



**Utopia Holdings Limited v Radar Security Limited & another (Environment and Land Case E032 of 2025) [2025] KEELC 4991 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4991 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND CASE E032 OF 2025  
FM NJOROGE, J  
JUNE 25, 2025**

**BETWEEN**

**UTOPIA HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**RADAR SECURITY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MASUMIN HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The subject of this ruling is the Plaintiff’s application dated 9/4/2025 in which it seek the following orders: -

1. ....Spent;
2. ....Spent;
3. That the Honorable Court be pleased to issue Status Quo order for the Property;
4. That pending the hearing and determination of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants either by themselves, their servants, agents and otherwise be and are hereby restrained by an injunction from charging, offering for sale, transferring and Trespassing into the Plaintiffs property being Title Number CR.46303 LR. NO. 17835/4 and Title Number CR.46304 LR. NO. 17835/5;
5. That the Officer Commanding Police Station Malindi police to ensure enforcement and compliance of the order;

{{>#arguments of this application be in cause.

2. The application is based on the grounds enumerated therein and supported by affidavit of Njee Muturi, said to be the Plaintiff’s director. The Plaintiff seeks injunctive relief on grounds that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have repeatedly and unlawfully trespassed onto their Land Title Numbers CR.46303



LR. NO. 17835/4 and CR.46304 LR. NO. 17835/5 (the hereinafter also referred to as “the suit property”) by sending armed youth, goons, and private security guards to destroy fences, structures and a pit latrine, causing chaos, threats to peace, and significant damage. The Plaintiff avers that the Defendants, who have no legal claim to the property, are allegedly attempting to grab the land, and their continued interference poses a serious risk of harm, loss of life, and irreparable damage. The Plaintiff, being in possession, seeks urgent protection of the court to prevent further unlawful acts.

3. The application is opposed. The 1<sup>st</sup> Defendant filed a replying affidavit sworn on 16/4/2025 by Joseph Mwellla, said to be the 1<sup>st</sup> Defendant’s head of litigation. The deponent averred that the 1<sup>st</sup> Defendant is at all material times the registered owner of all that parcel of land known as Plot No. 17835/4 measuring approximately 0.4452 Ha on a lease hold term of 99 years commencing on 1/4/1996, having purchased the same from Ancient Inland Seas Limited. Mr. Mwellla exhibited a copy of the sale agreement dated 26/10/2004, a copy of a certificate of title and postal search certificate dated 14/4/2025 to that effect. According to Mr. Mwellla, the 1<sup>st</sup> Defendant conducted due diligence prior to purchasing the said land and hired the 2<sup>nd</sup> Defendant to guard the land following attempts by goons to invade the same. He exhibited copies of receipts and invoices of payment of all land rents and rates.
4. According to the 1<sup>st</sup> Defendant, there is no evidence of the alleged destruction and that the application is marred with falsehoods in that the plaintiff is claiming to be in possession of the suit property. Mr. Mwellla added that the 1<sup>st</sup> Defendant does not have any interest in the adjacent Plot No. 17835/5 included in the Plaintiff’s suit.
5. In a supplementary affidavit sworn by Njee Muturi on 29/4/2025, the Plaintiff asserted that the title document being relied upon by the 1<sup>st</sup> Defendant, namely Title Number C.R 37207, is supported by Deed Plan No. 252653, which upon verification with the Director of Survey has been confirmed to be neither authentic nor issued by the Survey Department.
6. The application was canvassed by way of written submissions.

