



Mbugua & 3 others v Turi Gardens Limited & another (Environment and Land Case E363 of 2024) [2025] KEELC 4699 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4699 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E363 OF 2024**

**CG MBOGO, J
JUNE 24, 2025**

BETWEEN

**ELIZABETH NYAWIRA MBUGUA 1ST APPLICANT
SOPHIA WANJIRU MBUGUA 2ND APPLICANT
JOHNSON KAGUA MBUGUA 3RD APPLICANT
IAN WAHOME MBUGUA T/A MOWAKA AUTO CENTRE 4TH APPLICANT**

AND

**TURI GARDENS LIMITED 1ST RESPONDENT
SHAAZIR PRIME REALTORS LIMITED 2ND RESPONDENT**

RULING

1. Before me is the notice of motion dated 15th March, 2025 filed by the plaintiffs/applicants, and it is expressed to be brought under Order 40 Rules 1, 2, 3, & 4 of the [Civil Procedure Rules](#) and Section 63 (c) and (e) of the [Civil Procedure Act](#) seeking the following orders:-
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to restrain the 2nd defendant, its agents, servants or any person acting under its instructions from entering into or evicting, harassing, threatening, or in any manner interfering with the plaintiffs' quiet enjoyment of the suit property known as LR. No. 1/1396 (Original Number 1/1395/1) until further orders of this honourable court.
 4. That this honourable court be pleased to restrain the 2nd defendant, its agent, servants, or any person acting under its instructions from entering into or evicting, harassing, threatening, or in



any manner interfering with the plaintiffs' quiet enjoyment of the suit property known as LR. No. 1/1396 (Original Number 1/1395/1 pending the hearing and determination of this suit.

5. That this honourable court be pleased to issue a temporary injunction restraining the 2nd defendant from alienating, transferring, charging, leasing or in any way dealing with the suit property in a manner adverse to the plaintiffs' interests, pending the hearing and determination of this suit.
 6. That this honourable court be pleased to issue a mandatory injunction compelling the 2nd defendant to unconditionally withdraw the eviction notice dated 27th February, 2025 and to refrain from issuing any further notices of engaging in any actions aimed at dispossessing the plaintiffs of the suit premises.
 7. That this honourable court be pleased to direct the Officer Commanding Police Division (OCPD) Kilimani Police Station to ensure compliance with the orders issued herein, preventing any forced eviction or unlawful interference with the plaintiffs' possession of the suit property.
 8. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that the plaintiffs/applicants are the lawful tenants of the 1st defendant under a lease agreement dated 1st January, 2021 for a term of five years and three months. The application is supported by the affidavit of the 1st plaintiff/applicant sworn on even date and on behalf of the 2nd to the 4th plaintiffs/applicants. The 1st plaintiff/applicant deposed that the 1st defendant/ respondent has returned the sum of Kshs. 638,000/- being the monthly rent, and unless restrained, the defendants/respondents will evict them from the suit property. The 1st plaintiff/ applicant deposed the sometime in the month of July, 2024, the 1st and 2nd defendants/respondents entered into a sale agreement and conspired to evict them as the suit property was to be transferred to the 2nd defendant/respondent in vacant possession. She deposed that despite there being a lease agreement, the 2nd defendant/respondent has unlawfully issued them with an eviction notice dated 27th February, 2025 in disregard of the existing tenancy rights.
 3. The 1st plaintiff/applicant deposed that that the sale agreement between the defendants/respondents is null and void for violating the doctrine of *lis pendens*, and further their leasehold rights constitute an overriding interest under Section 28 of the [Land Registration Act](#). It was further deposed that they have heavily invested in their business, and unless the court intervenes, they will be forcefully evicted, and that they will suffer financial ruin and irreparable loss which cannot be compensated by an award of damages.
 4. The application was opposed by the replying affidavit of Abdi Aziz Sheikh Mohamed, the director of the 2nd defendant/respondent sworn on 26th March, 2025. The 2nd defendant/respondent deposed that it entered into a sale agreement with the 1st defendant/respondent on 10th July, 2024, and that it is a bona fide purchaser for value without notice of any encumbrance, any suit and holds a valid and indefeasible title under Sections 24 and 25 of the [Land Registration Act](#). It was further deposed that the lease agreement between the plaintiffs/applicants and the 1st defendant/respondent was terminated on 26th July, 2024 in accordance with the terms of the lease. The 2nd defendant/respondent deposed that the 1st defendant/respondent filed a professional undertaking in court to pay damages to the plaintiffs/applicants which brought the lease to its lawful end. Further, that it was not a party in the said agreement, and that therefore no contractual obligations exist between them.



