



**Mbugua v Mwaniki (Environment & Land Case E184 of 2024)  
[2025] KEELC 4221 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4221 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E184 OF 2024**

**JA MOGENI, J**

**MAY 28, 2025**

**BETWEEN**

**ELENA NJOKI MBUGUA ..... APPLICANT**

**AND**

**EMMA WAIRIMU MWANIKI ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated 6/05/2024 brought pursuant to to Article 40 (1) (b) and 162 (2) of *the Constitution* of Kenya, 2010, Section 38 (1) of the *Land Act* No. 6 of 2012, Section 23 (3) of the *Law of Contract Act* Cap 23, Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3A of the Civil Procedure Rules, Section 13 of the Environmental & Land Court Act (2011).
2. The Applicant is seeking the following:
  1. Spent
  2. THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue orders of Injunction restraining the Respondent/Defendant by herself, her servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation, dealing, disposing, trespassing and/or in any other manner interfering with the Applicant/Plaintiff's quiet use occupation and possession of all those parcels of land known as Nairobi/ block 122/288, Title Number Nairobi/ block 141/922;
  3. THAT pending the hearing and determination of this suit, this Honourable Court be further pleased to issue an order of prohibitory injunction restraining the Respondent/Defendant, whether by herself, her servants, agents, proxies and/or any persons deriving authority from her, from charging, leasing, licensing, or in any way creating any third-party interests or encumbrances on all those parcels of land known as Nairobi/block 122/288, Title Number Nairobi/block 141/922;



4. That this Honourable Court be pleased to make and/or issue such orders as it may deem fit to grant;
5. That the costs of the Application be provided for.
3. The Application is based on the grounds on the face of it and on Elena Njoki Mbugua sworn on 6/05/2024. The Applicant avers that vide an agreement dated 30/10/2019, she bought 0.0754Ha from the Defendant for a consideration of Kshs. 2,000,000/- which was to be excised from the original parcel LR No. Nairobi/block 122/288 measuring 0.1508 Ha.
4. That the Defendant thereafter refused to facilitate the transfer of the land that the Plaintiff/Applicant had paid for. That the Plaintiff is afraid that Respondent/Defendant may resort to initiating the discharge process and seek another loan using the Certificate of Lease as she had done with Dimkes Sacco where she obtained a loan of Kesh. 1,200,000 and an overdraft of Kesh 400,000. This despite the Plaintiff having cleared the initial loan of Kesh 750,000 owed to Agricultural Finance Corporation of Kenya (AFC). This earlier loan is the one that led to the Plaintiff entering into a sale of land agreement with the Defendant.
5. When the sale of land agreement was formalized through the engagement of services of J. Ngaii Gikonyo Advocates it was agreed that the Respondent/Defendant would commence the subdivision process and that the Plaintiff/Applicant would assume full occupation of the designated half portion which she did pending the issuance of the title deed bearing her name. She even constructed mabati structures to enable her workers settle on the said portion as shown vide annexure ENM6.
6. The Applicant has also annexed other documents such as the copies of the cheques made to the Respondent/Defendant as annexure ENM-4. Copy of the Sale Agreement as annexure ENM-5 and others to support her claim against the Respondent/Defendant.
7. She further avers that she has a good prima facie case against the Respondent/Defendant and it is only fair and just that her Application be allowed to conserve the suit property.
8. The Application is opposed and the Defendant/Respondent swore a Replying Affidavit on the 18/06/2024, and averred that she never entered into a Sale Agreement with the Plaintiff/Applicant whom she claimed not to know. It was her averment that she had entered into a contract with one Anthony Maina who is known to her and he agreed that he would help her settle her loan with Dimkes Sacco. He was to be in possession of a half of L.R. No. Nairobi/block 122/288 whereas she also occupied the remaining a half.
9. She avers that she has no issue whatsoever to the half portion of Land No. L.R. No. Nairobi/block 122/288 being owned and occupied by Anthony Maina in extension the Plaintiff/Applicant herein. She stated that they jointly agreed with Anthony Maina that upon completion of the loan, the original Title of L.R. No. Nairobi/block 122/288 was to be released by Dimkes Sacco Limited to the Plaintiff for subdivision and subsequent transfer of a half plot to Anthony Maina.
10. That the agreement was however not honored since upon completion of the loan she went to DIMKES SACCO offices where she found Anthony Maina, the Plaintiff/Applicant and other persons and she was given a duly filled transfer form bearing her parcel of land No. L.R. No. Nairobi/block 122/288 requiring her to execute. Upon perusal of the form she realized it was transfer form indicating full parcel of land L.R. No. Nairobi/block 122/288 and not a half as agreed upon with Anthony Maina. Further she contended that they had not agreed on the price of a half price of the parcel and so she declined to sign the transfer.



