



**Beba Freight Company Limited v Manji & 3 others (Environment & Land Case E264 of 2024) [2025] KEELC 3591 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3591 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E264 OF 2024**

**CA OCHIENG, J**

**MAY 7, 2025**

**BETWEEN**

**BEBA FREIGHT COMPANY LIMITED ..... PLAINTIFF**

**AND**

**BHARAT RAMJI MANJI ..... 1<sup>ST</sup> DEFENDANT**

**YOUNG MOON CHOI ..... 2<sup>ND</sup> DEFENDANT**

**LANDMARK FREIGHT SERVICES LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR OF TITLES, NAIROBI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff’s Notice of Motion application dated 2<sup>nd</sup> July 2024 where it seeks the following Orders:
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing of this application, this Honourable court be pleased to issue an order of permanent injunction restraining the Defendants /Respondents whether by themselves, servants, employees, agents and/or any other person acting under their instructions or his interests from entering, remaining in, occupying, erecting any illegal structures ,interfering with the Applicant’s entry, occupation and possession, otherwise dealing, entering, remaining, trespassing or in any other manner interfering with all that parcel of land known as Land Reference Number 21068 pending the hearing and determination of this suit.



- d. A declaration that the Plaintiff is the rightful and legal owner of a parcel of land known as Land Reference Number 21068 hence the Defendants/Respondents are trespassers and are in unlawful and illegal occupation and enjoyment of the said land and an order of eviction should be issued against him.
  - e. That the Honourable court be pleased to issue an order of eviction of the Defendants/Respondents whether by themselves, their agents and/or servants or any other person claiming under or through them from Plaintiff/Applicant's property known as Land Reference Number 21068.
  - f. That an order for the cancellation of the Defendants/Respondents names from the land register in respect of the suit property and rectification thereof to restore the Plaintiff/Applicant's name as the sole proprietor of the suit property known as Land Reference Number 21068.
  - g. That in the alternative, an order compelling the Defendants/Respondents to execute and deliver up to the Plaintiff/Applicant for registration of a transfer and all other relevant documents in respect of the suit property within 14 days of the order thereof and in default thereof, the Land Registrar to execute the transfers and other documents necessary to transfer ownership of the suit property to the Plaintiff/Applicant at the Defendants/Respondents' costs.
  - h. That the OCS, Kabete Police station and the area chief to enforce and/or ensure compliance of the court orders.
  - i. That the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
  - j. That the costs of this application be provide for.
2. The application is premised on grounds on its face and on the supporting affidavit of Bernard Otieno Mallo, a director of the Plaintiff. He avers that the Plaintiff is the registered proprietor of LR No. 21068, hereinafter referred to as the 'suit land', pursuant to a Letter of Allotment dated the 6<sup>th</sup> July 1995. He claims that after obtaining the Letter of Allotment, the Plaintiff took possession of the suit land, put up a perimeter wall and has been paying land rent and rates. He contends that in March 2024, the Defendants wrongfully entered the suit land, took possession and started erecting illegal structures claiming ownership without justification. He states that the Defendants have illegally destroyed developments in the suit land including the perimeter wall thus illegally depriving the Plaintiff of the use and quiet enjoyment of the said land and unless restrained, the Plaintiff is bound to suffer irreparable damage.
  3. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants vide the 1<sup>st</sup> Defendant's replying affidavit. He avers that the application is an abuse of the court process and is meant to mislead the Court into granting final orders at the interim stage. He contends that together with the 2<sup>nd</sup> Defendant they became legal owners of the suit land after purchasing it from the Plaintiff for a sum of Kshs. 15 million. Further, that they took ownership in 2011 and in 2018, they transferred the suit land to the 3<sup>rd</sup> Defendant for a sum of Kshs.160 million.
  4. The application is further opposed by the 3<sup>rd</sup> Defendant vide the replying affidavit sworn by its director, Samuel Mburu Kamau. He avers that the 3<sup>rd</sup> Defendant is the registered proprietor of LR 21068 IR 143069 vide a transfer by way of sale from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He explains that the suit land was advertised for sale by the vendor's agents (Kinyua Koech Limited). Further, that before purchase,