5. The 2nd defendant/respondent deposed that the plaintiffs/applicants continued occupation is unlawful and amounts to trespass. Further the reliance on the doctrine of lis pendens is misguided as the agreement between the parties was executed on 10th July, 2024 and the suit was filed on 3rd September, 2024. It was deposed that the notice to vacate was issued in compliance with the law and the plaintiffs/applicants have no legal basis to challenge the same. That for any claims or losses, the same can be compensated by way of damages hence they have not demonstrated that they will suffer irreparable harm.
6. The application was further opposed by the affidavit of Dr. Samuel Thenya Maina, the director of the 1st defendant/respondent sworn on 28th March, 2025. The 1st defendant/respondent deposed that it had notified the plaintiffs/ applicants of the intention to terminate the lease on or before 24th September 2024, and sell the suit property to salvage another property that is under threat of sale by the bank. It was further deposed that the intention to sell the suit property has always been known to the plaintiffs/applicants, and that they consented to the same. The 1st defendant/respondent deposed to the previous applications filed by the plaintiffs/applicants seeking orders of injunction, and the fact that they are aware that the transfer of the suit property was effected before the institution of this suit.
7. The 1st defendant/respondent further deposed that the lease agreement between the plaintiffs/applicants and itself is no more as it is not the owner of the suit property. Further, that the lease was not a registered lease, and it was not capable of forming an encumbrance to the 2nd defendant's rights to proprietorship. It was deposed that the plaintiffs/applicants have quantified the damages in the schedule for relocation of costs, and thus fails to meet the principles of suffering irreparable loss that cannot be compensated by an award of damages.
8. While further urging the court to vacate the orders of status quo issued on 17th March 2025, the 1st defendant/respondent deposed that it will suffer irreparable damages as it will not be in a position to handover vacant possession to the new owner despite having transferred ownership. Further, that the instant application will cause the defendants/respondents unnecessary financial hardship to the tune of Kshs. 1,169,773,007.14/= that far outweigh the costs of the plaintiffs/applicants' relocation from the suit property.
9. The 1st plaintiff/applicant filed a further affidavit in response thereto sworn on 6th May, 2025. While reiterating the contents of her supporting affidavit, the 1st plaintiff/applicant deposed that the purported certificate of title dated 30th October, 2024 was issued when this suit filed on 2nd September, 2024 was pending and thus the rule in *Oganda v Mollin* 2009 KLR pg 620 applies. Further, it was deposed that the purported termination of the lease mid-way by the 1st defendant/respondent was and still remains unavailable. The 1st plaintiff/applicant further deposed that the lease is for a term of 5 years and 3 months, and had not been terminated at the time of the sale. Further, that the termination notice dated 26th July, 2024 was unlawful and did not comply with the terms of the lease agreement or the provisions of the [Land Act](#).
10. The 1st plaintiff/applicant deposed that the claim that they are trespassers is false since they have been in lawful occupation, paying rent and investing resources, and that the notice was designed to defeat the tenant whose terms has not ended and whose suit is pending. Further, that the claim that their losses are compensable by damages is untenable as they operate businesses employing over 35 people, and an eviction would cause irreparable harm that cannot be remedied by monetary compensation.
11. The application was canvassed by way of written submissions. The plaintiffs/applicants filed their written submissions dated 8th May, 2025 where they raised the following issues: -



