



**Kasaine & 7 others v County Government of Kajiado & another (Environment and Land Case E018 of 2023) [2025] KEELC 4216 (KLR) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4216 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E018 OF 2023**

**MD MWANGI, J**

**MAY 27, 2025**

**BETWEEN**

**KEITH SAIBULU KASAINA ..... 1<sup>ST</sup> PLAINTIFF**  
**DANILO NTENTEN ..... 2<sup>ND</sup> PLAINTIFF**  
**TARAYA ENE LENKAI ..... 3<sup>RD</sup> PLAINTIFF**  
**PENINAH RIKINOI OLUBI ..... 4<sup>TH</sup> PLAINTIFF**  
**JOSEPH OLUBI MUNKE ..... 5<sup>TH</sup> PLAINTIFF**  
**SAMUEL MUNYWA MWANGI ..... 6<sup>TH</sup> PLAINTIFF**  
**IRMEMIRI SELF HELP GROUP ..... 7<sup>TH</sup> PLAINTIFF**  
**SEMPERO NKANINA ..... 8<sup>TH</sup> PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... 1<sup>ST</sup> DEFENDANT**  
**HAMILTON PARSENA (CEC LANDS, PHYSICAL PLANNING, HOUSING,  
URBAN DEVELOPMENT & MUNICIPALITIES) ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(In respect of the Plaintiffs' application dated 15<sup>th</sup> August 2023 seeking for an order of temporary injunction)

**Background**

1. The plaintiffs in this case claim to be the bona fide owners of various plots described as Plot Numbers B890, B888, B887, B886, B885, B291 and B891 within Ilbissil Trading Centre in Kajiado County. They have attached copies of allotment letters in support of their respective claims. They allege that



they have developed and have all through enjoyed peaceful possession of the same until 9<sup>th</sup> August 2023 when the 1<sup>st</sup> defendant vide a letter signed by the 2<sup>nd</sup> defendant required them to demolish their residential homes on the plots and vacate within 7 days on allegations that they had encroached on a land where a market was supposed to be set up.

2. The plaintiffs however allege that the survey and validation process by the 1<sup>st</sup> defendant clearly shows that they have not encroached into any market land. They assert that there is actually no market on the approved plan of Bissil Town.
3. The plaintiffs in their suit pray for a declaration that they are the bona fide owners of their respective plots within Ilbisil Trading Centre and further a permanent injunction restricting the defendants from interfering with their peaceful and quiet possession, enjoyment and utilization of their respective plots.
4. Pending hearing and determination of the suit, the plaintiffs vide their notice of motion dated 15<sup>th</sup> August 2023 sought for a temporary injunction under the provisions of Order 40 rules 1, 2 and 3 of the Civil Procedure Rules restraining the defendants from entering or demolishing the structures on their plots or otherwise evicting them from the plots.
5. The application is opposed by the defendants vide the grounds of opposition dated 27<sup>th</sup> November 2023 and the replying affidavit of Joshua Lemaikai sworn on 14<sup>th</sup> December 2024. As would be expected, the defendants assert that letters of allotment are incapable of vesting or conferring any proprietary rights. They assert that no certificates of title have been exhibited by the plaintiffs to demonstrate their proprietary rights over the plots.

#### **Court's directions.**

6. The court's directions were that the application be canvassed by way of written submissions. The plaintiffs complied and filed their respective submissions. The defendants did not file submissions.

#### **Issues for determination.**

7. Having considered the application and the responses by the defendants, the sole issue for determination is whether the application is merited.

#### **Analysis and determination.**

8. As the defendants have rightly pointed out at paragraph four of their grounds of opposition, the guiding principles for the grant of an order of interlocutory injunction were set out in the case of *Giella -vs- Cassman Brown Co. Limited (1973) EA 358*.
9. An Applicant must establish a prima facie case, demonstrate irreparable injury if a temporary injunction is not granted, and allay any doubts as to (b) by showing that the balance of convenience is in his favour.
10. The Court of Appeal in the case of *Nguruman Ltd - vs Jan Bonde Nielsen & 2 others* (2014) eKLR, while affirming the principles in *Giella -vs- Cassman Brown* held that,

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the



court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.

On the second factor, that the applicant must establish that he "might otherwise" suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot "adequately" be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."

11. Considering the plaintiffs' case against the above exposition, the court finds that the plaintiffs have not only established a prima facie case but have demonstrated that they are likely to suffer irreparable harm unless the order of interlocutory injunction is issued pending the hearing and determination of this suit. I say so because, as clearly stated in the above cited case, in establishing whether a prima facie case has been made, all that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The plaintiffs allege that they have been in occupation of the plots and have even established homes therein. This has not been explicitly denied by the defendants.
12. In arriving at this decision, I am further persuaded by the holding of Warsame J, (as he then was) in the case of [Joseph Siro Mosiama -vs- HFCK & 3 others](#) (2008) eKLR, where he stated that;  

"Damages is not and cannot be a substitute for the loss, which (may) be occasioned by a clear breach of the law in any case, the financial strength of a party is not always a factor to refuse an injunction. More so, a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an injunction".
13. Ours is a country governed by the rule of law; not by rule of power. Every person is equal before the law and has the right to equal protection and equal benefit of the law; the full and equal enjoyment of all rights and fundamental freedoms.
14. From whatever aspect one looks at it, the balance of convenience tilts in favour of the plaintiffs. The court must always opt for the lower rather than the higher risk of injustices as held in the case of [Amir Suleiman -vs- Amboseli Resort Limited](#) (2004) eKLR.
15. That said, I allow the plaintiffs' application dated 15<sup>th</sup> August 2024 and grant them an interlocutory injunction against the defendants pending the hearing and determination of the suit. The costs of the application shall be in the cause.

It is so ordered.



**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27<sup>TH</sup> DAY OF MAY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

N/A for the plaintiffs/applicants

Mr. Mutende for the defendants/respondents

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