11. She avers to have received on 16<sup>th</sup> April 2024 a Demand Notice from Kanyangi & Co. Advocates which letter referred to non-existent agreement of 30<sup>th</sup> October 2019. That on 13<sup>th</sup> May 2024, upon being served with the Court pleadings she found out that the Plaintiff/Applicant whom she alleges not to have dealt with as regards to the parcel of land No. L.R. No. Nairobi/block 122/288 and/or Dimkes Sacco Limited claiming vide agreement dated 30<sup>th</sup> October 2019 that the Defendant sold her a half of parcel No. L.R. No. Nairobi/block 122/288 measuring approximately 0.0754 Acres.
12. It is her case that the alleged Sale Agreement dated 30<sup>th</sup> October 2019 is a forgery and a fraud. Further that the Plaintiff has included her other parcel of land L.R. No. Nairobi/block 141/922 in Court proceedings in order to frustrate her from her matrimonial home so as the Applicant to get a leeway to vandalize and damage her home regardless of the circumstances.
13. She avers that if the orders here are granted she will stand evicted from her home.
14. Parties canvassed the Application by way of written submissions which I have considered. The main issue for determination is whether the Applicant has made out a case for the granting of orders of temporary injunction.
15. The Plaintiff/Applicant having sought for injunctive orders is only entitled to either grant or denial of the same at this stage. It is not in doubt that there has been contradictory and contentious issues that have been raised by both parties that require proper interrogation during the main trial, by calling of evidence, testing the same through cross examination and arrival of determination of the same. However, the suit is still at an interlocutory stage and the Court cannot deal with the merit of the case at this stage. See the case of *Airland Tours and Travel Ltd Vs. National Industrial Credit Bank, Milimani HCCC No.1234 of 2003*, where the Court held that:-

“In an Interlocutory Application, the Court is not required to make any conclusive or definitive findings of facts or law, most certainly not on the basis of contradictory affidavit evidence or disputed proposition of law.”

16. The law governing the granting of interlocutory injunction is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules, 2010 which provides that:-

“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.”



17. The conditions for consideration in granting an injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, where the Court expressed itself on the conditions that a party must satisfy for the Court to grant an interlocutory injunction as follows:-
- “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.”
18. The test for granting of an interlocutory injunction was considered in the *American Cyanamid Co. v Ethicom Limited* (1975) AER 504 where three elements were noted to be of great importance namely:-
- i. There must be a serious/fair issue to be tried,
  - ii. Damages are not an adequate remedy,
  - iii. The balance of convenience lies in favour of granting or refusing the Application.
19. The important consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a Decree or that the Defendant threatens or intends to remove or dispose the property, the Court is in such a situation enjoined to grant a temporary injunction to restrain such acts. In the instant case, it is not clear whether the suit property; L.R. No. Nairobi/block 122/288 is in danger of being alienated as the Defendant/ Respondent has denied. The Plaintiff/Applicant has also provided scanty evidence in respect of this subject.
20. The question which therefore arises is whether the Application meets the threshold set for the granting of orders of temporary injunction. In *Mrao Ltd v First American Bank of Kenya and 2 Others* (2003) KLR 125 which was cited with approval in *Moses C. Muhia Njoroge & 2 Others v Jane W Lesaloi and 5 Others*, (2014) eKLR, the Court of Appeal defined a prima facie case as:-
- “A Prima facie case in a civil Application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
21. Has the Plaintiff/ Applicant herein established a prima facie case? It is not in doubt that the Defendant/ Respondent is the registered owner of parcel No. L.R. No. Nairobi/block 122/288. The Defendant/ Respondent has alleged that the Sale Agreement by the Plaintiff/Applicant claiming a share of the suit property is illegal and facts leading to the fake document are denied. The said contention cannot be settled at this juncture. The Plaintiff/Applicant claims that half of the suit land was apportioned to her following the Sale Agreement dated 30/10/2019, which fact is vehemently denied by the Defendant/ Respondent.
22. As already stated above, these are contentious and contradictory statements of facts that cannot be determined at this stage. This Court will have to determine the same at the main hearing. However, as a registered owner, the Defendant/Respondent is deemed to be an absolute and indefeasible proprietor whose proprietorship can only be challenged as provided by the law. See Section 26(1) (a) & (b) of the [\*Land Registration Act\*](#).



