



Lois Holdings Limited (Suing through its Director Pamela Karambu Kimbui) v Kimbui & 2 others (Land Case E010 of 2025) [2025] KEELC 4474 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4474 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE E010 OF 2025
CK NZILI, J
JUNE 11, 2025**

BETWEEN

LOIS HOLDINGS LIMITED (SUING THROUGH ITS DIRECTOR PAMELA KARAMBU KIMBUI) PLAINTIFF

AND

DOUGLAS GITUMA KIMBUI 1ST DEFENDANT

EDWARD KIPNGETICH 2ND DEFENDANT

ANDREW TRIKOI 3RD DEFENDANT

RULING

1. This suit is brought by a company suing through its director Pamela Karambu Kimbui. Through an application dated 12/3/2025, the applicant seeks:
 - (a) A temporary injunction restraining the defendants/respondents from entering, maliciously destroying or dealing with farm known as LR No. 5335/2, that is part of Title No. IR 5741 within Endebess Sub-County, Trans Nzoia County.
 - (b) Eviction of the defendants/respondents from the property.
 - (c) In the alternative, order the status quo prevailing before 4/3/2025 invasion by the defendants/respondents or their agents while awaiting the hearing and determination of the suit.
 - (d) Sub-County Commander of Police, Endebess Sub-County to ensure that the orders of this court are obeyed
2. The reasons are contained on the face of the application and in a supporting affidavit of Pamela Karambu Kimbui, sworn on 12/3/2025. She depones that she is one of the three directors of the company who have authorized her to swear the affidavit and have owned the land for over 40 years as



per copy of her ID, CR12 and a title annexed as PKK-1, 2, and 3. The applicant avers that on 4/3/2023 the respondents without any colour of right or lawful authority trespassed on the land with armed goons and destroyed crops, farm equipment and a house belonging to it, yet they are not members or shareholders of the company. The applicant deposes that it reported the matter to the police, since the goons were violent attacked them and prevented their access to the land as per OB annexed as PKK-4. The applicant terms the actions of the respondents as amounting to trespass which has caused the company irreparable loss and damage which require the court to grant the reliefs sought in the interest of justice.

3. A party seeking a temporary order of injunction is required to meet the conditions set in *Giella v Cassman Brown & Co. Ltd* [1973] E.A, namely; establish a prima facie case with a probability of success, demonstrate that there will be irreparable damage in absence of a temporary injunction and lastly, that the balance of convenience tilts in favour of granting the orders sought. A *prima facie* case is established where based on the material placed before the court, a right is seen to have been infringed or violated to call for an explanation from the opposite side.
4. In *Mrao Ltd v First American Bank of (K)* [2003] KLR 123, the court said that a prima facie case in a civil application includes but is not limited to a genuine and arguable case. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), the court said that the party with the burden of proving prima facie case must show a clear and unmistakable right to be protected which is directly threatened by an act of right to be restrained. The court said that the invasion of the right has to be material and substantive, with an urgent necessity to prevent the irreparable damage that may result from the invasion. The court said that in considering whether there is an infringement, the court is not required to hold a mini-trial, or examine the merits of the case, but only to see on the face of it that the person applying has a right which has been threatened with violation.
5. Irreparable damage, on the other hand means that if the injunction is not granted, the damages recoverable in law may not be an adequate remedy, for the injury suffered or likely to be suffered. See *Esso Kenya Ltd v Mark Makwata Okiya* [1992] KECA 53 (KLR).
6. An injury is irreparable where there is no standard to measure it with reasonable accuracy. It must be actual, substantial and demonstrable injury. It is harm of such a nature that monetary compensation of whatever amount may never be an adequate remedy. See *JM v SMK & Others* [2022] eKLR. The balance of convenience is the balance of inconvenience that the plaintiff is likely to suffer in the absence of an injunction and the suit ultimately succeeding being more than the defendant could suffer if no injunction was to be issued and the suit ultimately dismissed. See *Pius Kipchrichir Kogo v Frank Kimeli Tenai* [2018] eKLR.
7. Applying the foregoing case law to the instant suit, the applicant has attached annexures PKK-1, 2 and 3, to show the nexus between the applicant and the suit land. The annexure PKK-3 is ineligible. There is no directors board resolution filed alongside the plaint to show that the deponent to the verifying and supporting affidavit has been authorized to file the suit. There are no reports to show what damage has been caused to the suit land. The particulars of the damaged crops, farm equipment and or buildings have not been pleaded or proved by way of photographs, reports or otherwise. The nature of activities that the applicant has been undertaking on the land for 40 years upto present, now threatened with damage, loss or injury have not been pleaded in the plaint or particularized in the affidavit in support to the application. Equally, the applicant has not demonstrated the acreage of the land which it has been in active possession of and when it sought to regain entry and the outcome of the police intervention, if any after reports were made to the Endebess Police Station.



8. A party seeking interim orders of injunction, eviction and or maintenance of the status quo, must therefore give vivid particulars of what the status quo was before the alleged invasion, and thereafter before the filing of the suit. The alleged wastage, destruction and vandalism must have been mentioned to the police if any. Equally, evidence of the threatened loss, damage or injury which is actual, real or ongoing has to be demonstrated. Eviction at interlocutory stage would be in the nature of mandatory injunction. Exceptional or special circumstances must therefore be demonstrated by the applicants, with tangible and cogent evidence.
9. The pillars of injunction are to be applied as separate, distinct and logically. They must be surmounted sequentially. In *Paul Gitonga Wanjau v Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR, the court observed that where a doubt exists as to the applicant's 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 injury which the respondent on the other hand would suffer if the injunction was granted and he would ultimately turn out to be right and vice versa.
10. In the instant case, I think the applicant other than the CR12 and a copy of the certificate of title, has failed to surmount the other pillars to be entitled to the interim orders sought. The upshot is I find the application lacking merits. It is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Akunde Jura for the Plaintiff present

No appearance for the Defendants

HON. C.K. NZILI

JUDGE, ELC KITALE.