- the 3<sup>rd</sup> Defendant conducted an official search which confirmed registration of the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He contends that the Vendor also provided the 3<sup>rd</sup> Defendant with completion documents, including rates and rent clearance certificates. Further, that the 3<sup>rd</sup> Defendant paid the full purchase price of Kshs. 160 million, which was acknowledged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, that granted it, vacant possession. He reiterates that after the sale, the 3<sup>rd</sup> Defendant conducted an after sale official search which confirmed the transfer had been effected successfully.
5. He avers that the 3<sup>rd</sup> Defendant Charged its title to the suit land with Kenya Commercial Bank. Further, that it sought for perusal of the title attached by the Plaintiff and that it was confirmed to be a forgery. He asserts that the 3<sup>rd</sup> Defendant also reported the issue to the Director of Criminal Investigations who referred it to the Land Fraud Investigations Unit. Further, that the DCI obtained documents which include the true certified copy of title LR No. 21068 IR 143069 that confirms registration of 3<sup>rd</sup> Defendant as its owner.
  6. He contends that the 3<sup>rd</sup> Defendant went ahead and requested for a search of title from the Ministry of Lands to obtain the current status of the suit land and the registered owner, which search confirms that the 3<sup>rd</sup> Defendant is the registered owner, thus it will suffer injustice if the application is allowed.
  7. The application is also opposed by the 4<sup>th</sup> Defendant vide the replying affidavits of Wanderi Mark Muigai, a Principal Land Registrar and Gordon O. Ochieng, Director, Land Administration. In Mr. Muigai's affidavit, he explains that from their records, the suit land Grant I.R 143069 in respect of LR No. 21083 has a lease for a term of 99 years with effect from 1<sup>st</sup> July 1995 and was registered in favour of the Plaintiff on 14<sup>th</sup> February 2013 as I.R 143069/1. Further, by a transfer instrument dated the 30<sup>th</sup> April 2013, the suit land was transferred in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the sum of Kshs. 15 million and the said transfer was duly registered as I.R 143069/2 on 13<sup>th</sup> May 2013.
  8. He contends that from their records, it confirms that vide an Instrument of Transfer dated the 2<sup>nd</sup> May 2018 between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and the 3<sup>rd</sup> Defendant, the suit land was transferred for a sum of Kshs.160 million and duly registered as I.R 143069/3 on 18<sup>th</sup> May, 2018. Subsequently, it was charged to Kenya Commercial Bank Limited for a sum of Kshs.150 million and duly registered as I.R 143069/4 on 23<sup>rd</sup> July, 2020.
  9. He avers that the purported Letter of Allotment and a Certificate of Title held by the Plaintiff are suspect and fraudulent thus its prayers should not be entertained as it does not possess any proprietary rights over the suit land.
  10. On his Part, Mr. Ochieng averments mirror those of Mr. Muigai, He explains that he was not able to trace the correspondence file number 303167 which file is purported to have generated the title produced by the Plaintiff.
  11. The Plaintiff filed a further affidavit sworn by Bernard Otieno Mallo in response to the replying affidavits filed in opposition to the instant application. He avers that the alleged acquisition of the suit land by the Defendants is void and that it would be in the interest of justice that the Chief Land Registrar is compelled to revoke the alleged title issued. Further, that the persons who allegedly signed the transfer documents conveying the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on behalf of the Plaintiff are indicated in the transfer documents as Robert Ndungu Muthui and Erick Kiptanui Naibei who are strangers to the Plaintiff as its directors are Bernard Otieno Omallo, John Gitau Ngumi and Atek Otech Richard as per the Plaintiff's CR12.



