2024, the Defendant's officials had visited the market and informed them that they would begin to construct a new market to adapt to the growing demand of traders, need for better modern facilities and for better management systems for which their market stalls be demolished soon because of the urgency of the project.
29. Their grievance was that they had not been made aware of the proposed new market, none of them had been involved in the decision making on the same or consulted and neither had they been presented with a plan of how the proposed market would be allocated and neither had there been a provision for reallocation or compensation to the traders to enable them continue with their businesses which was their source of livelihood.
30. The Applicants annexed Letters of Allocation of the title kiosks and stalls at Karunga Market by the Defunct County Council of Nakuru, proof of payment of rates and rent to the County Government of Nakuru and its predecessor the County Council of Nakuru, which I have considered. I have also considered the provisions of Part 2 (7) of the Fourth Schedule of *the Constitution* on the function of the County Government which is to develop and regulate markets, the fact that the Applicants have been in occupation of the title kiosks and stalls for over two decades wherein they have developed the same, and lastly that the instant Application was unopposed specifically by the 1st Defendant/Respondent.
31. Keeping in mind therefore the constitutional mandate of the 1st Respondent in developing and regulating the markets and the Applicants' rights as the current occupants of the title kiosks and stalls at Karunga market, and further that the order of Injunction being an equitable remedy, the court is enjoined to look at the conduct of the Applicant for the injunctive orders, the surrounding circumstances whether the order sought is likely to affect the interests of the Defendants/Respondents and to ensure equality of arms, the principle of proportionality and the need to treat all the parties coming to court on equal footing. I find that all that the Applicants sought was an injunction against the Defendants/Respondents restraining them from interfering with their title kiosks and stalls at Karunga Trading Centre within Gilgil township in the ways herein above enumerated so as to preserve the same pending the hearing and determination of the case.
32. Since it has also not been disputed that the Applicants herein are in occupation of the title kiosks and stalls at Karunga market, by not granting orders of injunction so sought in such a situation, there could be an eviction which at this interlocutory stage would be premature as it would cause irreparable harm to the Applicants. This is because at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties' cases as observed by Lord Diplock in *American Cyanamid Co. vs Ethicon Limited* [1975] 1 ALL ER 504; [1975] A.C. 396 HL at 510 where he stated as follows:

“It is no part of the Court's function at this stage of the litigation to try and resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.”
33. I thus see no harm in ordering that the parties do maintain the status quo pertaining which order will assist in case management until determination of the case, there having been no evidence that the Respondents herein, especially the 1st Defendant/Respondent will suffer any prejudice were the interim orders issued, them having not contested or demonstrated that they would suffer irreparable injury or be prejudiced. Secondly, no evidence had been alluded to its occupation of the contested titled kiosks and stalls or of any activity being carried therein.



34. The Court of Appeal in the case of *Mugah v Kunga* [1988] KLR 748, held that in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 3461/2025 Practice direction No. 23(1) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.
35. With this in mind, and whilst cautioning myself on the preservation of the status quo so as to ensure that no party is prejudiced, I would therefore interfere in a limited manner by clearly defining the status quo herein to the effect that:
- i. An order of status quo is herein issued to be maintained by all the parties in that it must be understood that the Plaintiffs/Applicants are in occupation of stalls and kiosks at Karunga Trading Centre within Gilgil township, as at the time of filing suit.
 - ii. There shall not be any interfering with the said stalls and kiosks at Karunga Trading Centre within Gilgil township.
 - iii. Such status quo is to be maintained by all parties until the matter is finally heard and determined.
 - iv. The cost of the application dated the 25th September, 2024 shall be in the cause.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 3RD DAY OF APRIL 2025

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

