



Wainaina v Governor, Kajiado County & another (Environment & Land Case E126 of 2022) [2025] KEELC 1182 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E126 OF 2022**

MD MWANGI, J

MARCH 7, 2025

BETWEEN

WAGITHUKU WAINAINA PLAINTIFF

AND

GOVERNOR, KAJIADO COUNTY 1ST DEFENDANT

**CEC MEMBER LANDS, PHYSICAL PLANNING AND
DEVELOPMENT 2ND DEFENDANT**

RULING

1. The Notice of Motion dated 11th November 2024 prays for amongst other orders an order of mandamus to issue compelling the Respondents to release the verdict of the dispute resolution committee and issue a certificate of ownership of Plot No. 69/Business (56) – Kisamis Trading Centre (hereinafter referred to as ‘the suit property’), an order of prohibition prohibiting the Respondents from disposing, transferring, or re-allocating the subject plot and an interlocutory order of injunction to restrain the Defendants from dispossessing the Plaintiff of the subject plot, entering into, occupying, constructing, fencing, leasing, disposing any interest and or undertaking any development on or in any other way interfering with the subject plot.
2. Undoubtedly, the application before me is an interlocutory application. In the English Case of *Gilbert v Eden* [1878] 9 Ch. D, Cotton L.J defined interlocutory applications as those applications;

“Which do not decide the rights of parties, but are made for purposes of keeping things in status quo till the rights (of parties) can be decided or for purpose of obtaining some directions of the court as to how the cause is to be conducted as to what is to be done in the progress of the cause for the purpose of enabling the court ultimately to decide upon the rights of the parties.”



3. Closer home, Ringera J, (as he then was) in the case of *Airland Tours and Travel Limited v National Industrial Credit Bank, Nairobi (Milimani)* HCCC 1234 of 2002, stated that in an interlocutory application, the court is not required to make any conclusive or definite findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of the law.
4. The prayers of mandamus and prohibition sought by the Applicant in this application, while I doubt that they can be granted in an ordinary civil suit, are final in nature. In an interlocutory application, the court would only grant orders to preserve the substratum of the suit or to keep things in status quo, so speaking. The orders of mandamus and prohibition are therefore declined.
5. The Plaintiff had fortunately also prayed for an order of interlocutory injunction pending the hearing and determination of the suit. On interlocutory injunctions, the law is well settled since *Giella v Cassman Brown*. The Applicant needs to establish a prima facie case, demonstrate irreparable injury if the injunction is not granted and allay any doubts by showing that the balance of convenience is in his favour. The three conditions are to be applied as separate, distinct and logical hurdles, which are to be summoned sequentially.
6. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, the Court of Appeal stated 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 Court of Appeal however cautioned that in considering whether a prima facie case has been established a court must not hold a mini trial and must not examine the merits of the case closely. What the court is to see is that on the face of it, the Applicant has a right, which has been or is threatened with violation. 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 on the face of it his case is more likely than not ultimately succeed.
7. In this case, the Applicant has demonstrated that he has had possession of the suit property since 1997, has been paying rates and has even partially developed the plot. This is on the face of it adequate demonstration that he has a right which is threatened with violation.
8. On irreparable injury, the Applicant having had possession of the subject plot for now over 20 years and having invested the sweat of his brow in partially developing it, I am persuaded that he stands to suffer irreparable injury unless the injunction is granted. In any event, the balance of convenience tilts in his favour.
9. Consequently, I allow the prayer for an interlocutory injunction restraining the Defendants by themselves, assigns, agents, proxies and or any other person working under their instructions from dispossessing the Plaintiff, entering into, occupying, constructing, fencing, leasing, disposing any interest of and or undertaking any development or in any other way interfering with all that property known as plot No. 69/Business (B56) – Kisamis trading Centre, pending the hearing and determination of the suit.
10. The costs of this application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF MARCH 2025.

M.D MWANGI

JUDGE



In the virtual presence of:

Mr. Njuguna for the Plaintiff/Applicant

N/A for the Defendants/Respondents

Court Assistant: Mpoye

M.D MWANGI

JUDGE

