



Mbukoni Holdings Limited v Nyachuba & another (Environment & Land Case E061 of 2024) [2025] KEELC 4345 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4345 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E061 OF 2024**

**AY KOROSS, J
JUNE 10, 2025**

BETWEEN

MBUKONI HOLDINGS LIMITED PLAINTIFF

AND

DANIEL NYACHUBA 1ST DEFENDANT

WILSON NDEGE ASUGO 2ND DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated 16/08/2024 filed by the plaintiff, where it seeks the following orders from this court: -
 - a. Spent.
 - b. That pending the hearing and determination of this suit, this honourable court be pleased to issue orders of injunction restraining the 2nd defendant by himself, his servants, agents, proxies and/or persons exercising authority from him from inhibiting, alienating, dealing, disposing, trespassing and/or in any other manner interfering with the plaintiff's quiet use, occupation and possession of land known as 722 Title Number 3/110.
 - c. That this honourable court be pleased to make any other and further orders that it deems just.
 - d. That the costs of this motion be borne by the defendants.
2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn by its managing director, Thomas Maingi Maina, on 16/08/2024.
2. A summary of the grounds in support of the motion are that a) the plaintiff is the registered owner of 722 Title Number 3/110 ["suit property"], b) the 1st defendant who was its former employee,



fraudulently, illegally and unjustifiably subdivided and subsequently transferred the suit property to the 2nd defendant without its knowledge or approval; and

2. C)In consequence, the plaintiff had and continues to suffer loss and damage arising from the deprivation of use of the suit property, and, d) the 2nd defendant held a fake title document and the plaintiff was apprehensive of an illegal sell of the suit property which will in turn expose it to suffer great loss and also prejudice its peaceful use and possession of the suit property.
5. The motion is opposed vide replying affidavit sworn by the 2nd defendant on 30/09/2024. In brief, he stated he was a stranger to all the allegations mounted against him and denied the assertions contained in the plaintiff's supporting affidavit and grounds. He maintained that the averments therein had not been substantiated by a copy of the sale agreement and/or title deed. It is worth noting that the 1st defendant did not participate in these proceedings.
5. Despite court directions, only the written submissions by the law firm of Ms. Dorcas Mutua & Co. Advocates for the 2nd defendant were received by this court.
5. Having considered the motion, its grounds, affidavits, and articulate submissions by the 2nd defendant, the singular issue for determination is whether the motion is merited.
5. This court's invitation to intercede has been moved pursuant to the provisions of Order 40 Rule 1 of the Civil Procedure Rules (CPR), which empowers this court to grant an injunctive relief by stating as follows: -

“ Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
5. Interlocutory injunctions are meant to preserve the substratum of the suit pending the hearing and determination of the suit, and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.
 5. The decision of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR reminds this court that its power in an application for interlocutory injunction is discretionary. Such discretion is judicial, and as is always the case, judicial discretion has to be exercised based on the law and evidence.
 5. The principles that guide this court in determining whether a temporary injunction ought to be issued were settled in the celebrated case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. By this decision, it is trite law that an applicant has to meet the threshold of the 3 tests, which are inter alia, establish a prima facie case; demonstrate irreparable injury; and that the balance of convenience tilts in its favour.



5. These principles were restated in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR in the following manner: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.”

5. When determining an interlocutory application such as the one before this court, the court has to be careful not to prejudice a party by making conclusive findings of fact or law on substantive issues that are the preserve of trial as was stated by Ringera, J (as he then was) in *Airland Tours & Travel Limited v National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002.

5. The 1st test to establish is whether the plaintiff has a prima facie case, and the definition of the term was defined by the Court of Appeal decision of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR, thus: -

“In civil cases a prima facie case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

5. Typically, on the preponderance of probabilities, the onus is on the applicant to prove a prima facie case. In this case, and as stated in the replying affidavit, the plaintiff has not presented a title document or any document whatsoever to prove the existence of the suit property, tender information as to who occupies the suit property, make disclosures as to the developments therein, or reveal the relationship between the parties.

5. In the circumstances, this court finds the plaintiff has not demonstrated a prima facie case and need not say more. For the above finding and reasons, the notice of motion dated 16/08/2024 is hereby dismissed with costs being in the cause. This matter shall be mentioned for pretrial directions.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 10TH DAY OF JUNE, 2025.

HON. A. Y. KOROSS

JUDGE

10.06.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Mutua for 2nd defendant.

N/A for plaintiff.



N/A for 1st defendant.

Ms Kanja- Court Assistant

