Muteru v Chege & 3 others (Environment and Land Case E194 of 2024) [2025] KEELC 4898 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4898 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT AND LAND CASE E194 OF 2024

JM ONYANGO, J

JUNE 30, 2025

BETWEEN

DOUGLAS MWANGI MUTERU ..... PLAINTIFF

AND

FRANCIS MBITIRU CHEGE ..... 1ST DEFENDANT

PRESTWOOD LIMITED ..... 2ND DEFENDANT

THE LAND REGISTRAR THIKA ..... 3RD DEFENDANT

THE ATTORNEY GENERAL ..... 4TH DEFENDANT

RULING

1. The subject of this Ruling is the Notice of Motion dated 12th November 2024 brought by the Plaintiff/Applicant under the provisions Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, and Order 40 Rule 1, 4 and 11 of the Civil Procedure Rules,2010 seeking the following orders:

    1. Spent

    2. Spent.

    3. That an Order of temporary injunction do issue restraining the 1st and 2nd Defendants/ Respondents, whether by themselves, their authorised agents, servants, employees, workers or otherwise howsoever from encumbering, trespassing on, wasting, damaging, alienating, selling, transferring, sub-dividing and/or in any other manner whatsoever intermeddling with or adversely interfering with the Plaintiff/Applicant's occupation of the parcel of land known as title number Thika Municipality Block 6/7 originally Land Reference Number 4953/2806 Thika, pending the hearing and determination of this suit.

4. That in the alternative, an order be granted preserving the suit property Title Number Thika Municipality Block 6/7 from any further dealings pending the hearing and determination of this suit.

5. That this honourable court grants any other order it may deem just and fit to grant in the circumstances.

6. That the costs of this Application be provided for.

2. The application is premised on the grounds set out on the face of it and the Supporting and Further Affidavit of Douglas Mwangi Muteru (the Applicant) sworn on 12th November 2024 and 10th March 2025 respectively. He avers that sometime in 2011, the 1st Respondent proposed to sell to him land reference number 4953/2806, now converted to Title Number Thika Municipality Block 6/7 (hereinafter referred to as "the suit property"), stating that he was a beneficial owner of the same. The Applicant further avers that through a sale agreement dated 11th July 2011, he purchased the suit property from the 1st Respondent at a cost of Kshs 10,000,000. He adds that he immediately took possession of the suit property after payment of the purchase price.

3. He explains that he unsuccessfully pursued the 1st Respondent to get the completion documents and as a result, he visited the Lands Registry at Ardhi House, where he discovered that the 1st Respondent had been issued with a new lease for the suit property after it had been converted, following the amendment of the R.I.M. A certificate of lease was thereafter issued to the 1st Respondent on 7th November 2016. He depones that upon conducting a search at the Thika District Land Registry, he discovered that the 1st Respondent had sold the suit property to the 2nd Respondent vide a sale agreement dated 2nd November 2017 and had executed a Transfer in favour of the 2nd Respondent on 15th February 2018. The Applicant states that he immediately reported the matter to the Directorate of Criminal Investigations (DCI), Land Fraud Department and registered a caution against the title to the suit property on 17th October 2024.

4. The Applicant deposes that on 10th November 2024, the 2nd Respondent instructed its workers to excavate trenches on the suit property in preparation for erecting a perimeter wall despite having been informed by the DCI that the Applicant was in possession of the suit property. The Applicant is apprehensive that unless the injunctive order is granted, the 2nd Respondent may proceed to adversely deal with the suit property to his detriment.

5. The 1st Respondent opposes the application through a Replying Affidavit sworn by him on 14th February 2025. It is his position that sometime in 2011, he met the Applicant in Mombasa, where he entered into an agreement with the Applicant in which the Applicant agreed to advance to him Kshs 10,000,000 against the suit property and in exchange, he was to secure for the Applicant a similar property within Thika area. He depones that they agreed that the he would sell to the Applicant at least 5 acres excised from the suit property in the event that he was not successful in getting him an alternative property.

6. He further depones that pursuant to the oral agreement made in Mombasa, the Applicant advanced him the sum of Kshs 200,000 and they agreed to meet later in Nairobi to execute an agreement that would be drawn by the Applicant's daughter, who is an advocate.

7. He states that the salient features of the agreement were that; (i) there was urgent need to secure his father's property by paying Equity Bank Limited the sum of Kshs 6,000,000 to avoid its auction as soon as possible after securing an allotment letter from the Ministry of Lands; (ii) the balance of Kshs 4,000,000 was to be paid in two instalments of Kshs 2,000,000 each ; (iii) the documents relating to the suit property were to be held as security for the loaned amount until the 1st Respondent secured an

allotment letter for the Applicant for a different property within Thika; and (iv) if the 1st Respondent was unable to secure the allotment of a different property for the Applicant, then he was to sell to the Applicant 5 acres of the suit property at an agreed price of Kshs 2,000,000 per acre.

8. He states that even though the agreement drawn by the Applicant's daughter did not reflect the terms agreed on by the parties, he signed the agreement upon being persuaded by the Applicant and upon the promise that the terms would be changed later. He further states that in breach of the agreement, the Applicant only deposited the sum of Kshs 1,000,000.

9. He contends that he accompanied the Applicant to view the suit property, where they found squatters cultivating the land. He adds that despite the Applicant erecting a temporary fence on the suit property, he never granted him possession because he never agreed to the sale of the suit property. After all, it had not been vested in him. He deposes that the agreement was that the Applicant would hold the documents to act as security.

10. He depones that sometimes in 2013 the Applicant introduced him to one Tom Wahiaro, who was to help him shoulder the cost of obtaining the letter of allotment in their favour so that they could share the intended property, or in the alternative, they would share the 5 acres if all failed.

