



Magezi Investment Limited v Mwangi & another (Land Case E023 of 2024) [2025] KEELC 3764 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3764 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E023 OF 2024
LC KOMINGOI, J
MAY 5, 2025**

BETWEEN

MAGEZI INVESTMENT LIMITED PLAINTIFF

AND

GEORGE MUNENE MWANGI 1ST DEFENDANT

CAROLINE BEATRICE WANGUI 2ND DEFENDANT

RULING

1. This is the Ruling in respect of the Notice of Motion dated 18th March 2024. It is brought under Article 22, and 23 of *the Constitution* of Kenya, Article 40, Article 165 of *the Constitution*, Sections 1A, 1B & 3A of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya, Order 40 rules 1 & 2, Order 51 rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the Law.
2. It seeks orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Spent
 - v. That pending the inter parte hearing and determination of the main suit, the Defendants/ Respondents, their agents, servants/employees or any auctioneers be restrained in any manner howsoever from evicting the Plaintiffs/Applicants from Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.



- vi. That pending the inter parte hearing and determination of the main suit, the Defendants/ Respondents, their agents, servants/employees or any auctioneers be restrained in any manner howsoever advertising for sale, occupying, assigning, leasing, selling, charging or in any way dealing with Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.
 - vii. The Defendants/Respondents be restrained from erecting advertisement boards notifying the general public that the Plaintiffs have been evicted from Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.
 - viii. Officer Commanding Station (OCS) Kajiado Police Station to ensure compliance of the orders.
 - ix. Any other orders that court may deem fit.
 - x. The costs of this Application be borne by the Defendant/Respondent.
3. The grounds are in the face of the Application and are set out in paragraphs a to p. The Application is supported by the Affidavit of Benard Otoo, the Managing Director of the Plaintiff/Applicant sworn on the 18th March 2024 and a further Affidavit sworn on 13th March 2025.
 4. The Application is opposed. There is a Replying Affidavit sworn by George Munene Mwangi, the 1st Defendant/Respondent filed on the 25th April 2024.
 5. On the 4th of April 2024, the Court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
 6. I have considered the Notice of Motion, the Affidavits in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are:
 - i. Whether the Plaintiff/Applicant’s application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application?
 7. The principles governing the grant of temporary injunctions were set out in the case of Giella VS Cassman Brown Ltd [1973] EA 358. The Court of Appeal in Mrao Ltd VS First American Bank of Kenya Ltd & 2 others [2003] KLR 125 stated what amounts to a prima facie case.
 8. It is the Plaintiff/Applicant’s case that there exists a sale agreement between it and the Defendants/ Respondents and that they are in breach by failing to provide completion documents thereby incapacitating further sales of the land.
 9. I find that the Plaintiff/Applicant has established a prima facie case with a probability of success at the trial.
 10. In the case of Joseph Siro Musyona VS HFCK HCC No. 265 of 2007, Warsame J. held; “On my part let me state that damages is not automatic remedy when deciding whether to grant an injunction or not. Damages is not and cannot be a substitute for the loss, which is occasioned by a clear breach of law. In any case the financial strength of a party is not always a factor to refuse injunction. More so a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an injunction.” I am satisfied that damages is not an adequate remedy.



11. It is on record that the Plaintiff/Applicant has paid substantial amounts towards the purchase of the suit property. I find that the balance of convenience tilts in favour of granting the orders sought.
12. In conclusion, I find merit in this application and I grant the orders sought namely;
 - a. That pending hearing and determination of the main suit, the Defendants/Respondents, their agents, servants/employees or any auctioneers are hereby restrained from evicting the Plaintiff/Applicant from Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.
 - b. That pending the hearing and determination of the main suit, the Defendants/Respondents, their agents, servants/employees or any auctioneers are hereby restrained from advertising for sale, occupying, assigning, leasing, selling, charging or in any way dealing with Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.
 - c. That pending the hearing and determination of the main suit, the Defendants/Respondents are hereby restrained from erecting advertisement boards notifying the general public that the Plaintiffs have been evicted from Title Number KJD/Olchoro Onyore/21XX6-21XX4, Title Number KJD/Olchoro Onyore/2XX27-21XX2 and Title Number KJD/Olchoro Onyore/22XX8-22XX5.
 - d. That the Officer Commanding Station (OCS) Kajiado Police Station do ensure compliance of the orders above.
 - e. That costs of this Application do abide the outcome of the main suit.**

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY 2025.

L.KOMINGOI

JUDGE

