



REPUBLIC OF KENYA



KENYA LAW
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**Tukei v Mungai & another (Land Case E118 of 2024)
[2025] KEELC 6144 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6144 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
LAND CASE E118 OF 2024
AY KOROSS, J
SEPTEMBER 23, 2025**

BETWEEN

LODUPO OLE TUKEI PLAINTIFF

AND

MOSES NDUNGU MUNGAI 1ST DEFENDANT

OKOA DEVELOPMENT COMPANY LIMITED 2ND DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 17/12/2024 filed by the plaintiff, expressed to have been moved within the provisions of Sections 3, 13 & 19 of the *Environment and Land Court Act*, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and Orders 40, Rules 1 (a) & (b) and 51 Rule 1 of the *Civil Procedure Rules*, and all other enabling provisions of the law. The plaintiff seeks the following reliefs from this court: -
 - a. Spent.
 - b. Spent.
 - c. The honourable court be pleased to grant an order of injunction barring the defendants whether by themselves, their agents, proxies and/or any other person acting under their instructions howsoever from transferring, alienating, disposing, selling, encumbering, assigning, or in any other like manner dealing with properties known as Mavoko Town Block 3/6878 and Mavoko Town Block 3/6880 pending the hearing and determination of this suit.
 - d. The defendants be ordered to deposit in court the original certificates of titles for the properties known as Mavoko Town Block 3/6878 and Mavoko Town Block 3/6880 for custody and safekeeping pending the hearing and determination of this suit.
 - e. The costs of this motion be provided for.



2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn on the instant date.
3. A summary of the grounds in support of the motion are inter alia: - a) the plaintiff and his co-claimants are bona fide purchasers for value and beneficial owners of plots within Mavoko Town Block 3/6878 and Mavoko Town Block 3/6880 [suit properties], (b) the claimants bought the plots within the suit properties through the 2nd defendant and they (suit properties) are all registered in the 1st defendant's name, (c) the claimants have paid the entire purchase price(s) for their respective plots but the defendants are yet to give them their certificates of title despite their numerous requests; and
4. D)The defendants' laxity in issuing title documents have exposed them to imminent loss of their investment and anxiety due to the uncertainty of the proprietorship of the plots they live on, (f) the defendants have from time to time used the suit properties as collateral/security without the knowledge and/or consent of the claimants all to their detriment and at the moment, they are aware that Mavoko Town Block 3/6880 (one of the suit properties) is encumbered.
5. Despite the law firm of M/s. Catherine Muruiki & Co. Advocates, being on record for the defendants, they did not file any documents in opposition to the motion, and as it stands, it is unopposed. It is on this basis that Mr. Andere, for the plaintiff, appeared before this court on 27/02/2025 and submitted that the motion be allowed as prayed.
6. Accordingly, having considered the motion, its grounds, affidavit, and grounds of opposition and Mr. Andere's submissions, the issues for determination are: -
 - a. Whether the motion has met the legal threshold to warrant the grant of interlocutory reliefs
 - b. If (a) is in the affirmative, whether the suit properties' title deeds should be deposited in court.
7. These 2 issues shall be handled sequentially.

a. Whether the Motion Has Met the Legal Threshold to Warrant the Grant of Interlocutory Reliefs

8. The plaintiff's motion is brought under Order 40, Rule 1 of the *Civil Procedure Rule (CPR)*, which guides this court in handling applications of this nature, and this provision of the law provides: -

“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 the 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 or until further orders.”
9. The principles for this court's consideration in the exercise of its unfettered discretion to grant an order of temporary injunction are now well settled in authoritative pronouncements and the triple requirements are that an applicant in this case the plaintiff must: (a) establish his case only at a *prima facie* level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and(c) ally any



- doubts by showing that the balance of convenience is in his favour. See *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 and restated in the Court of Appeal decision of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).
10. As held in *Nguruman (supra)*, temporary injunctions are equitable remedies solely to prevent grave and irreparable injury that is actual, substantial and demonstrable and cannot be adequately compensated by an award of damages. Furthermore, they are also meant to preserve the substratum of the suit pending the hearing and determination of the matter, and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.
 12. The Court of Appeal decision of *Kenya Commercial Finance Company Ltd –versus- Afraba Education Society* Civil Appeal No. 142 of 1999 (Nakuru) [2001] 1 EA 86 the Court of Appeal page 86 that was cited with approval in the Court of Appeal decision of *Attorney General v Kenya Commercial Bank Ltd & 3 others* [2004] eKLR stated as follows on how these 3 pillars of injunctions are to be considered: -

“In dealing with the Application before him, the Learned Superior Court Judge skipped dealing with the first and second conditions referred to above and straight away proceeded to address himself on the third condition in regard to the Application before him. Had he sequentially addressed himself on these conditions he would, on the material before him, have found that the first and the second Respondents had no registered interest in the land comprised in title number Nakuru Municipality/Block 2/488 and therefore had not demonstrated that they have a *prima facie case* with a probability against the Appellant, third, fourth and fifth Respondents. If so, no interlocutory injunction would be available to them.”
 13. Suffice it to say that it emerges that these 3 conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. As held in *Nguruman (supra)*, if a *prima facie case* is not established, then irreparable injury and balance of convenience need not be considered, as this first hurdle of a *prima facie case* has to be overcome before a consideration of the other grounds is undertaken.
 14. In these circumstances and dealing with the 1st pillar of *prima facie case*, the plaintiff has presented certificates of official searches of the suit properties and copies of title documents which reveal the 1st defendant has a registrable interest in them. Further, he has availed a bundle of annexures which show alleged payments made to the 2nd defendant by various persons, including the plaintiff, either for viewing of a plot, survey or for issuance of a title deed, amongst others.
 15. Nevertheless, some of the alleged plots appear to have changed hands, and the transactions also seem to have taken place sometimes between 1995 and 2016. Upon scrutiny of the plaint, it emerges that the claim hinges on privity of contract and involves a particularised breach of contract and damages.
 16. Having considered this and in light of the provision of Section 4(1) of the *Limitation of Actions Act* which provides that actions founded on contract may not be brought after the end of 6 years from the date on which the cause of action accrued, this court at this point opines that the plaintiffs claim as pleaded may be statutory barred and the plaintiff may have to grapple with this and maybe reconsider on the nature of claim that will adequately address his grievances. It is on this basis that this court finds that the plaintiff has not established a *prima facie case* and need not say more, as it is unnecessary to consider the 2nd issue.



17. In the end and for the above reasons and finding, this court hereby dismisses the notice of motion dated 17/12/2024 with costs being in the cause. This matter is referred to Court-Annexed Mediation. A mention date shall be given to confirm the status of the mediation process.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 23RD DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Leichuma for plaintiff.

N/A for defendant.

Ms Kanja - Court Assistant.