11. He further states that he obtained a letter of allotment issued in the names of the Applicant and Tom Wahiaro, as agreed, but the Director of Survey suspended the process before it was complete. He adds that he utilised the funds received from the Applicant to procure the letter of allotment from the Ministry of Lands for his company.

12. He contends that in 2014, the Applicant reported him to the Directorate of Criminal Investigation for the offence of obtaining money by false pretences; However, upon investigation, the lead investigator did not find him criminally liable. He further contends that sometime in 2014, in an effort to solve the dispute, he agreed to surrender a piece of surveyed land measuring two acres to the Applicant on condition that the Applicant would finance the process of obtaining the title. He adds that the Applicant has failed to finance the said process.

13. It is his claim that the Applicant has not paid the alleged purchase price of Kshs 10,000,000. He deposes that the payments alluded to by the Applicant were in respect of separate properties and/or made as loans not related to the suit property. He confirms transferring the suit property to the 2nd Respondent on 15th February 2018, upon obtaining the requisite documents.

14. The 2nd Respondent opposed the application through a Replying Affidavit sworn by Bimal S. Shah, the director of the 2nd Respondent, on 24th February 2025. He states that the 2nd Respondent purchased the suit property from the 1st Respondent at Kshs 45,000,000 vide a sale agreement dated 2nd November 2017. He adds that the 2nd Respondent further paid a sum of Kshs 105,090 for land rent for the year 2018, and Kshs 120,480 for land rates for the same year. He adds that the 2nd Respondent paid Kshs 1,800,040 towards stamp duty.

15. He contends that prior to the execution of the sale agreement, the 2nd Respondent procured a search dated 31st October 2017 and established that the 1st Respondent was registered as the proprietor of the suit property effective 1st August 1995 in accordance with the Certificate of Lease for the suit property. He further contends that the 2nd Respondent obtained rent and rates clearance certificates from the relevant authorities. He adds that the suit property was duly registered in the name of the 2nd Respondent. It is his claim that at the time of purchase of the suit property, the 2nd Respondent had no knowledge of the alleged sale to the Applicant. It is his position that since the 2nd Respondent is the absolute and indefeasible title holder capable of being protected under article 40, it is entitled to peaceful occupation of the suit property.

Submissions

16. The application was canvassed by way of written submissions. The Applicant filed its submissions dated 10th March 2025, while the 1st and 2nd Respondents filed their submissions dated 24th March 2025 and 1st April 2025 respectively.

Analysis and Determination

17. Having considered the issues raised in the application and the rival submissions, the main issue for determination is whether the application is merited.

18. The law on temporary injunction is provided under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 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 or
>
> (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit;
>
> 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."

19. The conditions for the grant of applications for injunctions were settled in the celebrated case of Giella v Cassman Brown & Company Limited (supra), where the court expressed itself in the following terms:

> " Firstly, an applicant must show 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 an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

20. . Further in Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR, the court reiterated that: -

> " These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.

The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.

Whether the Applicants have established a prima facie case

21. The case of Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others (supra) defined a prima facie case as follows;

> " A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in 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."

22. A perusal of the affidavits in support of the application reveals that the Applicant has adduced a copy of a sale agreement dated 11th July 2011, entered into with the 1st Respondent over the suit property. It has been submitted for the Applicant that he is the lawful owner of the suit property, having purchased it from the 1st Respondent and having been granted possession and occupation thereof. The evidence placed before this court by the Applicant shows that he has a prima facie case. I will therefore consider the second limb.

23. On irreparable harm, it emerges from the pleadings that the Applicant has been in possession of the suit property since 2011. The Applicant is challenging the transfer of the title to the suit property to the 2nd Respondent. The 2nd Respondent on the other hand, has stated that it is the indefeasible owner of the suit property, having obtained registration of the same in its name.

24. The 2nd Respondent has further stated that it was not aware of the existence of the agreement for sale between the Applicant and the 1st Respondent. It added that it did its due diligence by conducting a search to ascertain that the 1st Respondent was the owner of the suit property before purchase. However, it is not clear whether the 2nd Respondent conducted a physical search on the suit property.

25. The Applicant has explained that he is apprehensive that the 2nd Respondent may deal with the suit property to his detriment, given that it instructed its workers to excavate trenches on the suit property in preparation for erecting a perimeter wall. Given that the Applicant has been in possession of the suit property for over 12 years, I find that he is likely to suffer irreparable harm if the 2nd Respondent were to dispose of or in any way deal with the suit property before the Applicant is given an opportunity to be heard. Similarly, the 2nd Respondent is likely to be prejudiced if the Applicant is allowed to develop the suit property during the pendency of the suit and later own this court determines that it is the bonafide owner. I shall therefore consider the third limb.

26. The balance of convenience favours preserving the suit property by maintaining the status quo, pending hearing and determination of the suit. The purpose of a status quo order was explained as follows in Kenya Airline Pilots Association (KALPA) vs Co-operative Bank of Kenya Limited & another [2020] eKLR:

> " ...By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."

27. Similarly, in Texaco Ltd vs Mulberry Ltd [1972]1 WLR 814, the court stated as follows:

> " The end result is that status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders, but also when the court is of the view that as a case management strategy it would be more proportionate and appropriate without prejudicing one party but both, to issue a "status quo" order."

28. I therefore find merit in the application dated 12th November 2024, and allow prayer (4) in the following terms:-

    a. That pending the hearing and determination of the suit herein, the status quo both on the ground and in the register of Land Parcel Number Thika Municipality Block 6/7 originally Land Reference Number 4953/2806, be maintained.

    b. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025.

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J. M ONYANGO

JUDGE

In presence of:

Miss Akongo for the 2nd Defendant

Mr Gikaria for the Plaintiff

Court Assistant: Hinga