



REPUBLIC OF KENYA



**Wanjohi v Nganga & 2 others (Environment & Land Case E049 of 2024)
[2025] KEELC 4434 (KLR) (Environment and Land) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4434 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE E049 OF 2024**

**MC OUNDO, J
JUNE 12, 2025**

BETWEEN

ISAAC GATHUNGU WANJOHI PLAINTIFF

AND

LEWIS NGUYAI NGANGA 1ST DEFENDANT

PAULINE WANGARI NGUYAI 2ND DEFENDANT

FINANCE PLAN LIMITED 3RD DEFENDANT

RULING

1. Coming up for determination is a Notice of Motion Application dated 29th October, 2024 brought pursuant to the provisions of Order 40 Rules 2 & 4 (1), Order 51 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Sections 13, 14, 19 & 29 of the *Environment and Land Act* and all enabling provisions of the law wherein the Plaintiff/Applicant has sought that the Court issues a temporary injunction restraining the Defendants/Respondents by themselves, their agents, servants, officers and/or any other body or entity from selling, transferring, charging, leasing or dealing in any way with the property comprised in Title Deed No. Naivasha/Maraigushu Block 11/2092 pending the hearing and determination of the suit.
2. The said application was supported by the grounds therein as well as the Supporting Affidavit of an equal date sworn by Isaac Gathungu Wanjohi the Plaintiff/Applicant herein who deponed that he had been the registered proprietor of the property comprised in Title Deed No. Naivasha/Maraigushu Block 11/2092(suit property). That sometimes in the year 2018, we was in need of money and therefore informed the 1st Defendant of his willingness to sell him the suit property.



3. That subsequently, through an oral agreement, the 1st Defendant paid him a sum of Kshs. 500,000/= and parties agreed to reduce the sale agreement into writing later. The Applicant had then provided the 1st Defendant with original documents to the suit for inspection as requested whereby instead of returning them, the 1st Defendant transferred the suit land to himself and the 2nd Defendant/Respondent as the trustees for the 3rd Defendant/Respondent herein. He thus lodged a restriction on the land stating that the transfer had been void as there had been no sale agreement and/or payment of the purchase price. That he was apprehensive that the 1st Defendant would dispose of the suit property comprised in Title Deed No. Naivasha/Maraigushu Block 11/2092 wherein he would suffer irreparable damage. That it was only fair that the court issue orders restraining the Defendants/Respondents from dealing with the property in any way pending the hearing and determination of his suit.
4. In response and in opposition to the Application, the Defendants/Respondents vide their Replying Affidavit dated 9th January 2025 sworn by the 1st Defendant deponed that he had fully paid the sum of money referred to as a 'gentleman's agreement' as purchase price for the suit land and in exchange for the completion documents which included the transfer forms in triplicate, Land Control Board Consent to sell, copies of the Vendor's (Applicant herein) national identity card, KRA Pin and spousal consent all in favor of the Respondents. That the transaction had been completed without any objections wherein all the necessary documents had been duly executed and exchanged.
5. That six (6) years after the conclusion of the sale, the Respondents had received a demand letter stating that the purchase price of the suit property was Kshs. 20,000,000/= That the Applicant's claim based on the current valuation of the suit property was not only unsubstantiated but also irrelevant to the validity of the completed transaction where parties had settled for the purchase price of Kshs. 500,000/= which had fully been paid in a valid and transparent contract.
6. That subsequently, the Applicant's attempt to seek cancellation of the title six (6) years after the completion of the transaction was an afterthought, aimed at unjustly depriving the Respondents of their legitimate investment due to the appreciation of the property's value. That indeed, if the Applicant had been in dire need of the money and had only sought to use the land as collateral, he would have only furnished the Respondents with a copy of the title and/or the original title without handing over the completion documents to avert the transfer. That further, in the event that the Applicant had intended to charge the property in favor of the 3rd Responded, he would have obtained the Land Control Board consent to charge and not to transfer, and the title would have been encumbered through a charge rather than a transfer.
7. That in any case, there was no police occurrence book (OB) record indicating either that the Respondents were under investigation for fraud or that there was an ongoing case against them for fraud concerning the suit property herein. He thus deponed that the Applicant's Application was baseless, ill-founded and an abuse of the court process hence should be dismissed with costs to the Respondents.
8. Directions were issued for the disposal of the Application by way of written submissions wherein the Applicant framed one issue for determination to wit; whether the Plaintiff/Applicant was entitled to the injunctive order sought in the motion herein.
9. He placed reliance on the decided case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 to submit that he had satisfied all the parameters contained therein for the issuance of the injunctive orders sought. That he had established that he was the immediate previous owner of the suit property. That further, he had presented proof to demonstrate that he had lodged a restriction over the suit property



