



**Maridadi v Wanjohi (Environment and Land Case E035 of 2024)
[2025] KEELC 5203 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E035 OF 2024**

MD MWANGI, J

JULY 7, 2025

BETWEEN

JONATHAN RINCHO MARIDADI PLAINTIFF

AND

ISAAC GATHUNGU WANJOHI DEFENDANT

RULING

(In respect of the notice of motion dated 4th September 2024 brought under the provisions of Order 40 rules 1 -3 and 10 of the [Civil Procedure Rules](#), Sections 3, 3A and 63 of the Civil Procedure Act)

Background.

1. This suit was initiated by the Plaintiff vide his plaint dated 4th April 2024. The Plaintiff alleges that prior to 13th June 1991, he was the registered proprietor of all that property known as KJD/ Kitengela/1921 (hereinafter referred to as ‘the suit property’).
2. The Plaintiff avers that he had an agreement for sale of the suit property with the Defendant dated 2nd November 1990. However, the agreement was not concluded as the Defendant disappeared and only resurfaced after one year.
3. The Plaintiff affirms that he has been in occupation of the suit property all through. He alleges that the Defendant has no knowledge of the exact location of the land. He contends that the Defendant was issued with a title deed No. Kjd/Kitengela/3179 measuring approximately 24.28 hectares, illegally, fraudulently and unprocedurally. The Plaintiff particularizes the fraud at paragraph 7 of the plaint alleging that the Defendant obtained the title deed without a land control board consent. He claims that the Defendant used an illegal land control board consent to transfer the said land and disregarded all vital elements of transfer of land while processing the same.



4. The Plaintiff denies entering into an agreement with the Defendant for the sale of 24.28 hectares of land. In a bid to intimidate and legitimize his wrongful acquisition, the Plaintiff alleges that the Defendant allegedly caused him to be charged in criminal case No. 272 of 2017 in Ngong Law Courts but the Plaintiff was acquitted of all charges by the court.
5. The Plaintiffs prays for a declaration that the transfer and registration of Kjd/Kitengela 3179 is tainted with illegality and fraud and an order directing the Land Registrar Kajiado, to cancel the title Kjd/Kitengela/3179 in the name of the Defendant, amend the same to reflect the name of the Plaintiff and the Registrar to dispense with the production of the original title.

Response by the Defendant.

6. The Defendant in response to the Plaintiff's claim filed a statement of defence and counter-claim dated 4th September 2024. The Defendant asserts that at all material times, he is the registered proprietor of Kjd/Kitengela/3179 which is also known as Kjd/Ololoitikoshi/Kitengela/3179 measuring 24.28 hectares having bought it from the Plaintiff between 1985 and 1991. It was transferred to him on 13th June 1991.
7. The Defendant states that the Plaintiff being a member of Kitengela/Ololoitikoshi group ranch which was subdividing its land at the time believed that he would get over 250 acres after the subdivision. On 24th March 1985, the Defendant entered into a sale agreement with the Plaintiff whereby the Plaintiff agreed to sell him 100 acres at the purchase price of kshs. 125,000/- out of which a sum of kshs 42,500/- was paid on execution of the agreement. The balance of the purchase price was to be paid upon issuance of the land control board consent and transfer of the suit property to the Defendant. The land was sold with vacant possession. The Defendant was entitled to immediate possession and occupation of the land.
8. After the Plaintiff obtained a title deed however, it turned out that he got lesser land than what he had anticipated. Consequently, the parties mutually varied the agreement of 24th March 1985 and agreed that the Plaintiff would instead sell the Defendant 60 acres of land instead of 100 acres agreed earlier on. The proportionate consideration after reduction of the size of the land to be sold to the Defendant by the Plaintiff was kshs. 75,000/-, which the Defendant duly paid to the Plaintiff in full.
9. When a title was eventually issued in favour of the Plaintiff for the whole block being title No. Kjd/Kitengela/Ololoitikoshi/1921, the Defendant lodged a caution on the said title on 24th August 1989. The Defendant alleges that he thereafter went to the District Commissioner to request that a land control board meeting be convened for purposes of a consent for the portion that the Plaintiff had sold to him. The consent was granted on 11th June 1991 and the parties executed the transfer which was registered on 13th June 1991. The caution lodged on the land was removed on the mutual agreements of the parties.
10. The Defendant asserts that the Plaintiff subdivided LR. No. Kjd/Kitengela/Ololoitikosh/1921 into 3 parcels –KjdKitengela/3179, KjdKitengela/3180 and KjdKitengela/3181. The 1st parcel of land was transferred to the Defendant whereas the 2nd one was transferred to another person.
11. It is the Defendant's case that a consent to transfer Kjd/Kitengela/3179 was duly obtained. By virtue of the sale and transfer to him, the Defendants states that the Plaintiff's rights were extinguished in respect of Kjd/Kitengela/3179 and the Defendant acquired the exclusive right over the parcel of land to exclude, keep out or prevent others, including the Plaintiff from the use and possession of the same. The Defendant asserts that he has the right to earn income from his land and the right to transfer or alienate the same as he wills. He claims that he has been in possession of the land since the purchase and



transfer of the title to himself. The Defendant asserts that he peacefully enjoyed his property between 1991 and 2013 with the Plaintiff as his neighbor.

