



Le Monde Foods Ltd v Vaghjiyani Enterprises Ltd & 3 others (Environment & Land Case E040 of 2024) [2025] KEELC 4895 (KLR) (1 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E040 OF 2024**

**JA MOGENI, J
JULY 1, 2025**

BETWEEN

LE MONDE FOODS LTD PLAINTIFF

AND

VAGHJIYANI ENTERPRISES LTD 1ST DEFENDANT

NATIONAL HOUSING CORPORATION 2ND DEFENDANT

COUNTY GOVERNMENT OF KIAMBU 3RD DEFENDANT

**THE HON ATTORNEY-GENERAL (ON BEHALF OF THE MINISTRY OF
LANDS, HOUSING & URBAN DEVELOPMENT) 4TH DEFENDANT**

RULING

1. By a Notice of Motion dated 05/03/2024, brought under Order 40 Rule 1 (a) and (b) and Order 51 Rule 1 of the Civil Procedure Rule and all other enabling provisions of the law. The Applicant is seeking for the following orders:
 1. Spent
 2. Spent
 3. That the 1st and 2nd Defendants by themselves their servants agents or persons claiming under or through them be restrained from fencing, entering, excavating, constructing or otherwise interfering with land parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1653 and 1658 until the suit is heard and determined.
 4. That this Honorable Court to make such orders as will preserve/conservate the suit property until the suit is heard and determined.



5. The application is premised on the following grounds which are supported by the Annexed Affidavit of Ngige Mondo the nature of the case and on further grounds and reasons to be adduced at the hearing. The grounds identified are:
 - a. The Plaintiff/Applicant is the registered proprietor of land parcel The Plaintiff/Applicant is the registered proprietor of land parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1653 and 1658.
 - b. Sometimes in July, 2017 the National Land Commission purported to cancel the Plaintiff's title vide Gazette Notice No.6862 and grant the same to the Kiambu County Government.
 - c. The Plaintiff presented ELC Case No. 166 of 2017 and after a full hearing the Gazette Notice aforesaid was nullified and cancelled.
 - d. The Defendants have now entered the land and fenced it off and are excavating it with a view of constructing the so called "Affordable Houses".
 - e. This act of the Defendants is in blatant violation of the Plaintiff's Constitutional right to property a brazen disregard of the decision of the Court and is causing the Plaintiff loss and damage.
2. A summary of the grounds and the averments by the Applicant is that the Applicant is the registered owner of the suit property the Plaintiff is a registered proprietor of Land Parcel Nos. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1652, 1653 and 1658. He attached copies of the Titles marked NM 1(A-J).
3. That in the year 2006 the then Town Council of Kikuyu entered his land and fenced it off alongside other adjacent parcels of land and this led to the Applicant filing in Court HCC 906 of 2006 in the High Court at Nairobi initially against the Town Council of Kikuyu. Further that vide a Gazette Notice No. 6862 dated 17th July, 2017 the National Land Commission purported to cancel the Applicant's title deeds. A copy of the Gazette Notice is attached and marked Marked NM 2.
4. As a result to the gazettelement, the Applicant avers that he amended his Complaint and joined the National Land Commission and the County Government of Kiambu in the matter. A copy of the amended Complaint is annexed and marked NM 3. Following the amendment the matter was reassigned and new number as ELC No. 166 of 2017.
5. He avers that after the matter was fully heard the Court ordered that the Gazette Notice be cancelled and declared that the land belonged to the Applicant as evidenced by the copy of the Judgement and Decree which are annexed and Marked NM 4.
6. Yet, despite this finding, the Applicant avers that the 1st Defendant has now blatantly without any colour of right or excuse entered upon the suit land and started excavating the soil and making trenches in readiness for constructing houses for the 2nd Respondent and 3rd Respondents in what is referred to as affordable housing. As per the annexed copies of photographs of the site Marked NM 6.
7. It is his contention that despite writing to the Defendants through his Advocates, they have ignored the letter, a copy which is annexed and Marked NM 7.
8. The Applicant has asked the Court to issue the injunction sought or the Defendants will not stop carrying out their illegal activities which will effectively forcefully deprive the Applicant of his land.



9. Despite being served as evidenced by the Affidavit of Service deponed on 31/05/2024 by Jackson M. Gaturu only the 4th Defendant now 3rd Defendant filed a Replying Affidavit sworn by Silas Ondere on 24/09/2024 and denied all the averments in the application. No other Defendant filed any other response.
10. Since this application was canvassed by way of written submissions, at the time of writing this Ruling I was only able to interrogate the submissions filed by the Applicant dated 17/03/2025 and those of the 4th Defendant who relied wholly on the averments of the 2nd Defendant, Kiambu County dated 5/04/2025 which I have duly considered.