23. The instant Application relates to land parcel No. L.R. No. Nairobi/block 122/288. As earlier on stated, it is not in doubt that the said parcel is registered in the name of the Defendant/ Respondent.
24. Prima facie, being in occupation of the suit land, the Plaintiff/Applicant has therefore established that she has an interest over the suit property. The Plaintiff/Applicant has further alleged that the Defendant/ Respondent has been taking loans on the suit property despite her having settled a loan of approximately Kesh 5,000,000 and she is afraid the suit property may be auctioned and this will lead to her losing her money and the land altogether.
25. Consequently, the Court finds and holds that the Plaintiff/ Applicant has established a prima facie case with probability of success as her rights can only be curtailed in accordance with the law.
26. On whether the Plaintiff/ Applicant will suffer irreparable injury which would not adequately be compensated by an award of damages;- ‘Irreparable loss’ was described in the case of Paul Gitonga Wanjau Vs. Gathuthi Tea Factory Co. Ltd & 2 Others, Nyeri HCC No.28 of 2015, as simply injury or harm which would not adequately be compensated by damages and would be continuous.
27. It is not in doubt that the Plaintiff/ Applicant is in occupation of a portion of the suit property. If for any reason the Plaintiff/ Applicant is put out of occupation and taking into account that there have been some developments on the suit property and after the main hearing the Plaintiff/ Applicant becomes the successful litigant, this Court finds and holds that the Plaintiff/Applicant will have suffered irreparable harm that cannot be compensated by way of damages. It is trite that a crystalized right which if violated cannot be equated to compensation by damages. See the Case of Niaz Mohamm Janmohammed Vs Commissioner for Lands & 4 Others (1996) eKLR, where the Court held that:-
- “It is no answer to the prayer sought, that the Applicant may be compensated in damages. No amount of money can compensate the infringement of such right or atone for transgression against the law, if this turns out to have been the case. These considerations alone would entitle the Applicant to the grant of the orders sought.”
28. Equally in this case, the Court finds that if the Plaintiff/Applicant’s rights are infringed, no amount of money can compensate such infringement. For the above reasons, the Court finds that the Plaintiff/ Applicant has established that she is likely to suffer irreparable loss and/or injury which cannot be adequately compensated by an award of damages.
29. On the third limb wherein if the Court is in doubt, then it will determine the matter on the balance of convenience, the Court finds that the balance of convenience tilts in favour of maintaining the status quo. It is not in doubt that this matter raises serious conflicts of facts. Further it is not in doubt that a temporary injunction is meant to preserve and protect the suit property. See the case of Exclusive Estates Ltd Vs. Kenya Posts & Telecommunications Corporation & Another, Civil Appeal No.62 of 2004 where the Court held that:-
- “A temporary injunction is issued in a suit to preserve the property in dispute in the suit of the rights of parties under determination in a suit pending the disposal of the suit, to preserve the subject matter.”



30. On inhibition, I make reference to the provisions of Section 68(1) of the [Land Registration Act](#) where it is provided that:-

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, generally until a further order, the registration of any land lease or charge.”

31. As it were, an order of inhibition issued under Section 68 of the [Land Registration Act](#) is similar to an order of prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until the suit in which the property is a subject matter is dealt with.

32. The Court issuing such an order must be satisfied that the Applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending the trial. The Applicant has given an account of how the Respondent has refused to honor the Sale Agreement. On her part the Defendant/Respondent has disowned the Sale Agreement.

33. It is the Plaintiff/Applicant’s averment that she has saved the suit property from auctioneers and she just wants being given her portion. There is no doubt that the suit property is in danger of being alienated, hence the prayer for inhibition is warranted.

34. In *Dorcas Muthoni & 2 Others v Michael Ileri Ngari*[206]eKLR the Court held that;

“No prejudice will be caused to the Defendant/Respondent if an order of inhibition is granted as prayed.”

35. The Court was guided by the principle that the Court should always take the course that carries the lower risk of injustice.

36. Having considered the facts that have emerged in this case and the evidence adduced by way of Affidavit, it is the view of the Court that the Plaintiff/Applicant has established a prima facie case with a probability of success against the Defendant. As regards irreparable damage, I take the view that should the injunction not be granted the substratum of this case will be destroyed and the Plaintiff/Applicant will suffer irreparable loss which may not be quantified in damages. The balance of convenience if I had doubt, would tilt in favor of the Plaintiff/Applicant in order to safeguard the current status quo of the subject matter of the Application pending hearing and determination.

37. In light of the foregoing analysis, the Application dated 6/05/2024 is allowed in the following terms;

1. The order of inhibition is allowed in terms of prayer No. 3 as far as it relates to LR Nairobi/ block 122/288, in the Application until the suit is heard and determined.
2. An order of injunction is allowed in terms of prayer No. 2 in the Application but for a period of one year in relation to the suit property LR Nairobi/block 122/288.
3. The costs of this Application shall abide the outcome of the main suit.
4. Pre-trial Conference on 24/06/2025.

38. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28<sup>TH</sup> DAY OF MAY 2025  
VIA MICROSOFT TEAMS.**



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**MOGENI J**

**JUDGE**

In the presence of:

Ms. Akello for the Plaintiff

Ms. Munyua holding brief for Ms. Osoro for the Defendant

Mr. Melita – Court Assistant