12. In the year 2013 however, the Defendant realized that the title Kjd/Kitengela/3179 had been altered without his knowledge indicating the Plaintiff as the owner. He assumed that it was a mistake; it was actually rectified by the Land Registrar. However, soon thereafter, his workers were chased away from the land by the Plaintiff's wife. The Defendant lodged a complaint with the area chief and that was when the Plaintiff produced a title for Kjd/Kitengela/3179 in his name. The defendant escalated the matter to the police leading to the Plaintiff being arrested and charged with the criminal offence of forging the Defendant's title.
13. It is the Defendant's case that the Plaintiff while defending himself in the criminal case admitted selling the land – Kjd/Kitengela/3179 to him. Nonetheless, the Plaintiff has since then embarked on a series of illegal activities calculatedly denying the Defendant his rights of proprietorship on the land. The illegalities are particularized at paragraph 18 of the Defendant's statement of defence and counterclaim.
14. The Defendant prays for judgment against the Plaintiff for;
 - a. A declaration that through the contract of sale of the property Kjd/Kitengela/3179, all the Plaintiff's former rights were extinguished.
 - b. A declaration that between 13th June, 2013 when he removed the land register of the Defendant and replaced it with his own at the Land Registry at Kajjado, the Plaintiff admitted that indeed he sold the suit property to the Defendant; the latter became the owner.
 - c. A declaration that since June 2013, the Defendant has committed the tort of constructive trespass to land.
 - d. A declaration that the Defendant is the lawful owner of the property Kjd/Kitengela/3179.
 - e. A permanent injunction restraining the Plaintiff from interfering with the Defendant's quiet enjoyment of Kjd/Kitengela/3179.
 - f. Mesne profits with interest.
 - g. Interest on (f) above; and
 - h. The costs of the suit.
15. Alongside the statement of defence and counterclaim, the Defendant filed the notice of motion dated 14th September 2024 seeking restraining orders against the Plaintiff barring him from interfering with his enjoyment of property Kjd/Kitengela/3179, or being on the property Kjd/Kitengela/3179 pending hearing and determination of the suit.
16. From the Case Tracking System (CTS), no response has been filed to the Defendant's application. The last document filed on behalf of the Plaintiff was the plaint and the accompanying documents filed on 8th April 2024. The Plaintiff's advocates confirmed the position on 8th May 2025 and sought five (5) days to file his response and submissions which was allowed. He did not however comply. The application by the Defendant is therefore unopposed and shall be considered as such for the purposes of this ruling.



Issues for Determination.

17. Having considered the application filed by the Defendant, as well as his submissions filed on 3rd May 2025, the sole issue for determination is whether the Defendant's application has met the threshold for the grant of the orders sought.

Analysis and Determination.

18. It is noteworthy that the Defendant has filed a counter-claim in this suit. No doubt, the court has the jurisdiction to issue an order of temporary injunction in the Defendant's favour if the application meets the threshold for the grant of the order.
19. The principles guiding the grant of an interlocutory injunction are now well settled. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, the Court of Appeal while upholding the principles laid down *Giella v Cassman Brown & Company Limited* (1973) E.A. 358, stated that;
- “In an interlocutory injunction application, the applicant has to satisfy the principle requirements to;
- a. Establish his case only at the prima facie level,
 - b. Demonstrate irreparable injury if a temporary injunction is not granted, and
 - c. Alleviate any doubts as to (b) above by showing that the balance of convenience is in his favour”
20. The court went further to state that the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected and which is directly threatened by an act sought to be restrained. In this case, the Defendant holds a title to the suit property which under Section 26 of the *Land Registration Act* is to be taken as prima facie evidence of ownership of the suit property. With that the Defendant surmounts the 1st hurdle.
21. The 2nd hurdle for the applicant is establishing that he might otherwise suffer irreparable injury which cannot adequately be compensated by an award of damages in the absence of an injunction. This is because, the equitable remedy of a temporary injunction is issued solely to prevent grave and irreparable injury; an injury where there is no standard by which its amount can be measured with reasonable accuracy or an injury or harm of such a nature that monetary compensation of whatever amount will never be an adequate remedy.
22. The Defendant in this case argues that he has been unlawfully prevented from using and enjoying his land. The Defendant refers to the court of appeal decision in *Kamau Muchuba v Ripples Limited* (1993) eKLR, where the court held that as far as possible, a party ought not to be allowed to retain a position of advantage that it obtained through a planned and blatant unlawful act.
23. On this point, this court further agrees with the holding of Warsame J (as he then was) in *Joseph Siro Mosiama v HFCK & 3 others* (2008) eKLR, to the effect that,
- “Damages is not and cannot be a substitute for the loss, which is occasioned by a clear breach of the law. In any case, the financial strength of a party is not always a factor to refuse an injunction. Moreso, a party cannot be condemned to take damages in lieu of crystallized right which can be protected by an order of injunction”.



24. The applicant in my considered view has demonstrated irreparable harm or injury that he stands to suffer unless an interlocutory injunction is granted.
25. In any case, considering the uncontested facts as presented by the applicant, the balance of convenience tilts in his favour. The balance of convenience being in favour of a party as held by the court in the case of *Chebii Kipkoech v Barnabas Tuitoek Bargarua & ano* (2019) eKLR, means that;
- “...if an injunction is not granted and the suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to them would be greater than that caused to the Defendants if an injunction is granted and suit is ultimately dismissed”.
26. That said, the court finds in favour of the Defendant against the Plaintiff. The application dated 14th September 2024 is allowed as prayed with costs to the Defendant.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 7TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mwenda h/b for Dr. Kamau Kuria (SC) for the Defendant/Applicant

N/A for the Plaintiff/Respondent

Court Assistant: Mpoye

