



**Waithaka & 5 others v Mwangi & another; Kimani & another (Interested Parties) (Environment and Land Case E080 of 2024) [2025] KEELC 6038 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6038 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E080 OF 2024  
CA OCHIENG, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**ERIC KARURI WAITHAKA ..... 1<sup>ST</sup> PLAINTIFF  
PAUL NJUMBI ..... 2<sup>ND</sup> PLAINTIFF  
PETER N MWIHU ..... 3<sup>RD</sup> PLAINTIFF  
JOHN WAMBUGU ..... 4<sup>TH</sup> PLAINTIFF  
SAMUEL K KIGUMO ..... 5<sup>TH</sup> PLAINTIFF  
PAUL SILVANUS MASIA ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**STEPHEN KAMAU MWANGI ..... DEFENDANT**

**AND**

**WAINAINA REAL ESTATES LIMITED ..... AGENT**

**AND**

**ZIPPORAH WAIRIMU KIMANI ..... INTERESTED PARTY  
JAMES NG'ANG'A T/A LITTLE VINEYARD AUCTIONEERS .... INTERESTED PARTY**

**RULING**

1. What are before Court for determination are three applications dated the 29<sup>th</sup> February, 2024, 14<sup>th</sup> June 2024 and 26<sup>th</sup> July 2024 respectively. In the Plaintiff's Notice of Motion application dated the 29<sup>th</sup> February 2024, they seek the following Orders:



- a. Spent.
  - b. Spent.
  - c. That the Honourable Court be pleased to restrain the Landlord through his agents, servants, assigns or any other person deriving authority from him from levying distress pending the hearing and determination of this suit.
  - d. Costs.
2. The application is premised on grounds on its face and on the 6<sup>th</sup> Plaintiff's supporting affidavit. He avers that the Plaintiffs' have been tenants of the landlord on Plot No. 209/5810 for over 15 years occupying shop numbers; 1-7, and 10-12 respectively. Further, that on 28<sup>th</sup> March 2023, the 1<sup>st</sup> Defendant issued them with a notice to alter the terms of their respective tenancies, which they failed to oppose and as a result, he issued them with a Letter of Offer dated 29<sup>th</sup> May 2023. He explains that subsequently, they filed Tribunal Case No. E595 of 2023 in which the 1<sup>st</sup> Defendant was temporarily restrained from altering the terms of the tenancy and in its Ruling of 5<sup>th</sup> December 2023, the Tribunal directed the Plaintiffs to sign the Letter of Offer dated 29<sup>th</sup> May 2023, on or before 1<sup>st</sup> January 2024. He claims they were subsequently served with proclamation notices from auctioneers for alleged rent arrears. He insists that the Plaintiffs have no rent arrears and that they have sought the indulgence of this Court to determine when the alleged rent increment took effect.
3. In the application dated the 14<sup>th</sup> June 2024, the Plaintiffs seek the following Orders;
- a. Spent.
  - b. That the Honourable Court be pleased to restrain the 1<sup>st</sup> Interested party from interfering with the Applicants' quiet enjoyment of the said premises pending the hearing and determination of this suit.
  - c. That the Applicants herein deposit rent in Court pending the hearing and determination of this suit.
  - d. Costs of the Application provided for.
4. The application is premised on grounds on its face and on the 6<sup>th</sup> Plaintiff's supporting affidavit, which mirrors his averments in his supporting affidavit to the Plaintiffs' application dated the 29<sup>th</sup> February 2024. He avers that while the Plaintiffs were granted interim orders on 5<sup>th</sup> March 2024 to the effect that the status quo was to be maintained, they are now at risk of being auctioned by the 1<sup>st</sup> Interested Party's agent, who proclaimed on 3<sup>rd</sup> June 2024 pursuant to instructions of 30<sup>th</sup> of May 2024. He claims that the Plaintiffs have always paid rent to the 2<sup>nd</sup> Defendant but are in limbo as they do not know who should now receive rent. Further, that the Plaintiffs' seek to be allowed to deposit rent in Court pending the hearing and determination of this suit.
5. In the application dated the 26<sup>th</sup> July 2024, the Plaintiffs seek the following orders:
- a. That the Honourable Court be pleased to restrain the 1<sup>st</sup> Interested party from interfering with the Applicants' quiet enjoyment of the said premises pending the hearing and determination of this suit.
  - b. That the Applicant herein deposit rent in Court pending the hearing and determination of this suit.