- on 18th January 2021. That the Defendants/Respondents on the other hand had neither contested the same nor shown any steps that they had taken either to remove the restriction or to contest the said restriction lodged over the suit property.
10. He submitted that if the Defendants/Applicants were not restrained from dealing with the suit property, they were likely to deal with the property in other ways that did not require registration of documents in the land registry while the dispute herein was ongoing in court.
 11. He thus submitted that the balance of convenience tilted in favor of granting the injunction order sought, pending the hearing and determination of the dispute between the parties in the instant case to ensure that the subject matter was preserved.
 12. The Respondent's submissions dated the 17th March 2025 on the other hand in opposition of the Application were founded on the following issues for determination.
 - i. Whether the Applicants case is urgent to meet the threshold for the grant of an injunction as set out in *Giella v Cassman Brown* (1932)(sic)
 - ii. The Legality of the transaction.
 - iii. Land Control Board Consents.
 - iv. Failure to Prove Intended Charge Instead of Transfer
 13. On the first issue for determination as to whether the Applicants' case is urgent to meet the threshold for the grant of an injunction as set out in *Giella v Cassman Brown* (1932) (sic), the Respondents submitted in the negative to the effect that that the Applicant's case did not meet the legal threshold for the grant of a temporary injunction.
 14. That on the issue of a prima facie case with a probability of success, the Applicant's case lacked merit as it was initiated six years after the transaction, with no urgency whatsoever. That the Applicant failed to demonstrate any legal basis to challenge the completed sale, and the delay itself negated the existence of a genuine legal grievance.
 15. On the second ground, the Applicant did not demonstrate any irreparable harm, as any claim could be remedied through monetary compensation. That even if the Applicant alleged any loss, the law provided for compensation through damages which negated the need for injunctive relief.
 16. Lastly, that the Respondents held both the title and possession of the property, which tilted the balance of convenience in their favor. That the Applicant had not provided any cogent reason why the property should be interfered with, especially when the Respondents had never sought to dispose it off. That the balance of probabilities clearly supported the Respondents' continued ownership and possession of the property.
 17. That parties had entered into a valid contract which was enforceable and binding and there was no evidence to prove any fraudulent transfers and therefore the Applicant's application should be dismissed in its entirety with costs and the temporal injunctive orders lifted.

Determination.

18. I have considered the Applicant's application, its opposition, the submissions by the parties, the authorities cited and the applicable law. The Applicant herein has sought for temporary injunctive orders restraining the Respondents from dealing in any way with the property comprised in Title Deed No. Naivasha/Maraigushu Block 11/2092 pending the hearing and determination of the suit.



19. In response and in opposition to the Applicant’s Application, the Defendants/Respondents through their Replying Affidavit dated 9th January 2025 deponed that they purchased the property in a lawful and legal agreement wherein the whole purchase price of Ksh. 500,000/= had been paid in exchange for the transfer documents. That six (6) years later, after the conclusion of the sale, the applicant now sought to cancel the title on the basis of a current valuation of the suit property which was not only unsubstantiated but also an afterthought, aimed at unjustly depriving the Respondents of their legitimate investment due to the appreciation of the property’s value.
20. The celebrated case of *Giella v 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").
21. The Court has been moved under a Certificate of Urgency, by the Applicant, to issue temporary injunction orders against the Respondents. At this stage, the Court is only required to determine whether the Applicant is deserving of the Orders sought and is not required to determine the merit of the case.
22. Subsequently, the issue for determination is whether an interim order of injunction restraining the Respondents should issue
23. 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.”
24. I have considered the Search Certificate dated 6th September 2024 annexed herein. According to the said Search Certificate, the suit property herein being Title No. Naivasha/Maraigushu Block 11/2092 was registered in favor of the 1st and 2nd Defendants/Respondents as Trustees of the 3rd Defendant/Respondent on 22nd January 2019. Subsequently, as it stands, the 3rd Defendant/Respondent is the registered proprietor of the suit property wherein it is conferred with all rights, privileges and appurtenances thereto, free from all other interests and claims, which rights, privileges and appurtenances are not liable to be defeated except as provided in the Act.
25. Indeed, the rights of a proprietor are set out in Section 25 of the *Land Registration Act*, which provides as follows.
- “The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by order of court shall not be liable to be defeated except as provided in this Act and shall be held by the proprietor, together with all privileges thereto, free from all other interests and claims whatsoever, but subject:-



- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any shown in the register, and
 - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”
26. Section 26 (1) of the Act provides that the certificate of title is to be taken as conclusive evidence of proprietorship Section 26 (1) provides:-
- “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 subject to challenge, except
- a. on the ground of fraud or misrepresentation to which the person is proved to be a party, or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.
27. The Applicant has argued that the transfer of the suit property’s title to the 3rd Respondent had been illegally and unlawfully procured and therefore cannot be deserving of protection under the law. However, there is no evidence that the Government has recalled and/or revoked the title. Both the [Land Registration Act](#) at Section 26 (1) that provides for the indefeasibility of title, and Article 40(6) of the [Constitution](#) envisage that where a registered title is impugned on the grounds set out in the provisions, that due process would be followed to have such title revoked, cancelled and/or annulled. The courts have in a series of cases in the recent past held that due process has to be followed before a registered title can be revoked on the grounds of having been fraudulently or irregularly issued.
28. There having been demonstrated that the 3rd Defendant/Respondent was the registered owner of the suit property wherein it had been issued with a title, prima facie its title is indefeasible and the burden shifts to the Applicant to show or demonstrate that the title is challengeable within the provisions of the law.
29. Ostensibly, it is not possible to make a final determination at this interlocutory stage on the validity of the 3rd Respondent’s title but the mere proof that it holds a duly registered certificate of title which on the face of it was properly acquired, is sufficient to lead the court to hold that the Applicant has not established a prima facie case.
30. Therefore, 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 it 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- Afraba Education Society* (2001) IEA 86



cited by Gitumbi, J (As she then was) 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”.

31. Consequently, I dismiss the application dated 29th October, 2024 with costs to the Respondents. 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 12TH DAY OF JUNE 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

