



REPUBLIC OF KENYA



**Kamaru & another v Nugi (Land Case E340 of 2024)  
[2025] KEELC 4038 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4038 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E340 OF 2024**

**CG MBOGO, J  
MAY 22, 2025**

**BETWEEN**

**LIBERATTA NJERI KAMARU ..... 1<sup>ST</sup> PLAINTIFF**

**WILFRED KAMARU NDURE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**HUMPHREDDY DAVID KAMAWE NUGI ..... DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 19<sup>th</sup> August, 2024 and the notice of motion dated 4<sup>th</sup> October, 2024 respectively. The notice of motion dated 19<sup>th</sup> August, 2024 is filed by the plaintiffs/applicants, and it is expressed to be brought under Article 40 of *the Constitution*, Sections 13 and 14 of the *Environment and Land Court Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rule 1 and 2 of the Civil Procedure Rules seeking the following orders: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of the suit herewith, this honourable court be pleased to issue orders restraining the defendant/ respondent whether by himself, his servants, agents, representatives, assigns and/ or any other person acting under his instructions from trespassing, evicting, selling to any other party, leasing, demolishing the developments/ structures thereon or in any other way interfering with the plaintiffs/ applicants peaceful occupation of the property known as L.R. No. 57/862 (Original No. 57/29/30).
  4. That the Officer Commanding Station Kasarani Police Station be ordered to supervise the enforcement and ensure compliance with the orders herein.



5. That this honourable court be pleased to issue any other orders it may deem just, fit and expedient to award in the interest of justice.
6. That the costs of the costs of this application be provided for.
2. The application is premised on the grounds inter alia that vide a sale agreement dated 20<sup>th</sup> November, 2018, and upon payment of the deposit, the plaintiffs/applicants were entitled to take possession of the suit property.
3. The application was supported by the affidavit of the 1<sup>st</sup> plaintiff/ applicant sworn on even date. The 1<sup>st</sup> plaintiff/ applicant deposed that together with the defendant/ respondent, they entered into an agreement for the sale of LR. No. 57/862 (Original No. 57/29/30), the suit property for a sum of Kshs. 38,500,000. Further, it was deposed that there were terms in the said agreement which included payment of Kshs. 3,000,000 as deposit which was duly paid. The 1<sup>st</sup> plaintiff/ applicant further deposed that the defendant/ respondent did not adhere to the terms of the agreement on completion documents, and despite the same, they paid a further sum of Kshs. 32,500,000 with a balance that is now due.
4. That over time, they have requested for the said completion documents in vain. However, sometime in May, and July 2024, they were asked to pay a sum of Kshs. 5,200,000/- and Kshs. 15,056,386 in order to obtain the completion documents. The 1<sup>st</sup> plaintiff/applicant deposed that the defendant/ respondent has threatened to evict them.
5. In response to the application, the defendant/ respondent filed his replying affidavit sworn on 4<sup>th</sup> October, 2024. The defendant/respondent deposed that the plaintiffs/applicants did not pay the deposit of the purchase price on the execution of the agreement, and that the parties varied the agreement orally on the basis that payment would be made on 20<sup>th</sup> November, 2018. He further deposed that the parties also varied the terms of the agreement with regard to the interest and possession which resulted in the forceful possession of the suit property by the plaintiffs/applicants on 3<sup>rd</sup> August, 2024.
6. The defendant/respondent deposed that on 31<sup>st</sup> January, 2019, the plaintiffs/applicants had not completed paying the balance of the purchase price, and thus he could not hand over the completion documents. He deposed that the plaintiffs/applicants have breached the agreement, and that they owe him Kshs. 4,200,000/-. That as a result, he has suffered great loss. He deposed that the plaintiffs/applicants have also misled this court by stating that they put up a school on the suit property which is false, as they have not constructed any structures as alleged.
7. The defendant/respondent filed the notice of motion dated 4<sup>th</sup> October, 2024 which is expressed to be brought under Order 40 Rules 1 & 2 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) seeking the following orders: -
  1. Spent.
  2. That the honourable court be pleased to order the eviction of the plaintiffs from premises known as L.R. No. 57/862 (Original No. 57/29/30).
  3. Spent.
  4. That this honourable court do grant a temporary injunction restraining the plaintiffs, their servants and/or agents from trespassing, constructing on and/or erecting any structures on or in any other way alienating or interfering with the suit property being L.R. No. 57/862 (Original No. 57/29/30) pending the hearing and determination of this suit.



