



**Mwangi v Kamau (Environment & Land Case E027 of 2025)  
[2025] KEELC 3656 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3656 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E027 OF 2025**

**A OMBWAYO, J**

**MAY 9, 2025**

**BETWEEN**

**GEORGE MWANGI ..... PLAINTIFF**

**AND**

**JOEL MWANGI KAMAU ..... DEFENDANT**

**RULING**

1. The Plaintiff/Applicant filed the instant application dated 17th March, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That pending the hearing and determination of this suit, the Respondent whether acting in person, by proxy, through his agents, servants, employees or any other person acting at his behest, be restrained by way of a temporary injunction from trespassing, harvesting sand and/or stones, selling, leasing, transferring or in any other dealing with the suit land Title number Bahati/bahati Block 1/8X7.
  5. That the OCS Bahati Police Station to ensure compliance with the orders.
  6. That the costs of this application be borne by the Defendant/Respondent.
2. The Application was based on grounds set out and supported by the Affidavit of George Mwangi the Plaintiff/Applicant herein sworn on 17th March, 2025. He stated that he was the owner of the land parcel Bahati/bahati Block 1/8X7 the suit property herein having acquired from his late father vide Succession Cause No. 16 of 1999. He further stated that the Defendant/Respondent had trespassed



onto his suit property and harvested materials from the land. He denied having leased or sold the land to the Respondent. He added that he had moved the court to stop any activities by the Respondent where the court on 18th October, 2024 issued interim orders stopping the said activities. He stated that if the Respondent is not restrained from interfering with the suit property, he will end up wasting and damaging the suit land to his detriment. He urged the court to allow the application as prayed.

### **Response**

3. The Respondent filed his Replying Affidavit sworn on 7th April, 2025 where he averred that the Applicant was his uncle. He further averred that the Applicant failed to disclose to the court how he came to acquire the suit property which originally belonged to his late grandfather. He averred that the title was questionable as it failed to adhere to the due process of succession. He averred that he has been in continuous an open occupation of the suit property since 1998 having been settled by his late grandfather. He denied any trespass as he has been in occupation for the past 25 years. He averred that the Applicant's allegation that he only became aware of his occupation on 15th October, 2024 was false. He further averred that the granting of the orders sought in the present application would amount to eviction at an interlocutory stage. He also averred that the Applicant's title was allegedly fraudulently acquired. He urged the court to dismiss the application with costs.

### **Submissions**

4. Parties did not file submissions.

### **Analysis and Determination**

5. This court has considered the application and supporting affidavit and is of the view that the main issue for determination is whether the Plaintiff/Applicant is entitled to an order of temporary injunction.
6. The principles upon which the court should grant an injunction were set out in the case of *Giella V Cassman Brown & Company Ltd* 1973 EA 358 as follows:

“First, the applicant must show that he has 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 damages.
7. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.” Further, in the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

“A prima facie case is one 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. The Plaintiff/Applicant contends that he is the registered owner of the suit property being BAHATI/BAHATI BLOCK 1/837. He also contends that the Defendant/Respondent has since trespassed onto his land and harvested sand.
9. On the other hand, the Defendant/Respondent contends that he is the rightful owner of the suit property having acquired the same from his late grandfather. He also contends that the
10. Plaintiff/Applicant fraudulently acquired the suit property. The Defendant/Respondent has neither denied that he was in occupation of the suit property. It is this court's view that on the face of record



without delving into the merit as to how the Plaintiff/Applicant acquired the suit property, it is a fact that the suit property is registered in his name. This is evidenced by the Certificate of Title issued on 25th March, 2015. The Plaintiff/Applicant has therefore not demonstrated that he has a prima facie case with a probability of success.

11. It is noteworthy that the Defendant/Applicant has not denied the alleged activities of sand harvesting on the suit property as evidenced in the photos annexed in the Plaintiff/Applicant's supporting affidavit.
12. In the circumstance, I find and hold that the balance of convenience tilts in favour of maintaining the status quo of the suit property pending the hearing and determination of the main suit. It is this court's view that for purposes of clarity, status quo in this instance is that the suit property should remain as it is from the date of this ruling and the Defendant/Respondent is estopped from excavation of materials or any further activities touching on the suit property.
14. In addition, this order shall remain in force for a period of six months to enable the parties to comply with Order 11 of the Civil Procedure Rules so as to expedite the hearing of this case. The costs of the application shall be in the cause. It is so ordered.

**HON. JUSTICE ANTONY O. OMBWAYO**

**DATE: 2025-05-09**

