



**Mwangi v Gathecha & 2 others (Environmental and Land Originating  
Summons E035 of 2024) [2025] KEELC 5070 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5070 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E035 OF 2024**

**MN KULLOW, J**

**JUNE 30, 2025**

**BETWEEN**

**SMOSES MUHIA MWANGI ..... APPLICANT**

**AND**

**JOSEPH NGUMO GATHECHA ..... 1<sup>ST</sup> RESPONDENT**

**AUGUSTINE KIMIRI KUNGU ..... 2<sup>ND</sup> RESPONDENT**

**SIMON MBUGUA NGETHE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Notice of Motion dated 25/5/2024 and filed under certificate of urgency the plaintiff/applicant sought for the following orders:-
  1. Spent
  2. That pending the interparties hearing of the application the court be pleased to issue an order of interim injunction restraining the respondents either by themselves, their agents, servants, or any persons claiming title from harassing, evicting, selling, or transferring, charging, or in any way from interfering with the applicant quiet possession of land title Dagoretti/Riruta 5094.
  3. That pending the interparties hearing of the main suit the court be pleased to issue an order of interim injunction restraining the respondents either by themselves, their agents, servants, or any persons claiming title from harassing, evicting, selling, or transferring, charging, or in any way from interfering with the applicant quiet possession of land title Dagoretti/Riruta 5094.
  4. Cost of this application be provided for.
2. The application is based on 5 grounds thereof and the applicant's supporting affidavit sworn on 24th April 2024, it is the applicant's contention that the suit land was originally registered in the name of



Josephine Wanjiku and that he has been residing on the suit property since 1998, wherein he has been living with his family. The applicant further claims that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who subsequently got the suit land registered in their names, have been trying to evict him from the suit land despite him and family enjoying quite and peaceful possession.

3. The application was opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by way of replying affidavit sworn on the 2/9/2024. It is the Respondent's contention that they are the registered owners of the suit property land Dagoretti/Riruta 5094 and the same was bequeathed to them through succession by one Kararari and that the applicant has trespassed on the property and is claiming ownership through adverse possession.
4. The Applicant further contends that a person alleging right to title of ownership through adverse possession must show evidence that his possession was not permissible, open and continuous and has excluded the true owner from enjoyment of the property. It is the Respondent contention that the applicant did not enjoy peaceful and uninterrupted occupation of the suit land.
5. I have considered the application and the replying affidavit in opposition and the sole issue arising for determination is:-
  - a. Whether the Applicant has met the requirements for the grant of an Order of temporary order of injunction sought.
6. The law relating to injunctions is provided under Order 40 (1) (2) of the Civil Procedure Rule which provides as follows: -

“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;
- (b) .....,

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.”

7. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 further mandates this court to grant interim preservation orders; including an interim order of injunction in the nature sought herein.
8. The principles guiding the grant of injunctions is now well settled. An applicant must satisfy the 3-limb test set out in the celebrated case of *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360 as follows: -
  - a. where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;
  - b. He will suffer irreparable harm/injury which cannot be adequately compensated by damages;
  - c. Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to



be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.

9. These 3 grounds to be established are to be applied as separate, distinct and logical hurdles which an applicant for an Order of Injunction is expected to surmount sequentially. The existence of one limb alone does not automatically entitle an Applicant to an order of injunction without considering the other hurdles. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86.
10. The first ground that an Applicant must establish is that he has a Prima Facie case which raises arguable and triable issues with a probability of success. The Court of Appeal in Mrao Ltd vs First American Bank of Kenya Ltd & 2 (Supra) explained what amounts to a prima facie case and stated as follows:

“a prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It 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.”
11. The Applicant contends that he has been possession and occupation since 1998 and has constructed a semi-permanent structure thereon as evidenced by annexure MM1 and the Respondents have not controverted that evidence even though they have alleged to have inherited from one Kararari there is no evidence to support the same.
12. I am careful not to delve into the merits of the main suit however, based on the material presented before the court, I find that the Applicant has demonstrated that he has a prima facie case. The ownership of the suit property is at the center of the suit herein hence the need to preserve it and prevent any interference or alienations/transfer thereof.
13. In view of the circumstances; I find that the Applicant has satisfactorily proved to this court that he has a prima facie case against the Respondents to warrant the grant of an injunction pending the hearing and determination of the suit.
14. The second ground to be determined is whether the Applicant has demonstrated that he will suffer irreparable harm which cannot be adequately compensated by damages unless an Order of Injunction is granted. The onus is on the applicant to demonstrate the nature and extent of the substantial injury likely to be suffered.
15. Halsbury’s Laws of England, 3rd Edition Volume 21, Paragraph 739 page 352 defines irreparable injury as;

‘injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by grant of injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the injury in respect of which relief is sought is likely to destroy the subjected matter in question.’
16. The Applicant contends that he has been and still is in actual possession and occupation of the suit property together with his family whereas the 1<sup>st</sup> & 2<sup>nd</sup> Respondents have never been in occupation of the said land. He is apprehensive that he stands to suffer irreparable damage if the orders sought herein are not granted.



17. In the premises, I find that the Applicant has demonstrated to the required threshold the irreparable loss that he is likely to suffer that cannot be compensated by an award of damages.
18. The final to be considered is on the balance of convenience and here the court needs to be satisfied that the inconvenience or hardship likely to be caused to the Applicant by declining the injunction will be greater than that which is likely to be caused to the Respondent. The court is called upon to balance the inconveniences of both parties and possible injuries to them and their properties.
- (See Charter House Investment Limited vs Simon K. Sang and 3 Others [2010] eKLR.)
19. It is not in dispute that the Plaintiff/Applicant is in actual possession and occupation of the suit property, it is also not in dispute that the 2nd and 3rd Respondent holds a Title Deed to the said suit property; this court will not delve into the validity of the said Title or interrogate the manner in which the title was obtained at this interlocutory stage. The Applicant is apprehensive that unless the orders sought are granted, the 2nd and 3rd Respondent is likely to alienate, sell, subdivide, transfer or interfere with his occupation and possession of the land thereof. Therefore, it is my considered opinion that the inconvenience likely to be caused to the Applicant is greater than that which is likely to be caused to the Respondents in the circumstances. to this end, I find that the balance of convenience tilts in favor of the Applicant by granting the order of injunction.

## CONCLUSION

20. In view of the foregoing, I find that the Application dated 25th May, 2024 is merited and is hereby allowed on the following terms: -
- a. An Order of Temporary Injunction be and is hereby issued restraining the Respondents by themselves, agents, servants and/or employees from entering, alienating, selling, transferring, leasing, disposing and/or interfering in any manner whatsoever with the property known as Dagoretti/Riruta 5094.
  - b. That pending the hearing of the main suit an order of permanent injunction do and is hereby issued restraining the respondents either by themselves, their agents, servants, or any persons claiming title from harassing, evicting, selling, or transferring, charging, or in any way from interfering with the applicant quiet possession of land title Dagoretti/Riruta 5094.
  - c. Costs of the Application to be in the cause.
21. It is so Ordered.

**DATED, SIGNED and DELIVERED virtually in NAIROBI this 30<sup>th</sup> day of June, 2025.**

**HON. JUSTICE MOHAMED N. KULLOW**

**JUDGE**

In the virtual presence of:

Mr. Gachuhi for the Applicant

N/A for the Respondents

Ms. Philomena W. Court Assistant

