



REPUBLIC OF KENYA



Nzwili (Suing as the Legal Administrator of the Estate of Samuel Nzwili Nzioki - Deceased) ((Suing as the Legal Administrator of the Estate of Samuel Nzwili Nzioki - Deceased)) v Mua & 2 others (Environment & Land Case E017 of 2025) [2025] KEELC 3807 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE E017 OF 2025**

EO OBAGA, J

MAY 15, 2025

BETWEEN

**NELSON KASYIMA NZWILI PLAINTIFF
(SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF SAMUEL
NZWILI NZIOKI - DECEASED)**

AND

**ALOIS MUA 1ST DEFENDANT
DISTRICT LAND REGISTRAR, MAKUENI 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 16th April, 2025 in which he sought the following orders:
 1. Spent
 2. Spent
 3. That pending the interparties hearing of the application herein and/or on interim basis the honourable court be pleased to grant an order of temporary injunction restraining the 1st Defendant by himself, his servants, agents and/or employees from enforcing a court order dated f 24th January, 2024 which was issued on 2nd February, 2024 from demolishing all or any structures erected on the plot No. 555 Emali market within Makueni County in any way interfering and/or dealing with said plot pending the hearing and determination of this suit.



4. That pending the hearing and determination of this suit the 1st Defendant/Respondent by himself, his servants, agents and/or employees be restrained by mandatory injunction from evicting the Plaintiff, his employees, assigns, servants and/or agents from Plot No. 555 Emali Market, within Makueni County and/or parcel number Emali Township 1/198 located within Emali Market Makueni County.
 5. That pending hearing and determination of this suit the Defendant by himself, his servants, agents and/or employees be restrained by mandatory injunction from demolishing all or any structure(s) constructed by the Plaintiff on plot number 555 Emali Market within Makueni County.
 6. That further to prayers 2 and 3 pending hearing and determination of the suit herein the Plaintiff be at liberty to commission a geo-spatial survey to be carried out by the Government Surveyor and/or a private Surveyor on land registration number Emali Township Block 1/198 and the plot known as number 555 Emali Market withi Makueni Coutny and the said report to be deposited in court.
 7. That the costs of this suit be provided for.
2. The Applicant is the administrator of the Estate of his late father Samuel Nzwili Nzioki (Deceased) who was allottee of plot No. 555 within Emali market, Makueni County. The Applicant contends that the 1st Respondent has a lease over plot No. 1/198 which has encompassed not only plot 555 but a number of others.
 3. The Applicant depones that the 1st Respondent has obtained a court order given on 24th January, 2024 and issued on 2nd February, 2024 which has given him authority to evict all those within plot N. 1/198 under supervision JHHU of the officer commanding Emali police station. He states that the 1st Respondent has enlisted the services of Mambu Auctioneers to enforce the orders of 24th January, 2024 which were issued on 2nd February, 2024.
 4. The Applicant further states that he has constructed a building on plot 555 where he has been operating since it was built. His father was allotted plot 555 on 15th May, 2001. It is his contention that the title held by the 1st Respondent is shrouded with illegality, fraud, misrepresentation of facts, abuse of office and corruption.
 5. The Applicant states that if his building is demolished, he will suffer irreparable damage and that the injunction sought will not prejudice the 1st Respondent. He further states that he has been receiving phone calls from police who are asking him to remove his belongings from the building before the court order is effected.
 6. The 1st Respondent who was duly served neither entered appearance nor filed grounds of opposition or replying affidavit. However, this notwithstanding, I must be satisfied that the Applicant has demonstrated that he has a prima facie case with probability of success to warrant issuance of injunctive orders.
 7. The principles for grand of injunctions were well captured in the case of Giellla –vs-Cassman Brown & Co. Ltd (1973) EA358. First, an Applicant has to demonstrate that he has a prima facie case with probability of success. Second, an injunction will not issue unless the Applicant will suffer loss which will not be compensated in damages. Third, if the court is in doubt, it will decide the application a balance of convenience.



8. In the instant case, the Applicant's interest is on plot 555 Emali Market. He has no interest in plot 1/198 belonging to the 1st Respondent. The orders which were given on 24th January, 2024 and issued on 2nd February, 2024 were in respect of plot 1/198. The Applicant is seeking to stop execution which arose from ELC Case No. 98 of 2017 where judgment was given on 28th December, 2018 through this separate case.
9. The court takes judicial notice of the judgment in ELC No. 98 of 2017 where the 1st Respondent was the Plaintiff. The 1st Respondent succeeded in this case. The 1st Defendant in that case moved to the Court of Appeal but his appeal was dismissed in a Judgment delivered on 7th July, 2023 [Edwin Mutinda Ndetei –vs- Alois Muia]. The Applicant's claim is similar to the claim of the 1st Defendant in ELC 98 OF 2017 which claim did not succeed on appeal. This being the case, I find that the Applicant has not demonstrated that he has a prima facie case with probability of success.
10. Even if the Applicant's building was to be demolished and he finally succeeds, the damage which will arise therefrom is capable of being compensated. Even if the court was in doubt, the balance of convenience tilts in favour of the 1st Respondent who has been found in similar circumstances that he is the lawful owner of plot 1/198 which decision has been affirmed by a higher court than this court. I therefore find that this application is devoid of merit. The same is dismissed with no orders as to costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF MAY, 2025.*

In the presence of:

Mr. Nabwera for Mr. Musyoka Kimeu for Applicant.

Court assistant – Steve Musyoki

