



**Yunis v Yusuf (Environment & Land Case E358 of 2024)  
[2024] KEELC 14139 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14139 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E358 OF 2024  
MD MWANGI, J  
NOVEMBER 6, 2024**

**BETWEEN**

**MUMTAZ AKHTAR MOHAMMED YUNIS ..... PLAINTIFF**

**AND**

**HASSAN YUSUF ..... DEFENDANT**

**RULING**

**Background**

1. The Plaintiff vide her Notice of Motion application dated 30<sup>th</sup> August, 2024, prays for a temporary injunction pending hearing and determination of the main suit, restraining the Defendant/ Respondent from entering, encroaching, trespassing, remaining on, using, constructing, damaging, wasting away or in any way dealing or interfering in any manner with the suit property known as L.R No. 3734/294 (original 3734/5/181) delineated on land survey plan number 54084 and situated along Chalbi Drive in Lavington within the Nairobi City County and the Plaintiff's peaceful, quiet possession, enjoyment and use of the suit property.
2. She also prays that the OCS Muthangari Police Station be ordered to ensure compliance with the order. A third prayer is that an inhibition be placed on the title to the suit property.
3. The Plaintiff is the registered owner of the suit property. She alleges that sometimes in on or about the 22<sup>nd</sup> August 2024, the Defendant attempted to forcibly enter into the suit property purporting to be the owner of it chasing out the Plaintiff's guards and briefly occupying it until the Plaintiff regained possession the following day.
4. The Plaintiff's application is further supported by the affidavit of one Brian D'Souza which elaborates on the grounds in support of the application.



5. The Defendant was duly served with the application but did not respond to the application. The assertions by the Plaintiff in her application are therefore uncontroverted.

### **Determination**

6. The sole issue for determination is whether the Plaintiff's application meets the threshold for the grant of orders of temporary injunction pending the hearing of the main suit.
7. The Plaintiff's application is brought under the provisions of Order 40 rule 1, 2 and 3 of the Civil Procedure Rules. The order sought is an interlocutory order, which according to the definition by Cotton, L.J in the case of *Gilbert – Vs- Edean* (1878) 9 Ch. 259, does not decide the rights of the parties. It is only meant to keep things in status quo until the rights can be decided after a full hearing of the matter.
8. In determining an interlocutory application, the court is therefore not called upon to resolve the issues in dispute with finality. AS expressed in the case of *Giella – vs – Cassman Brown & Company Ltd* (1973) E.A 358, all that is expected of the court is to establish whether the applicant has demonstrated a prima facie case with a probability of success and that if the injunction is not granted, the applicant is likely to suffer irreparable loss that cannot be compensated by an award of damages; in other words, the court needs to be satisfied that the applicant's case is neither frivolous nor vexatious.
9. Having carefully considered the Plaintiff's application in its entirety, I am persuaded that it meets the threshold for the grant of orders of a temporary injunction pending the hearing and determination of the main suit. The Plaintiff has demonstrated a prima facie case with a probability of success and that she is likely to suffer irreparable loss unless the order of temporary injunction is granted.
10. For purposes of preservation of the substratum of the suit, the court considers it appropriate to issue the temporary injunction orders sought by the Plaintiff. Consequently;
  - A. Pending the hearing and determination of this suit, an order of temporary injunction be and is hereby issued restraining the Defendant/Respondent from entering, encroaching, trespassing, remaining on, using, constructing, damaging, wasting away or in any way dealing or interfering in any manner with the suit property and the Plaintiff's peaceful, quiet possession, enjoyment and use of the suit property known as L.R No. 3734/294 (original 3734/5/181) delineated on land survey plan number 54084 and situated along Chalbi Drive in Lavington within the Nairobi City County.
  - B. The OCS Muthangari Police Station is directed to ensure compliance with this order
  - C. An Order of inhibition be and is hereby issued directing registration of an inhibition over the title L.R. No. 3734/294 (Original 3724/5/181) restricting any dealings including but not limited to transfer charge or lease or any other transaction interfering with the Plaintiff's ownership of the property.
  - D. Costs shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:



Mr. Kinyanjui h/b for Mr. Litoro for the Plaintiff/Applicant

N/A by the Defendant/Respondent

Court Assistant: Yvette