- a. Whether the plaintiffs have established a prima facie case with a probability of success. And if yes, does this honourable court have jurisdiction to grant the prayers sought.
 - b. Whether the lease agreement dated 1st January, 2021 entered into by the applicants and the 1st respondent constitute a valid contract. And if yes, whether the lease agreement can be terminated before expiry of the 5 years 3 months.
 - c. Who bears the costs of the application.
12. On the first issue, the plaintiffs/applicants submitted that they have demonstrated a valid lease interest and ongoing possession giving rise to an overriding interest under Section 28 (b) of the [Land Registration Act](#). They submitted that they have established a prima facie case with a probability of success, and that they will suffer irreparable injury as they have not breached any covenants of the agreement, and that the means of livelihood from the family derived from the business will be destroyed. To buttress on this issue, the plaintiffs/applicants relied on the cases of *Giella v Cassman Brown* [1973] EA 358, *Assanand v Pettitt* [1989] KLR 242, and *Board of Governors, Moi High School Kabarak v Malcom Bell and Another* [2013] eKLR.
13. On the second issue, the plaintiffs/applicants submitted that under Section 36 (2) of the [Land Registration Act](#), the fixed term lease agreement entered into by the parties although not registered, is recognized as a binding contract, and the same does not contain a termination clause. Reliance was placed in the cases of *Kenya Commercial Bank Limited v Popatlal Madhavji & another* [2019] eKLR and *Chimani Meghji Naya Shah & Another v Oxford University Press (E.A) Ltd* [2007] eKLR. On the third issue, the plaintiffs/applicants urged the court to allow the application as prayed together with costs.
14. The 1st defendant/respondent filed its written submissions dated 12th May, 2025 where it raised four issues for determination as listed below:-
- a. Whether the applicants have established a prima facie case.
 - b. Whether the applicants have shown irreparable harm.
 - c. Whether the balance of convenience favours the applicants.
 - d. Whether the application is an abuse of the court process.
15. On the first issue, the 1st defendant/respondent submitted that the plaintiffs/applicants have not denied their awareness of its intention to sell the property owing to the numerous discussions between them. Further, that their cooperation and engagement in those discussions constitute implied consent to the transaction. It was further submitted that the invocation of the doctrine of lis pendens is misplaced, as the plaintiffs/applicants have failed to demonstrate any legal interest or right that has been infringed. Reliance was placed in the cases of *Mrao Ltd v American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, and *Marete v Ndegwa & 2 others (Civil Appeal E042 of 2021)* [2024] KECA 545 (KLR).
16. On the second issue, and while relying on the case of *Bayside Limited v DIB Bank Kenya Ltd* (Commercial Case E483 of 2023) [2024] KEHC 125 (KLR), the 1st defendant/respondent submitted that the plaintiffs/applicants have failed to discharge this burden as the loss to be suffered are quantifiable.
17. On the third issue, the 1st defendant/respondent submitted that the plaintiffs/applicants have no lease and therefore, they are in unlawful occupation of the premises and have refused to vacate despite



- multiple notices. To buttress on this issue, the 1st defendant/ respondent relied on the cases of *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd 7 2 others* [2016] eKLR, and *Ndeffo Co. Ltd v Ndegwa & 4 others* (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR).
18. On the fourth issue, it was submitted that the plaintiffs/applicants conduct in this matter reveals a deliberate effort to frustrate the legal process owing the application filed in this court, and before the Business Premises Rent Tribunal. While relying on the cases of *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others* [2009] eKLR, and *Karibu-Whytie J Sc en Sarak v Kotoye* (1992) 9 NWLR 9pt 264) 156 at 188-189(e), the 1st defendant/ respondent submitted that this application is an abuse of the court process, and urged the court not to countenance such conduct where the same party files repeated applications seeking the same reliefs from different fora.
19. The 2nd defendant/respondent filed its written submissions dated 3rd April, 2025 where it raised three issues for determination as listed below:-
- i. Whether the plaintiffs/applicants have a prima facie case against the 2nd defendant/respondent.
 - ii. Whether the plaintiffs/applicants will suffer irreparable harm if the orders sought are not granted.
 - iii. Whether the balance of convenience is in favour of the plaintiff/applicants.
20. On the first issue, the 2nd defendant/respondent submitted that the lease agreement between the plaintiffs/applicants and the 1st defendant/respondent was terminated on 26th July 2024, and that the said notice has not been set aside by a competent jurisdiction. That while the lease agreement had no termination clause, the 2nd defendant/respondent submitted that notwithstanding the absence of a termination clause, the 1st defendant/respondent was entitled to terminate the agreement. To buttress on this issue, the 2nd defendant/respondent relied on the case of *Kwanza Estates Limited v Jomo Kenyatta University of Agriculture and Technology* (Petition E001 of 2024) [2024] KESC 74 (KLR) (6 December 2024) (Judgment).
21. The 2nd defendant/respondent further submitted that the doctrine of lis pendens does not invalidate the sale agreement and transfer of property, and that on the face of it, it has complied with the mandatory procedures of issuing a notice to vacate under Section 152E of the *Land Act*. Reliance was placed in the case of *Marete v Ndegwa & 2 others* (Civil Appeal E042 of 2021) [2024] KECA 545 (KLR) (24 May 2024) (Judgment).
22. On the second issue, the 2nd defendant/respondent submitted that the equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury that cannot be adequately compensated by an award of damages. To further buttress on this issue, the 2nd defendant/respondent relied on the cases of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2012] eKLR. It was submitted that the 1st defendant/ respondent filed an undertaking in court to pay damages, and deposited in court Kshs.2,000,000/= as ordered by the court in a ruling delivered on 16th January, 2025.
23. On the third issue, the 2nd defendant/respondent submitted that the plaintiffs/applicants do not deny that the 1st defendant/respondent approached them with an offer for them to purchase the suit property. Further, that the 1st defendant/respondent gave an undertaking which has to be enforced. It was submitted that the balance of convenience does not shift in favour of the plaintiffs/applicants.



