



**Obwoge v Mwangi (Environment & Land Case E0208 of 2024)
[2025] KEELC 4899 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4899 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E0208 OF 2024**

JM ONYANGO, J

JULY 2, 2025

BETWEEN

PETER ORERI OBWOGE PLAINTIFF

AND

JOEL MUIRURI MWANGI DEFENDANT

RULING

1. This ruling determines the Plaintiff's Notice of Motion dated 14.3.25 seeking a restraining order restraining the defendant by himself, his agents, servants, or anybody acting under his authority from entering, encroaching onto, trespassing, disposing of, alienating constructing or in any other way interfering with the Applicant's possession and proprietary rights over the parcel of land known as L.R No. 4953/2750 pending the hearing and determination of this suit.
2. The application is premised on the grounds outlined in the Notice of Motion and the Applicant's supporting affidavit sworn on the 14th March 2025 in which he avers that he is the registered owner of the suit property, having purchased it from Kenton (K) Limited.
3. That the defendant trespassed into the suit property sometime in October 2024 and he has started constructing some structures thereon in complete disregard of the Applicants rights to thereto.
4. The court directed the Respondent to file his response to the application after which the application would be canvassed by way of written submissions but by the time of writing this ruling on 27th June 2025, the Respondent had not filed any response. However, the Applicant complied with the court's directions and filed his submissions which I have read and considered.

Analysis and Determination

5. The singular issue for determination is whether the Applicant is entitled to an order of injunction.



6. Order 40 Rule 1(a) and (b) of the Civil procedure Rules, 2010 provides as follows:

Where in any suit it is proved by affidavit or otherwise –

- a. That any property in dispute in a suit is in danger of being wasted, damaged or alienated, by any party to the suit or wrongfully sold in execution of a decree or;
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit; the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit.

7. In order to grant an order of temporary injunction, the court must be satisfied that the conditions in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E.A 358 have been met. In the said case the court set the following conditions:

“Firstly, an 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 the application on the balance of convenience.”

I will now proceed to determine if the applicant has met the above-mentioned conditions. On whether the applicant has established a prima facie case I am guided by the case of *Mrao v First American Bank of Kenya & 2 Others* where the court pronounced itself thus:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case in 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,”

8. In the instant case, The Applicant has demonstrated that he is the registered owner of the suit property by exhibiting a copy of the title in his name. He has also annexed to his supporting affidavit, photographs of the structures which the Respondent is in the process of constructing on the suit property.
9. The Respondent has maintained a studious silence and has not offered any rebuttable to the Applicant’s averments. This is quite telling. The court can only draw an inference that the Respondent’s actions are unlawful. In the circumstances, it is my finding that the Applicant has established a prima facie case with a probability of success.
10. On whether the Applicant has demonstrated that he will suffer irreparable damage, the Applicant has expressed the fear that he could be lose his land. The Respondent’s brazen acts of constructing structures on the Applicant’s land cannot be taken lightly. He clearly intends to dispossess the Applicant from his land and I satisfied that if he does so, the Applicant shall suffer irreparable loss as he may not be able to get a similar piece of land.
11. Lastly on the question of balance of convenience, it is clear that the court is not in doubt but nevertheless, the balance tilts in favour of the Applicant who stands to suffer if the order of injunction is not granted.



12. Consequently, the application has merit and I grant it and make the following orders:

- a. A temporary injunction is hereby issued restraining the Respondent by himself, his agents, servants, employees and/or anybody or authority claiming or working under him from entering, encroaching onto, trespassing, disposing of, alienating, constructing structure on or in any other way interfering with the Plaintiff/Applicant's possession, and proprietary rights over the suit land known as L.R No. 4953/2750 pending the hearing and determination of this suit.
- b. The costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 2ND DAY OF JULY 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Miss Kimani for Kugwa for the Plaintiff

Mr Kereu for Mr Muturi Njoroge for the Respondent

Court Assistant: Hinga