12. He highlights various discrepancies in the Transfer documents and contends that the Defendants have violated Article 40 (6) of *the Constitution* which provides that protection of right to property does not extend to any property that has been found to have been unlawfully acquired.
13. The application was canvassed by way of written submissions.

### Submissions

14. The Plaintiff in its submissions contends that the alleged transfers of the suit land from the Plaintiff to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and subsequently to the 3<sup>rd</sup> Defendant were illegal, irregular, unprocedural and through a corrupt scheme orchestrated by the 4<sup>th</sup> Defendant to deprive it, of its property in violation of its constitutional rights. It further submits that the Instrument of Transfer of Title dated the 16<sup>th</sup> November, 2011 from the Plaintiff to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was executed by Robert Ndungu Muthui and Eric Kiptanui Naibei as Vendors yet they are strangers to the Plaintiff as its CR12 indicates that its directors are Bernard Otieno Mallo, John Gitau Ngumi and Atek Otech Richard.
15. It further submits that the ownership of land whose title was not acquired regularly is not protected under Article 40 of *the Constitution* yet the Defendants are relying on fraudulently acquired title to encroach on its parcel of land and unless restrained they will remain in unlawful occupation. To buttress its averments, the Plaintiff relied on the following decision: Dina Management Limited v County Government of Mombasa & 5 Others (Petition 8 (E010) OF 2021) [2023] KESC 30(KLR) (21 April 2023) (Judgment)
16. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submit that the Plaintiff did not surmount the hurdles set in *Giella v Cassman Brown & Co Ltd* [1973] EA to warrant issuance of the orders sought. It insisted that the Plaintiff failed to establish a prima facie case since the 3<sup>rd</sup> Defendant is currently in possession and occupation of the suit land since 2018 and has ownership documents to that effect. Further, that this position is confirmed by records kept by the 4<sup>th</sup> Defendant. They further submit that since the Plaintiff has no right accruing over the suit land, it shall not suffer irreparable injury in the event temporary injunction is granted and it has not disclosed the nature and extent of the injury likely to be suffered. They insist that issuing injunctive orders in favour of the Plaintiff carries a higher and untold risk of injustice thus the balance of convenience tilts in favour of the 3<sup>rd</sup> Defendant.
17. To support their averments, they relied on the following decision: *Runka Services Co-operative Sacco Ltd v Mbaya* (Cause E163 of 2022) [2022] KEELRC 1384 (KLR) (23 June 2022) (ruling).
18. The 3<sup>rd</sup> Defendant in its submissions contends that the court properly directing itself on the basis of the evidence presented would not need an explanation or rebuttal as the Defendants' evidence has overwhelmingly rebutted the evidence of the Plaintiff thus no prima facie case has been established as the Plaintiff has no proprietary interest in the matter. Further, that there are compelling reasons of the Plaintiff's directors being involved in fraud as they: John Gitau Ngumi, Atek Oketch Richard and Bernard Mallo were charged with conspiracy to defraud contrary to Section 317 of the *Penal Code* in Nairobi Chief Magistrate's Criminal Case No. E054 of 2025, *Republic v John Gitau Ngumi and another*.
19. It also submits that irreparable injury as defined in the case of *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others* [2016] eKLR was not demonstrated as the Plaintiff is neither in possession nor has it developed /improved the suit land in any way and would therefore not stand to suffer any irreparable harm/injury even if the injunction sought was refused. It insists that the balance of convenience does not tilt in favour of the injunctive orders sought as it acquired its title to the suit land lawfully and that evidence by the Chief Land Registrar has demonstrated that the Plaintiff



transferred the suit land to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. To support its arguments, it relied on the case of Solomon Too & Another v Zipporah Jebichi Seroney & Another [2018] eKLR.