- c. That the orders issued on 5<sup>th</sup> March, 2024, which were extended on 11<sup>th</sup> July, 2024 may also apply to Eric Karuri Waithaka, Peter N. Mwihu, John Wambugu and Samuel K. Kigumo.
6. The application is based on grounds on its face and on the supporting affidavit of Diana Odero, Advocate in conduct of the matter on behalf of the Plaintiffs. She avers that when the Notice of Motion dated 14<sup>th</sup> June, 2024 was being prepared, Eric Karuri Waithaka, Peter N. Mwihu, John Wambugu and Samuel K. Kigumo names were erroneously left out, but their names were included in the Plaint dated 26<sup>th</sup> February, 2024.
7. Neither the Defendants nor the Interested parties filed responses.
8. However, the Defendants had filed a Notice of Preliminary objection contending that this court has no jurisdiction to preside over the matter. The same was dismissed by this court vide its Ruling of 30<sup>th</sup> October 2024.

### **Submissions**

9. The Plaintiffs in their submissions contend that they have demonstrated the requirements for grant of injunctions as stipulated in *Giella v Cassman Brown* (1973) EA 358 to warrant the interim orders sought. They seek for the Court to interpret when the alleged rent increment over their premises took effect. They insist that they have established that they will suffer irreparable damages if the orders sought are not granted as the premises occupied are business premises, of which they have accumulated customers as well as goodwill thus should the Landlord levy distress, the loss will be too great to be compensated by way of damages.
10. To buttress their averments, they relied on the following decisions: *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR, as well as the case of *Ndeffo Co. Ltd v Ndegwa & 4 Others* (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR) (30 APRIL 2024) (Ruling).
11. The Defendants and the Interested Parties did not file submissions to the applications.

### **Analysis and Determination**

12. Upon consideration of the three instant applications including the respective affidavits and submissions, the following are the issues for determination:
  - i. Whether the Plaintiffs have established the threshold for grant of an interlocutory injunction restraining the Defendants and the 1<sup>st</sup> Interested party from levying distress over the suit premises?
  - ii. Whether there is uncertainty on whom the Plaintiffs should pay rent and if so, whether the same should be deposited in court.
13. In line with the principle established in the case of *Giella v Cassman Brown & Co Ltd* (1973) E A 358, I will proceed to decipher whether the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought.
14. I will further rely on the definition of a prima facie case as articulated in the case of *Mrao Ltd v First American Bank Limited* (2003) KLR 125 where the Court described it as follows:

“..... 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”.



15. This is a dispute centered on tenancy agreement and reconciliation of rent accounts. The Plaintiffs claim that they are not in rent arrears and seek protection from eviction on the basis that their businesses will suffer irreparable loss. I note pursuant to orders issued on 5<sup>th</sup> December 2023 in BPRT Case No. E595 of 2023, which relates to the dispute herein, the Tribunal directed the Plaintiffs to sign the Letter of Offer dated 29<sup>th</sup> May 2023, on or before 1<sup>st</sup> January 2024. I note the said Letter of Offer indeed altered the terms of the existing tenancy between the Plaintiffs and Defendants. In the Plaint, the Plaintiffs have sought for interpretation of when the rent increment commenced and accounts to be taken.
16. Looking at what the Plaintiffs have presented, I find that they have failed to demonstrate the date they signed the new Letter of Offer as directed by the Tribunal. The Plaintiffs except for insisting they have been paying rent have not provided the statement of accounts for the said rents, they have so far paid. The Plaintiffs further claim that since they are not certain on whom they should pay rent to, they should hence deposit the same in court until this matter is determined. However, I opine that this should not be an issue since they know who their landlord is.
17. It is trite that injunctive remedies are equitable remedies and courts cannot alter the terms of a contract between parties. Further, a party seeking orders of injunction must come to court with clean hands. From the explanations tendered, it seems the Plaintiffs have declined to sign the new Letter of Offer as directed by the Tribunal, and seek to pay the old rent. I opine that the orders the Plaintiffs are seeking against the Defendants which include paying rent in court are futile.
18. In my view, the Plaintiffs should have adhered to the Order from the Tribunal, paid the agreed new rent to their landlord, before coming to court. In the circumstance, I find that the Plaintiffs have not established a prima face case as against the Defendants and Interested Party to warrant the orders as sought.
19. In further associating myself with the decision in *Nguruman Ltd. Vs. Jan Bonde Nielsen* (2014) eKLR where the Court of Appeal held that in instances where a party fails to establish a prima facie case, the court need not proceed to make a determination of the other two limbs on injunction, I will hence decline to deal the said other two limbs.
20. In the foregoing, I find the three Notice of Motion applications dated the 29<sup>th</sup> February, 2024, 14<sup>th</sup> June 2024 and 26<sup>th</sup> July 2024 unmerited and will dismiss them.
21. Costs will be in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms. Odero for Plaintiff/Applicant

Court Assistant: Joan

