



REPUBLIC OF KENYA



ICEA Lion Trust Company Limited & another v Wamalwa & others (Environment & Land Case E436 of 2024) [2025] KEELC 4975 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4975 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E436 OF 2024**

CA OCHIENG, J

JULY 3, 2025

BETWEEN

ICEA LION TRUST COMPANY LIMITED 1ST PLAINTIFF

**SIMON KAMERE (SUING AS ADMINISTRATORS OF THE ESTATE OF
JOSEPH KAMAU KAMERE - DCD) 2ND PLAINTIFF**

AND

RICHARD PANI WAMALWA & OTHERS DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiffs' Notice of Motion application dated the 3rd October 2024. They seek orders the following Orders:
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to issue an injunction restraining the Defendants either by themselves, their agents, servants and in any manner howsoever from dealing with conveying, subdividing, encroaching or trespassing and or remaining on land parcel of land known as Nairobi Block 194/320 formerly L.R. No. 5989/6.
 - d. That pending the hearing and determination of this suit, status quo be maintained.
 - e. That the Officer Commanding Station, Runda Police Station do oversee the enforcement of Court Orders issued.
 - f. That costs for this Application be provided for.
2. The application is premised on grounds on its face and on the 2nd Plaintiff's supporting affidavit. He avers that one Sophia Muthoni Kamere and Joseph Kamau Kamere [both deceased] are the registered



owners of Nairobi Block 194/320 formerly 5989/6, hereinafter referred to as the 'suit land'. He deposes that the estate of Joseph Kamau Kamere has enjoyed quiet possession of the suit land until on 22nd October 2024 when unknown persons led by the Defendant [Richard Pani Wamalwa], purporting to be squatters unlawfully trespassed thereon. He avers that the said illegal trespass was reported at Runda Police Station vide OB No. 11/22/10/2024.

3. He claims that the Defendants have started depositing construction material and intend to erect illegal structures on the suit land and unless restrained, their actions will cause the Plaintiffs to suffer irreparable loss and damage.
4. The application is opposed by the Defendants vide the replying affidavit of Richard Pani Wamalwa. He avers that he has gathered that the Plaintiffs themselves deposited stones to put a perimeter wall on the suit land, but the public objected to their attempt for reasons that the said land is known to have been compulsorily acquired for construction of the Northern Bypass. Further, that since the suit land was not fully utilized, the remainder is public land, meant for a road reserve. He contends that citizens have a right to protect public property hence those who objected were just exercising their rights independently as he did not influence anybody. He denied being present on the day of the alleged trespass.
5. He claims that the Plaintiffs' attempt at grabbing the suit land herein started way back in 2015. He produced a letter drafted by Githogoro Residents Association on 1st October, 2015 in relation to the suit land. He urged the court to preserve public property and not to aid the Plaintiffs whose hands are allegedly tainted with illegality.
6. He contends that between 21st to 23rd January 2025, Kenya Urban Roads Authority [KURA] together with their surveyors held a meeting on the suit land, which he also attended, together with neighbours and the 2nd Plaintiff's family to identify beacons. He insists that all beacons were traced and a verdict reached that the suit land is part of a road reserve.
7. He reiterates that during the said meeting, it came up that the Plaintiffs had leased the suit land to Truce Lounge, Clyn Garage, North Baptist Church and other entities who were informed that their businesses are being conducted on a road reserve. He annexed a copy of the map of the area.
8. He asserts that the Plaintiffs have deliberately avoided to sue the right government entities concerned with the suit land and urges that Kenya Urban Roads Authority and the Githogoro Residents Association should be joined in these proceedings, to enable the Court determine all issues herein. He further urged the court to conduct a site visit to ascertain the beacons on the suit land.
9. The application was canvassed vide written submissions.

Submissions

10. The Plaintiffs reiterate their averments in the affidavit in support of the application and contend that they have met the threshold for grant of injunctions as stated in the case of *Giella v Cassman Brown Co. Ltd* [1973]. Further, that by attaching a copy of the Title to the suit land, which is prima facie evidence of ownership, they have established a prima facie case as defined in the case of *Mrao Limited v. First American Bank of Kenya Limited & 2 Others* [2003] eKLR.
11. They further submit that since the Defendants have deposited and threatened to erect illegal structures on suit land and further purported to subdivide it, there is no proof of their allegations that it is a road reserve or public property. They argue that a temporary injunction is needed to protect their rights from threats of violation, which are acts that cannot be compensated by an award of damages. Further, that the balance of convenience tilts towards preserving the suit land until the suit is determined.



12. The 1st Defendant reiterates his averment's in his replying affidavit to the instant application and submits that no prima facie case has been demonstrated to warrant the orders sought. He points out that he has no interest in the suit land and in the circumstances, there is nothing linking him to the alleged complaint of trespass. Further, that he cannot cause the Plaintiffs any harm and the balance of convenience cannot hold in the circumstances.

Analysis and Determination

13. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Plaintiffs are entitled to orders of interlocutory injunction restraining the Defendants from interfering with the suit land pending the outcome of this suit.
14. In relying on the principles as outlined in the case of *Giella v Cassman Brown [1973] EA 358* as well as the description of a prima facie case as espoused in the case of *Mrao Ltd v First American Bank Limited [2003] eKLR*, I will proceed to determine if the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought.
15. The Plaintiff claims that the suit land is registered in the names of Sophia Muthoni Kamere and Joseph Kamau Kamere and allege that on or about 22nd October 2024, the Defendants, invaded the suit land under the guise of being squatters, deposited building materials, and threatened to construct illegal structures thereon. They have annexed a Certificate of Title to that effect.
16. On their part, the Defendants claim that the application is incompetent as the suit land is a road reserve, allegedly compulsorily acquired for construction of the Northern Bypass. The 1st Defendant denied being present on the day of the alleged trespass and in his submissions stated that he had no interest in the suit land.
17. Looking at the documents presented by all the parties, I note the Plaintiffs hold a Certificate of Title to the suit land. The 1st Defendant insisted that the suit land is public land but did not tender any gazette notice to that effect. The 1st Defendant claimed there was a meeting with KURA, but there are no minutes presented.
18. From this analysis, it is my considered view that since the Plaintiffs hold a Certificate of Title to the suit land, which the Defendants have trespassed on and deposited construction materials with an intention to construct thereon, I find that they have indeed established a prima facie case as against the Defendants, to warrant the orders of temporary injunction as sought. I opine that since the Defendants have deposited and threatened to erect illegal structures on suit land and purported to subdivide it, the Plaintiffs will indeed suffer irreparable harm. Further, that the balance of convenience indeed tilts in favour of granting the Plaintiffs an order of temporary injunction.
19. In the circumstances, I find the instant Notice of Motion merited and will allow it by making the following Orders:
- i. That pending the hearing and determination of this suit, an Order of injunction is hereby issued restraining the Defendants either by themselves, their agents, servants and in any manner howsoever from dealing with conveying, subdividing, encroaching or trespassing and or remaining on land parcel of land known as Nairobi Block 194/320 formerly L.R. No. 5989/6.
 - ii. That the Officer Commanding Station, Runda Police Station do oversee the enforcement of Court Orders issued.



iii. Costs will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF JULY 2025.

CHRISTINE OCHIENG

JUDGE

In the presence of:

Mwangi for Plaintiffs

Were for Defendants

Court Assistant: Joan