### **Analysis and Determination**

20. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the issue for determination is whether the Plaintiff is entitled to the orders as sought in the said application.
21. The Plaintiff has sought for various orders of a permanent nature at this interlocutory stage including; a permanent injunction restraining the Defendants from interfering with the suit land, a declaration that it is the rightful owner of the suit land, cancellation of the 3<sup>rd</sup> Defendant's name from the register as well as an eviction order against the 3<sup>rd</sup> Defendant.
22. At this juncture, I will only proceed to deal with the prayer for permanent injunction as the other prayers are premature and can only be determined after viva voce evidence has been adduced.
23. In line with the principles established in the case of Giella Vs Cassman Brown & Company (1973) EA 358 as well as the definition of a prima facie case as stated in the case of Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) KLR 125, I will proceed to decipher whether the Plaintiff is entitled to orders of a permanent injunction restraining the Defendants from the suit land.
24. The Plaintiff contends that it is the proprietor of the suit land and has explained that it obtained a Letter of Allotment dated 6<sup>th</sup> July 1995. Further, that once it obtained the allotment to the suit land, it took possession but in March 2024, the Defendants evicted it therefrom and demolished its perimeter wall. The Defendants have opposed the instant application and insisted that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold the suit land to the 3<sup>rd</sup> Defendant and effected a Transfer to it. I note the 4<sup>th</sup> Defendant confirmed that it is the Plaintiff that had initially been registered as proprietor of the suit land but it transferred the same to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, who in turn transferred it to the 3<sup>rd</sup> Defendant. The Plaintiff has argued that the Instrument of Transfer of Title dated the 16<sup>th</sup> November, 2011 from the Plaintiff to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants was executed by Robert Ndungu Muthui and Eric Kiptanui Naibei as Vendors yet they are strangers to the Plaintiff, as its CR12 indicates that its directors are Bernard Otieno Mallo, John Gitau Ngumi and Atek Otech Richard.
25. From a perusal of all the Defendants' responses including documents, I note they all claimed it is the Plaintiff's title that was fraudulently obtained and that the 3<sup>rd</sup> Defendant is in possession of the suit land and is the registered proprietor as per documents held by the Ministry of Lands.
26. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not explained how Robert Ndungu Muthui and Eric Kiptanui Naibei signed as Vendors nor disputed that they are Bernard Otieno Mallo, John Gitau Ngumi and Atek Otech Richard are directors of the Plaintiff. Further, the Defendants did not explain the discrepancies in the dates as contained in the Transfer Instruments. To my mind, I opine that even though the 3<sup>rd</sup> Defendant is the current registered proprietor of the suit land, the root of its title has to be interrogated and the discrepancies during acquisition of the title by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants explained.
27. However, on the quest for a permanent injunction, I wish to make reference to the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR, where the court held that:

“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually



restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”
28. See also the case of Kenya Consortium to Fight Aids, Tb & Malaria & Another V Brigitte Mukui Kitenge & 4 Others [2013] eKLR.
29. Insofar as I find that the Plaintiff has established a prima facie case with probability of success at the trial, but, based on the prayers sought, I am of the view that the said orders cannot issue at this juncture.
30. However, in the interest of justice and in order to protect the substratum of the suit, I find that an entry of inhibition to restrict further dealings or transfer of the suit land and maintenance of status quo to stop further developments thereon, would suffice pending the determination of the suit.
31. In the foregoing, I find the instant Notice of Motion application premature and will disallow it. I will proceed to make the follow orders:
  - a. Obtaining Status Quo be maintained where no party should interfere with the suit land nor transfer it to a third-party pending outcome of this suit.
  - b. The Chief Land Registrar be and is hereby directed to register an inhibition order against LR No. 21068 IR 143069, to subsist until the determination of this suit.
  - c. Costs of the Application will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF MAY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Aencha for Plaintiff/Applicant

Owino for Plaintiff

Mrs. Omondi holding brief for Ms Lumallas for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Ms Swaka for Wanjohi for 3<sup>rd</sup> Defendant

Kamau Allan for 4<sup>th</sup> Defendant

Court Assistant: Susan