### **Plaintiff’s Submissions**

7. Relying on the principles set out in *Giella v Cassman Brown* [1973] EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Plaintiff submitted that it has met the threefold threshold for the grant of an interlocutory injunction. Firstly, it has demonstrated a prima facie case with a probability of success, founded on verified title documents and public records. Secondly, the Plaintiff asserted that it stands to suffer irreparable harm if injunctive relief is not granted, as the land is a finite and unique resource whose occupation, development, or alienation cannot be adequately compensated through damages. Thirdly, the Plaintiff submitted that the balance of convenience favors preservation of the status quo, as it is in possession of the property and is merely seeking protection from unlawful and forceful dispossession.
8. Further, the Plaintiff argued that the continued interference by the Defendants is not only unlawful but undermines the rule of law and constitutes vigilantism. The use of private security forces and armed youth to assert ownership is in disregard of lawful dispute resolution mechanisms, the Plaintiff argued, and is a matter of serious concern that warrants the intervention of the Court in protection of constitutional and property rights.
9. To buttress its case, the Plaintiff cited *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR to demonstrate that infringement of proprietary rights through acts of trespass and destruction amounts to irreparable injury. Additionally, it has relied on *Kenleb Cons Ltd v New Gatitu Service Station Ltd* [1990] KLR 557, where Bosire J (as he then was) emphasized the importance of preserving property in dispute where the legality of occupation is in question.



10. The Plaintiff also invoked Section 26(1)(b) of the *Land Registration Act*, 2012, to argue that a title obtained through fraud, misrepresentation, or unlawful means is not protected and should not be used to perpetuate illegal occupation or intimidation of rightful owners.
11. In conclusion, the Plaintiff submitted that the Defendants have no valid claim to the land; that their conduct is calculated to cause maximum disruption and potential harm; and that the Plaintiff's peaceful possession and development rights must be safeguarded. The Plaintiff therefore prays for orders of temporary injunction, an enforcement order to the Officer Commanding Malindi Police Station, and costs of the application.

### **1<sup>st</sup> Defendant's Submissions**

12. Guided by the principles in *Giella v Cassman Brown* [supra] and *Suleiman v Amboseli Resort Limited* [2004] eKLR, counsel submitted that the Plaintiff has failed to establish the three requirements in granting an injunction, and that there is no any sufficient reason to allow the application.
13. On whether the Plaintiff had established a prima facie case, counsel relied on the definition of prima facie case established in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and *Vivo Energy (K) Ltd v Maloba Petrol Station Ltd & 3 Others* [2015] eKLR. He submitted that the Plaintiff has only provided an unverified title to the suit property, without laying down its historical background or root, while the Defendant has shown how it acquired its title and demonstrated that it has all along been in occupation of the suit property.
14. Counsel further submitted that irreparable harm and balance of convenience would therefore need no consideration, having failed to establish a prima facie case; but in any event, any loss thereof can be easily assessed and compensated. He added that the balance of convenience tilts in favour of the 1<sup>st</sup> Defendant since it has been in occupation thereof.
15. Counsel's further argument was that the suit and application as filed, offends Order 4 Rule 1 (4) of the Civil Procedure Rules, in that it was brought without the authority of the Plaintiff Company, and should be found fatally defective. To buttress this point, counsel cited the case of *Ibacho Trading Co. Ltd v Samel Aecha Ondora & 3 Others* [2017] eKLR.

### **ANALYSIS AND DETERMINATION**

16. Having considered the pleadings, affidavits, and submissions by both parties, the following issues arise for determination: -
  - i. Whether the Plaintiff has established a prima facie case with a probability of success;
  - ii. Whether the Plaintiff stands to suffer irreparable harm if an injunction is not granted;
  - iii. Whether the balance of convenience tilts in favour of the Plaintiff;
  - iv. Whether the application offends Order 4 Rule 1(4) of the Civil Procedure Rules.
17. In *Giella v Cassman Brown* [1973] EA 358, the Court set out the first condition for the grant of an interlocutory injunction as the requirement that an applicant must establish a prima facie case with a probability of success. This principle was further elaborated in *Mrao Ltd v First American Bank of Kenya Ltd* [supra], where the Court defined a prima facie case as one which, on the face of it, discloses a genuine and arguable claim, capable of succeeding at trial.
18. In the present matter, the Plaintiff has placed reliance on Certificates of Title for CR.46303 and CR.46304 and supporting deed plans, the authenticity of which has allegedly been verified by the