5. That the costs of this application be provided for.
8. The application is premised on the grounds inter alia that the defendant/respondent is the registered proprietor of the suit property, and that on 3<sup>rd</sup> August, 2024, the plaintiffs/applicants entered and trespassed on the same denying him access to his property.
9. The application is supported by the affidavit of the defendant/respondent sworn on even date. The defendant/respondent reiterated similar averments contained in his replying affidavit sworn on 4<sup>th</sup> October, 2024 in response to the notice of motion dated 19<sup>th</sup> August, 2024, and there would be no need to rehash the same.
10. The application was opposed vide the replying affidavit of the 1<sup>st</sup> plaintiff/applicant sworn on 1<sup>st</sup> November, 2024. The 1<sup>st</sup> plaintiff/applicant averments are similar to the depositions contained in her supporting affidavit sworn on 19<sup>th</sup> August, 2024. There would no need to rehash the same, save to note its contents.
11. Both applications were canvassed by way of written submissions. The plaintiffs/applicants filed their written submissions dated 7<sup>th</sup> February, 2025 in respect of the notice of motion dated 19<sup>th</sup> August, 2024. They raised two issues for determination, namely: -
  - a. Whether the threshold for the grant of interlocutory injunction has been met.
  - b. Who should bear the costs of the application.
12. On the first issue, the plaintiffs/applicants submitted that the application has a prima facie case with a probability of success, based on the actions of the defendant/respondent to frustrate them by refusing to hand over the completion documents. They relied on the case of *Mrao Ltd v First American Bank of Kenya and 2 others* [2003] eKLR. The plaintiffs/applicants further submitted that they have invested a lot of money in developing a school, and that they stand to suffer irreparable damages. Further reliance was placed in the cases of *Joseph Sire Oromo v Housing Finance Company of Kenya* [2008] eKLR, *Banis Africa Ventures Limited v National Land Commission* [2021] eKLR, *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR and *Charity Njeri Kanyua v Trevor Kent* [2016] eKLR.
13. The plaintiffs/applicants further submitted that the balance of convenience tilts in their favour, and that they are deserving of the court's intervention.
14. With regard to the notice of motion dated 4<sup>th</sup> October, 2024, the plaintiffs/applicants filed their written submissions dated 14<sup>th</sup> February, 2025 where they raised two issues for determination as follows: -
  - a. Whether the threshold for the grant of interlocutory injunctions has been met.
  - b. Who should bear the costs of the application.
15. On the first issue, the plaintiffs/applicants submitted that the defendant/respondent does not have a prima facie case with a probability of success pursuant to the terms of the agreement for sale. They relied on the case of *Mrao Ltd v First American Bank of Kenya and 2 others* [2003] eKLR. Further, they submitted that the defendant/ respondent has not shown the irreparable damage to be suffered yet he has received ninety percent of the purchase price. To buttress on this issue, the plaintiffs/applicants relied on the cases of *Charity Njeri Kanyua v Trevor Kent* [2016] eKLR, and *Banis Africa Ventures Limited v National Land Commission* [2021] eKLR.
16. The plaintiffs/applicants further submitted that the balance of convenience ought to be considered if the court is in doubt which is not the case. They submitted that the defendant/respondent is not



deserving of the orders. Reliance was placed in the cases of *American Cyanid v Ethicon Ltd* (1975) 1 All ER 510-511, *Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & another* [2022] eKLR, *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR, and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR.

17. The defendant/respondent filed his written submissions dated 7<sup>th</sup> February, 2025. He submitted that the plaintiffs/applicants have admitted that they are still indebted to him, and thus in breach of the sale agreement. He submitted that the plaintiffs/applicants do not have a prima facie case for the reason that the sale agreement is yet to be completed, and that they do not have proprietary interest in the suit property.
18. The defendant/respondent further submitted that the plaintiffs/ applicants have also not demonstrated the loss to be suffered if the orders are not granted. Further, that there is no evidence of a school structure as alleged, and that the evidence he has supplied shows the old structures he developed prior to the sale. To buttress on this submission, the defendant/respondent relied on the case of *Kenya Commercial Finance Co. Ltd v Afraha Education Society* [2001] Vol. 1 EA 86. He urged the court to dismiss the notice of motion dated 19<sup>th</sup> August, 2024.
19. The defendant/respondent further submitted that he has annexed a copy of the title deed in his name which is prima facie evidence that he has proprietary rights over the suit property. Further, he submitted that he stands to suffer loss as the plaintiffs/ applicants may develop the suit property should the court deny to grant the orders sought. The defendant/ respondent submitted that the balance of convenience lies in his favour as the legal owner of the suit property. The defendant/ respondent relied on the case of *Suraya Holdings Limited v ICICI Bank Ltd & anor* [2015] eKLR.
20. I have carefully considered both applications, replies and the written submissions as well as the authorities cited. In my view, the issue for determination is whether either party is deserving of the orders of injunction pending the hearing and determination of the main suit.
21. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of *Giella versus Cassman Brown* (1973) EA 358. This position has been largely pronounced in numerous decisions and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* [CA No.77 of 2012](#) [2014] eKLR where the Court of Appeal held that:-

“in an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

22. As a result, the parties ought to first establish a prima facie case. In *Mrao Limited versus First American Bank of Kenya Limited* [2003] eKLR, the court stated as follows: -

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”



23. Also, in the case of Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani) HCCC No. 360 of 2001: it was held,

“The remedy of injunction is one of the greatest equitable reliefs. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”

24. It is not in dispute that the defendant/respondent is the registered owner of the suit property. It is also not in dispute that the parties herein entered into a sale agreement dated 20<sup>th</sup> November, 2018 for the sale and purchase of the suit property. Perhaps at this stage it would be easy to say that the defendant/respondent has established prima facie case owing to his proprietary interests over the suit property. However, the dispute at hand revolves around the terms of the agreement in regards to payment of outstanding monies, and the handing over of the completion documents which the parties seem not to agree.

25. While bearing in mind that injunction orders are meant to preserve the suit property pending the just determination of the case, it has not been shown by either party that the property is at a risk of disposal, damage, alteration or alienation. What is clear however, is that the plaintiffs/applicants indeed took forceful possession of the same. I say so because, they seek orders stopping their eviction, yet in their supporting affidavit, they claim to have been denied possession and claim to be threatened with eviction. When exactly did they assume possession and occupation?

26. From the above, and without preempting the main suit, the outstanding issue regarding the disputed balance of the purchase price is one that can be compensated by damages. I would also encourage the parties to consider mediation in a bid to address this issue if they would want to. From the above, it is my finding that the order commending itself for issuance is status quo. The suit property to remain as it is with no further developments or alterations, and with no dealing on the title deed by either party until the suit is heard and determined. Costs to be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 22ND DAY OF MAY, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**22/05/2025.**

In the presence of:

Ms. Betty Cheronno - Court assistant

Ms. Aniela holding brief for Mr. Okech for the Plaintiff /Applicant – present



No appearance for the Defendant /Respondent – present