24. I have carefully considered the application, replies thereof and the written submissions as well as the authorities cited. I am of the view that the issue for determination is whether the plaintiffs/applicants have met the threshold for the grant of the orders of injunction.

25. The guiding principles for the grant of the orders of temporary injunction are well settled and are set out in the judicial decision of *Giella versus Cassman Brown* (1973) EA 358. This position has been largely pronounced in numerous decisions and more particularly in the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 [2014] eKLR where the Court of Appeal held that:-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

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”.

26. As a result, the plaintiffs/applicants ought to first establish a prima facie case. In *Mrao Limited versus First American Bank of Kenya Limited* [2003] eKLR, the court stated as follows: -

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

27. Also, in the case of *Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd.* Nairobi (Milimani) HCCC No. 360 of 2001: it was held:-

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”

28. It is not disputed that the plaintiffs/applicants entered into a tenancy agreement with the 1st defendant/respondent for a term of 5 years and 3 months commencing on 1st January, 2021. The plaintiffs/applicants contended that the 1st defendant/respondent returned the monies paid into its account



as rent, and further sold the suit property to the 2nd defendant/respondent who has now issued an eviction notice. They further contended that the acts by the defendants/respondents are unlawful for the reason that the sale transaction took place while the lease existed thus violated the doctrine of lis pendens. The plaintiffs/applicants contended that if the court does not intervene, there will be loss of livelihood as more than 35 people had been employed in the business.

29. The 1st defendant/respondent contended that the issue of the sale was not new to the plaintiffs/applicants and all along they were aware that there was need to sell the property so as to rescue another property belonging to the 1st defendant/respondent. Further, it was argued that the court needs to vacate the orders of status quo issued on 17th March, 2025 to avert further loss. It was argued that the loss to be incurred far outweighs the loss to be suffered by the plaintiffs/applicants.
 30. The 2nd defendant/respondent contended that it entered into sale agreement with the 1st defendant/respondent, and thereafter followed due process in issuing the notice to vacate pursuant to the relevant provisions of the *Land Act*. It was further contended that the lease agreement was properly terminated and the plaintiffs/applicants are trespassers on the suit property. Further, that there has been previous litigation over the same issues and this application is an abuse of the court process. Further, that the plaintiffs/applicants are not deserving of the orders since the damages are quantifiable.
 31. From the above summary of the issues presented before this court, it is evident that the lease agreement between the plaintiffs/applicants and the 1st defendant/respondent is in existence. On this issue, I am satisfied that the plaintiffs/applicants have established a prima facie case. However, the 2nd defendant/respondent is now the registered owner of the suit property and he has issued a notice to vacate the suit property. Having found that the plaintiffs/applicants have established a prima facie case, it is necessary to establish whether the loss to be suffered cannot be compensated by way of damages.
 32. In *Nguruman Limited supra*, it was further observed:-

“The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
 33. On the issue of irreparable loss, I have perused the documents relied on by the parties. From these documents, it is clear that the plaintiffs/applicants were aware of the plans by the 1st defendant/respondent to sell the suit property to offset a loan facility. The existence of the lease agreement notwithstanding, plans of relocation seemed to have been discussed between the plaintiffs/applicants and the 1st defendant/respondent. More so, it has not been demonstrated the loss to be suffered cannot be adequately compensated by an award of damages. On this issue, I find that irreparable loss has not been proved.
 34. This court is not in doubt so as address itself on the balance of convenience. It is my finding that the plaintiffs/applicants have not made a case to warrant the grant of injunction orders. The notice of motion dated 15th March, 2025 is hereby dismissed. Costs in the cause.
- Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 24TH DAY OF JUNE, 2025.

HON. MBOGO C.G.



JUDGE

24/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Njau for the 2nd Defendant

Ms. Kimanthi for the 1s Defendant

Mr. Mwenda holding brief for Dr. Kamau Kuria for the Plaintiff