- Director of Surveys. The Plaintiff has also alleged unlawful trespass, destruction of property, and threats of dispossession. In rebuttal, the 1<sup>st</sup> Defendant avers that it holds a title CR.37207, for Plot No. 17835/4 and has supported this assertion with a certificate of lease, sale agreement, and evidence of payment of rates.
19. However, the Plaintiff has produced evidence suggesting that the 1<sup>st</sup> Defendant's title document is tied to a deed plan disowned by the Director of Surveys as fraudulent and not relating to the suit property. This raises a legitimate question as to the integrity and validity of the Defendant's title. The Court is therefore satisfied that the Plaintiff has demonstrated a prima facie case with a probability of success, sufficient to warrant the Court's protective intervention at this interlocutory stage.
  20. The second requirement under the Giella test is that the applicant must demonstrate that they stand to suffer irreparable harm that cannot be adequately remedied by damages. The Plaintiff has deposed that it is in possession of the suit property, has erected fences and structures, and that continued interference by the Defendants poses a risk of destruction and potential injury to property and life. In *Mrao Ltd* (supra), the Court acknowledged that the infringement of proprietary rights, especially where there is physical destruction, may amount to irreparable harm. In this instance, the Plaintiff is not only alleging trespass but repeated incidents of incursion by armed individuals and threats to peaceful possession. I find that such threats cannot be quantified monetarily and do indeed amount to irreparable injury.
  21. The third limb under *Giella* (supra) requires the Court, where doubt exists, to decide the matter on the balance of convenience. In *Nguruman Ltd v Jan Bonde Nielsen* (supra), the Court emphasized the sequential nature of the *Giella* principles but recognized the need to preserve the status quo when justice so requires.
  22. The Plaintiff asserts possession of the land and has sought preservation of the status quo. The 1<sup>st</sup> Defendant similarly claims occupation. However, given the disputed nature of title and the apparent threat of further trespass and destruction, it is more equitable to maintain the current state of affairs and restrain all parties from interfering with the suit property pending resolution. I find that the balance of convenience tilts in favour of preserving the Plaintiff's possession.
  23. The 1<sup>st</sup> Defendant objected to the suit and application on the basis that they offend Order 4 Rule 1(4) of the Civil Procedure Rules, which requires a verifying affidavit to be sworn by a person duly authorized by the company. The Plaintiff filed a supporting affidavit by one Njee Muturi. While the Defendant has questioned the authority of the deponent, there is no specific evidence to demonstrate that he lacked such authority. The objection is therefore not sufficiently substantiated at this stage and does not defeat the application on its face. Such authority can be filed at any stage before the case is heard and determined.
  24. Having carefully considered the application dated 9/4/2025, the affidavits on record, and the submissions by both parties, this Court is satisfied that the Plaintiff has met the requisite threshold for the grant of injunctive relief as established in *Giella v Cassman Brown* [supra] and reaffirmed in subsequent jurisprudence.
  25. The Court finds that the Plaintiff has demonstrated a prima facie case with a probability of success, is at risk of suffering irreparable harm if the orders sought are not granted, and that the balance of convenience tilts in its favour.
  26. Accordingly, the Court makes the following orders:
    - a. A status quo order is hereby issued in respect of Title Numbers CR.46303 (LR No. 17835/4) and CR.46304 (LR No. 17835/5), preserving the current state of occupation and barring any



further developments, alterations, or acts of interference by any of the parties pending the hearing and determination of this suit;

- b. Pending the hearing and determination of the suit, the Defendants, whether by themselves, their agents, employees, servants, or any other persons acting under their authority, are hereby restrained by way of an injunction from trespassing onto, transferring, charging, selling, alienating, or in any other manner dealing with or interfering with the suit property;
- c. The Officer Commanding Malindi Police Station is directed to provide such assistance as may be necessary to enforce compliance with the orders of this Court;
- d. The costs of this application shall be in the cause;
- e. The plaintiff shall file his lists of witnesses and documents and bundle of documents and within 30 days and the defendants within 60 days from the date of this order; timelines run concurrently;
- f. This suit shall be mentioned on 14<sup>th</sup> October 2025 for issuance of a hearing date.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

