



Nduati & 2 others v Chemutai & 3 others (Environment & Land Case E080 of 2024) [2025] KEELC 3550 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3550 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E080 OF 2024**

MAO ODENY, J

MAY 6, 2025

BETWEEN

BEDAN MWANGI NDUATI 1ST PLAINTIFF

MOSES KIPKURUI KOECH 2ND PLAINTIFF

SAMUEL GITHINJI MURAYA 3RD PLAINTIFF

AND

MERCY CHEMUTAI 1ST DEFENDANT

SAMMY KIMUTAI CHERUIYOT 2ND DEFENDANT

BEN KEMBOI KOMEN 3RD DEFENDANT

LAND REGISTRAR, NAKURU 4TH DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 25th November, 2024 by the Plaintiff/Applicants seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit this honorable court be pleased to grant a temporary injunction barring the 1st, 2nd and 3rd Defendants/respondents by themselves, their servants, agents, proxies and/or persons exercising authority from them from inhibiting, alienation, dealing, disposing, trespassing and/or in any other manner interfering with the Plaintiffs'/applicants quiet use. Occupation and possession of all those parcels of land known as Nakuru Municipality Block 20/43 measuring approximately 1.247 Ha. (sic)



- d. The costs of this Application be provided for.
2. The application was supported by the annexed affidavit of Samuel Githinji Muraya, the 3rd Plaintiff/Applicant sworn on 25th November, 2024 where he deponed that they are the registered owners of the parcel of land known as Nakuru Municipality Block 20/43 measuring approximately 1.247 Ha which they acquired vide allotment letter dated 24th November, 1993.
3. He further deponed that the Respondents have trespassed and interfered with the subject parcel of land exposing them to the risk of it being transferred or sold by the 1st, 2nd and 3rd Respondents hence the need for a temporary injunction order.
4. The 1st Defendant/Respondent, Mercy Chemutai, filed a Replying Affidavit sworn on 18th December, 2024 where she deponed that the Respondents are the registered owners of Nakuru Municipality Block 20/43 having acquired the same vide a letter of allotment dated 24th November, 1993. She deponed that they paid and took possession of the suit property hence it was no longer available for allocation.
5. The Respondent also stated that the Applicants never paid for the letter of allotment dated 24th November, 1993 and urged the court to dismiss the application with costs.

Applicants' Submissions

6. Counsel for the Applicants filed submission dated 28th January, 2025 and identified the following issues for determination:
 - a. Whether the Applicants have established a prima facie case?
 - b. Whether the applicants are likely to suffer irreparable injury?
 - c. Where does the balance of convenience lie?
7. On the first issue, counsel relied on the case of Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & another [2021] eKLR and submitted that the Applicants are the registered owners of the parcel of land registration number Nakuru Municipality Block 20/43 measuring approximately 1.247 Ha of which they annexed a copy of certificate of lease, letter of allotment and a current search of the property which shows that the Applicants acquired the subject parcel of land. Counsel submitted that the Respondents have attached a search to their Replying Affidavit dated 28th November, 2022, which is not the current search of the property and does not show the actual position as is.
8. On the second issue, Ms. Rotich submitted that the Applicants are in occupation of the subject property and will suffer irreparable injury if the orders of temporary injunction are not granted. It was counsel's further submission that the Respondents are not in the property, hence they will not suffer any prejudice if the application is allowed.
9. On the third issue, counsel submitted that the balance of convenience is in favor of the Applicants and cited the case of Mourice Muthiani v Harrison Mulinge Waivati & another [2022] eKLR.

Respondents' Submissions

10. Counsel for the Respondents filed submissions dated 16th January, 2025 and submitted that the Applicants have not met the threshold set in Giella vs Cassman Brown Company Limited for the grant of injunctive orders sought against the Respondents.



11. It was counsel's submission that the 1st, 2nd and 3rd Respondents were issued with an allotment letter, complied with the terms and were issued with a title in the year 2022, while the Applicants obtained their title in 2024, hence, the Respondents' title is first in time and should prevail.
12. Counsel submitted that the Applicants have alleged fraud on the part of the 1st, 2nd and 3rd Respondents however, they have not provided any evidence to assert their claim and cited Section 26 of the [Land Registration Act](#) and the cases of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR and *Gitwany Investment Ltd vs Tajmal Limited & 3 others* [2006] eKLR.
13. Mr. Ochieng submitted that no material has been placed before the court to show that the Applicants will suffer irreparable harm and relied on the case of *Mureithi vs City Council of Nairobi* [1979] eKLR. Further, that the balance of convenience would tilt in favour of maintaining the status quo whereby the 1st, 2nd and 3rd Respondents are in possession and relied on the case of *Joash Ochieng Ougo & Another vs Virginia Edith Wambui Otieno* [1987] eKLR. Counsel asked the court to dismiss the application with costs.

Analysis And Determination

14. The issue for determination is whether the Plaintiff/Applicants have satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of this suit. The principles for the grant of a temporary injunction are well set out in the case of *Giella vs. Cassman Brown & Co. Ltd* (1973) EA 358.
15. It is trite law and procedure that a claimant seeking orders of injunction orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not be adequately compensated by an award of damages, if the order is not granted and if the court is in doubt it will decide the application on a balance of convenience.
16. It is the Applicants' case that they are the registered owners of the parcel of land known as Nakuru Municipality Block 20/43 measuring approximately 1.247 Ha and that the Respondents have trespassed onto the subject parcel of land and they are apprehensive that the 1st, 2nd and 3rd Respondents may sell or transfer the suit land if orders of injunction are not granted hence they will suffer irreparable loss.
17. The principles for grant of a temporary injunction are well settled. In the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“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.”
18. It is incumbent upon the Applicant to prove that he or she will suffer irreparable harm that is not capable of being compensated by an award of damages if an order of injunction is not issued. The irreparable injury of harm should not be speculative. It should be real, actual and substantial, which



the Applicant must demonstrate. Mere apprehension, which is unfounded, will not suffice to benefit from the grant of an equitable remedy of a temporary injunction.

19. The Respondent in her Replying Affidavit deponed that the Applicant did not pay for the letter of allotment dated 24th November, 1993 hence they were not entitled to procure a title to the suit land.

20. In the case of *Rockland Kenya Limited v Elliot White Miller* [1994] eKLR, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff’s undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

21. The purpose of a temporary injunction is to preserve the substratum of the suit. The Applicant must establish a prima facie case with a probability of success and not present a frivolous case. In the case of *Paul Gitonga Wanjau –vs- Gathuthis Tea Factory Company Ltd & 2 Others* (2016) eKLR, the court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”

22. I have considered the application, the submissions by counsel and find that the application has merit and is therefore allowed as prayed with the following specific orders:

- a. A temporary injunction is hereby issued barring the 1st, 2nd and 3rd Defendant/Respondents by themselves, their servants, agents, proxies and/or persons from disposing of all those parcels of land known as Nakuru Municipality Block 20/43 measuring approximately 1.247 Ha pending the hearing and determination of the suit.



b. Costs to the Applicants.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

