



REPUBLIC OF KENYA



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**Ndirangu v Njihia (Environment & Land Miscellaneous Case E043 of 2024)
[2025] KEELC 4276 (KLR) (Environment and Land) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND MISCELLANEOUS CASE E043 OF 2024**

MC OUNDO, J

JUNE 5, 2025

BETWEEN

ROBERT WAITITU NDIRANGU PLAINTIFF

AND

SARAH NJOKI NJIHIA DEFENDANT

RULING

1. Before me for determination is a Notice of Motion Application dated 18th September, 2024 wherein the Plaintiff/Applicant has sought for interim orders restraining the Respondent by herself, her relatives, assigns and/or anybody else acting on her instructions from entering, trespassing, encroaching, erecting and/or building or in any manner interfering with the Plaintiff's peaceful occupation of the parcel of land known as USD Industrial Plot No. 780 Naivasha Municipality. He also sought that the resultant orders be served through the OCS Naivasha Police Station to ensure compliance for peace to prevail.
2. The said application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Robert Waititu Ndirangu, the Plaintiff/Applicant herein who deponed that the Respondent had illegally encroached into his parcel of land known as UNS Industrial Plot No. 730 Naivasha Municipality without any reason whatsoever. That further, the Respondent had illegally erected and/or constructed structures without his consent and/or authority hence denying him peaceful occupation and/or usage.
3. That the Respondent had persistently refused to vacate the suit property and/or remove the illegal structures causing him mental anguish. That the illegal actions by the Respondent had amounted to violation of his constitutional right to free ownership as enshrined in *the constitution*. That the Respondent had persistently caused a breach of peace in his effort to have her vacate and/or move out of the suit property.



4. He deponed that unlike the Respondent, he had legal ownership documents and therefore it was the mandate of the court to protect private property from being encroached and/or trespassed upon without any reasonable cause. That the continued illegal occupation of the suit property by the Respondent had subjected the same to waste and alienation.
5. That subsequently, the Respondent should be restrained from her illegal actions to preserve the suit property from further waste and alienation. That he could not access his property as freely as it was necessary to enable him develop and/or use the same thus causing him great losses. That whereas the Respondent had been served with the necessary vacate notices, she had adamantly refused to comply with the same.
6. In response and in opposition to the Applicant's Application, the Respondent filed her Replying Affidavit and a Supporting Affidavit both dated 26th March 2025 wherein she deponed that she had not be served with the documents in person but rather she had been summoned to collect the same at Railways Police Station.
7. That the Plaintiff/Applicant had paid several visits at her home with armed men whom she had only managed to keep away with the help of the onlooking community members and other road users.
8. Directions were issued for the disposal of the Application by way of written submissions wherein the parties complied and filed their respective submissions which I shall summarize as herein under.
9. The Plaintiff/Applicant vide his submissions dated 11th March 2025 first summarized the factual background of the matter as well as the proceedings in court before placing reliance on the provisions of Section 1A(3) (sic) of the Civil Procedure Act to submit that all parties to civil proceedings were under a duty to assist the Court in its mandate to further overriding objectives of the said Act, participate in the process of the court and comply with the directions and orders of the court so as to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes.
10. That the mere fact that the Defendant/Respondent had refused, neglected and/or ignored to comply with the directions of the Honourable Court was sufficient proof that she had been deliberately sabotaging the work and objectives of the Court. That indeed, the Plaintiff/Applicant had filed in court a letter of Allotment to the suit property, UNS. Industrial Plot No. 730 Naivasha Municipality issued by the Department of Lands dated 2nd February 1999 as well as a Survey Report dated 11th November 2024 as proof of ownership of the suit land.
11. That on the other hand, the Defendant/Respondent had failed, refused and/or neglected to present any documents and/or evidence that would at least explain her presence on the land and or/trespass. That further as it had been evidenced by the Survey Report, the Defendant/Respondent did not live in the suit property but had instead illegally trespassed by putting up structures purely designed to deceitfully claim ownership of the suit property. That indeed, the Defendant/Respondent had deceitfully sought to present herself as some helpless and weak individual who had nowhere else to live in with the mistaken hope that she would end up being declared the owner of the suit property.
12. He thus urged the court to grant the orders as prayed in his Notice of Motion dated 18th September 2024.
13. The Defendant/Respondent on the other hand vide her submissions dated 26th March 2025 reiterated that the Plaintiff's Application lacked transparency as the Plaintiff himself had first appeared on the suit land claiming that the "surveyor" had made a mistake in identifying the boundary. That the Plaintiff had been raising alarm and sending unknown people to disrupt her peaceful occupation of the suit property. That indeed the Plaintiff had visited the suit land with men armed with pangas and machetes



wherein they had started clearing a life fence comprised of cactus plantation that had been growing on the suit land for the past four years.