Analysis and Determination

11. Having considered the application and the written submissions, I find that the only issue for determination is whether the Applicant has met the threshold for the grant of an order of injunction.
12. An interlocutory application, is ideally issued between the parties while the dispute between the parties is pending. In normal circumstances the Court is careful not to venture into making definitive findings on facts of law or facts. The power of Court in an application for an interlocutory injunction is discretionary, that will be judicially exercised on the basis of law and evidence. The conditions for granting a temporary injunction are well known. Firstly, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.
13. In the instant case, I have noted that the Applicant has produced his title deeds to the suit property and a Judgment of this Honorable Court declaring him as the proprietor of the suit property. It is therefore not clear how the 3rd Defendant who was the 4th Defendant has trespassed on his land yet they have not presented any documents in Court to claim ownership to the suit property.
14. The Applicant claims that the 3rd Defendant previously 4th Defendant has trespassed on his suit property and is in the habit of erecting constructing houses on the said suit property despite the Applicant having been declared as the owner by a competent Court of law. He attached photographs showing the excavation and construction going on.
15. The evidence of the Applicant is uncontroverted. The Applicant's claim of the Defendant having trespassed on his land and gone ahead to excavate and start construction despite being aware that the Court decreed that the land belongs to the Applicant/Plaintiff is an arguable case of trespass that raises a serious question that ought to be tried by Court during a full trial.
16. The principles applicable in an application for an injunction were laid down in the celebrated case of *Giella Vs Cassman Brown & Co Ltd* [1973] EA 358 and I have already referred to them hereinabove.
17. The Applicant in an application for injunction must first establish that he has a prima facie case with a probability of success. The Court of Appeal defined a prima facie case in the case of *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR 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.”



18. It does follow therefore that I need to consider whether the Applicant has established a prima facie case with a probability of success, the Applicant's claim over the suit property is anchored on the Title Deed registered in his name. So it is my finding from studying the documents presented as attachments to the Supporting Affidavit that the suit property is registered in the names of the Applicant herein. The Applicant has clearly demonstrated that he is the registered owner of land parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1653 and 1658. To that extend therefore I am satisfied that the Applicant has established that he has a prima facie case with a probability of success.
19. On the second issue that concerns irreparable harm, the Court of Appeal in the case of Nguruman Limited Vs Bonde Nielsen & 2 Others (2014) eKLR held that: -

“On the second factor, the Applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation of whatever amount, will never be adequate remedy.”
20. It is therefore the Applicant's responsibility to show that they will suffer irreparable harm which cannot be adequately compensated by award of damages. The Applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
21. It is not in dispute that the Applicant is the registered owner of land parcel No. Muguga/Gitaru/1644, 1645, 1646, 1647, 1648, 1653 and 1658. The Applicant further submitted that after the Court had declared him as the proprietor of the suit property the 1st Respondent entered the suit property and started excavation that led to the 2nd and 3rd Respondents starting construction of affordable houses on his suit property.
22. That despite the 1st Respondent being in receipt of his letter from his advocates they have ignored and gone ahead with the construction at high speed. A copy of the letter is attached to the supporting affidavit.
23. The Applicant's case is that the Respondents have refused to stop trespassing on the suit property despite the demand letter written. The 1st Defendant has not responded to the application to explain or rebut the facts stated by the Applicant despite being served. A temporary injunction is needed to protect the rights of the Applicant from violation or threats of violation of acts that he cannot be compensated by an award of damages.
24. In the circumstances the balance of convenience tilts towards preserving the property in dispute in the suit until the suit is determined. The suit property could only be preserved if the actions of the Respondents were restrained pending the final disposal of the suit. It is for these reasons that, on preponderance of probability, I do find the Notice of Motion dated 05/03/2024 is merited and is hereby allowed. I order as follows: -
 - a. That a temporary injunction be and is hereby issued restraining the Respondents whether by themselves, their agents and/or servants whatsoever from leasing, selling, subdividing, disposing off or occupying the property known as land parcel No. Muguga/Gitaru/1644,



1645, 1646, 1647, 1648, 1653 and 1658 LR No. Nairobi/Block 263/3071 pending the hearing and determination of this suit.

- b. That the costs of this application be in the cause.
- c. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 1ST DAY OF JULY 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Mwaura holding brief for Mr. Njuguna for the Plaintiff

1st Defendant – Absent

Mr. Motari for the 2nd Defendant

Ms. Rebo for the 3rd Defendant

Mr. Motari for the 4th Defendant

Mr. Melita – Court Assistant