14. In her undated further submissions, the Defendant submitted that the Plaintiff had first visited the suit land on 16th August, 2024 asking for the owner of the same. That further, on 19th August 2024, the Plaintiff had visited the said land with two police officers who were armed with guns. That on the following day, that is 20th August 2024, the Plaintiff had visited the land with a gang of people who were armed with weapons, without any documents such as a court order, notice from the chief or land documents. That she had reported the incident to the police through OB number 6520/8/2024 because she was afraid for her life.

Determination.

15. I have considered the Applicant's application, its opposition and the submissions by parties. In his application dated 18th September, 2024, the Applicant herein sought for temporary injunction orders restraining the Respondent from interfering in any manner with his peaceful occupation of the parcel of land known as USD Industrial Plot No. 780 Naivasha Municipality.
16. In response and in opposition to the Applicant's Application, the Respondent in her layman's submission was that she had not been served with any proprietorship documents by the Applicant who had instead developed a habit of visiting her in the company of armed men to threaten and evict her from the suit land which persons had been repelled by community members and other road users.
17. The Court has thus been moved under a Certificate of Urgency, by the Applicant, to issue temporary injunction orders against the Respondent. At this stage, the Court is only required to determine whether the Applicant is deserving of the Orders sought. The Court is not required to determine the merit of whether the Applicant herein has demonstrated that he has a genuine and arguable case or not. Subsequently, the issue for determination is whether an interim order of injunction restraining the Respondent should issue
18. The celebrated case of *Giella vs Cassman Brown* (1973) EA 358 sets out conditions for the grant of an interlocutory injunction as follows: -
 - i. Is there a serious issue to be tried (prima facie case)
 - ii. Will the Applicants suffer irreparable harm if the injunction is not granted;
 - iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").
19. On the first issue as to whether the Plaintiff/Applicant in this matter has made out a prima facie case with a probability of success, I am guided by the case of *Mrao vs First American Bank of Kenya Limited & 2 Others* (2003) KLR 125, where a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case 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 as to call for an explanation or rebuttal from the latter.”
20. The Plaintiff/Applicant herein has alleged that the suit property herein being parcel of land known as UNS Industrial Plot No. 730 Naivasha Municipality (Suit Property) solely belonged to him and that he had the legal ownership documents to that effect by virtue of a Letter of Allotment dated 2nd February, 1999.



21. The Supreme Court of Kenya in the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) had held as follows:

“So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein...

Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines....” [Emphasis added]

25. The provisions of Section 26(1) of the [Land Registration Act](#) are very clear to the effect that:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

22. Considering the Supreme Court decision herein above and the provisions of Section 26 of the [land Registration Act](#) which obliges me to take a certificate of lease as conclusive evidence of proprietorship, I find that that the Applicant herein has not exhibited any document in his application to prove that he is the proprietor of any of the suit land known as USD Industrial Plot No. 780 Naivasha Municipality.

23. The mere fact that the Applicant holds no title to the suit land is sufficient to lead the court to hold that he has not established a prima facie case and cannot therefore benefit from an order of injunction them not having demonstrated ownership of the property.

24. There having been no establishment of a Prima facie case, I need not consider the other two conditions for the grant of temporary injunction as established in the Giella –vs- cassman Brown Ltd case (supra) as the conditions are sequential such that when the first condition fails then there is no basis upon which the court can give an injunction unless the court was entertaining a doubt as to whether or not a prima facie case had been established. The Court of Appeal in the case of Kenya Commercial Finance Co. Ltd –vs- Afraha Education Society (2001) IEA 86 cited by Gitumbi, J with approval in the case of Joseph Wambua Mulusya –vs- David Kitu & Another (2014) eKLR observed as follows: -

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied”.

25. I have however one observation to make, which is that since the Respondent is in occupation of the suit land, wherein there have been allegations of violent invasion of the suit property made by the Plaintiff/ Applicant, it is directed as follows;

- i. The Application dated the 18th September, 2024 is herein dismissed with costs.
- ii. Parties shall maintain the status quo prevailing to be understood that the Defendant/ Respondent is in possession and occupation of the suit property known as USD Industrial Plot No. 780 Naivasha Municipality, until the matter is heard and determined.



- iii. Parties to comply with the provisions of Order 11 of the Civil Procedure Rules within the next 21 days for the hearing of the main suit herein.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 5TH DAY OF JUNE 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

