



REPUBLIC OF KENYA



Wanjama v City Council of Nairobi & another (Environment and Land Appeal E033 of 2024) [2025] KEELC 4929 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4929 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E033 OF 2024**

**TW MURIGI, J
JUNE 20, 2025**

BETWEEN

GEOFFREY MAINA WANJAMA APPELLANT

AND

CITY COUNCIL OF NAIROBI 1ST RESPONDENT

REGINA WANJIKU MBUGUA 2ND RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 22nd May 2024 in which the Applicant seeks the following orders:-
 - a) Spent.
 - b) That this Honourable Court be pleased to issue an order of a temporary injunction restraining the 2nd Respondent, her agents, persons claiming title under her name and her servants from alienating, continued trespass, wasting, development, encroachment, letting, charging, disposing, dealing and concluding any transaction on the suit premises being Plot No. H26B situated at Huruma Estate Infills (Kiamaiko) in any way howsoever or in any manner whatsoever pending the hearing and determination of this Appeal.
 - c) That this Court be pleased to grant an order of mandatory injunction compelling the 2nd Respondent, her agents, persons claiming title under her name and her servants to forthwith vacate the suit premises being Plot No H26B situated at Huruma Estate Infills (Kiamaiko) pending the hearing and determination of this suit.
 - d) That in the alternative, this Court be pleased to grant an order of eviction from Plot No. H26B situated at Huruma Estate Infills (Kiamaiko) against the 2nd Respondent her agents, persons



claiming title under her name and her servants pending the hearing and determination of the application herein.

- e) That this Honourable Court be pleased to issue an order for the O.C.S Huruma to supervise the enforcement of the orders herein.
 - f) That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Geoffrey Maina Wanjama sworn on even date.

The Applicant's Case

3. The Applicant averred that the Respondent evicted him from the suit property in the most inhuman manner despite the court having issued status quo orders on 28th April 2023.
4. He further averred that his suit was subsequently dismissed despite the fact that the Respondent had taken possession of the suit premises illegally.
5. The Applicant contends that the Respondent took possession of the suit property through unorthodox and illegal means.
6. He further contended that it is imperative that he is restored in possession of the suit property pending the hearing and determination of this appeal in order to uphold the rule of law. He further contended that the Respondent should be evicted from the suit property pending the hearing and determination of this appeal. The Applicant is apprehensive that he will suffer grave injustice if he is not restored in possession of the suit property.
7. In conclusion, the Applicant urged the court to allow the application as prayed.

The 2nd Respondent's Case

8. The Respondent filed a replying affidavit in opposition to the application. She averred that the application is misconceived as Plot No. H26B Huruma Estate Infills does not exist. She further averred that the Applicant has not met the threshold for the grant of the orders sought. The Respondent contends that the issues raised herein ought to be canvassed in the appeal and not in the instant application. In conclusion, the Respondent urged the court to dismiss the application with costs.

The Response

9. The Applicant filed a supplementary affidavit in response to the Respondent's replying affidavit. He averred that the City County of Nairobi had confirmed that Plot No. H26B Huruma Infills exists and that it belongs to him. He urged the court to allow the application as the Respondent had confirmed that she has no claim over Plot No. H26B
10. The application was canvassed by way of written submissions.
11. As at the time of writing this ruling, the Applicant had not filed his submissions as directed.

The 2nd Respondent's Submissions

12. The 2nd Respondent filed her submissions dated 26th March 2025.
13. On her behalf, Counsel submitted that the Applicant has not satisfied the conditions for the grant of an injunction set out in the case of *Giela v Cassman Brown Co. Ltd* EA 358.



14. Counsel further submitted that the orders staying the eviction issued on 3rd April 2023 were vacated on 24th April 2023.
15. It was submitted that the demolition on Plot No. H99 was carried in accordance with the law. It was further submitted that no malicious damage was occasioned on the Appellant's Plot No. H26 which is adjacent to the Respondent's Plot No. H99. Counsel contended that Plot No. H26B does not exist as the judgment held that the parcel on the ground was Plot No. H99 Huruma Estate Infills belonging to the Respondent.
16. Submitting on the conditions necessary for the grant of an injunction, Counsel asserted that the judgment was entered in favour of the 2nd Respondent and consequently a decree and eviction orders were issued on 13th February 2023.
17. Counsel argued that the application is made in bad faith with the sole aim of denying the 2nd Respondent the fruits of her judgment.
18. On the second condition, Counsel submitted that the 2nd Respondent will suffer prejudice if the orders sought are granted since she has already executed the judgment and is in occupation of Plot No. H99 as opposed to Plot No. H26B which the Applicant is claiming.
19. Counsel further submitted that the balance of convenience tilts in favour of the 2nd Respondent.

Analysis And Determination

20. Having considered the application, the respective affidavits and the rival submissions, the issue that arises for determination is whether the Applicant has met the threshold for the grant of an injunction pending the hearing and determination of the appeal.
21. Order 42 Rule 6(6) of the Civil Procedure Rules provides as follows;

“Notwithstanding anything contained in sub-rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
22. The principles governing the grant of a temporary injunction pending appeal were set out in the case of Patricia Njeri & 3 Others v National Museum of Kenya [2004] eKLR, as follows;-
 - a. “An order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship than it would avoid.
 - c. The applicant must show that to refuse the injunction would render the appeal nugatory.
 - d. The court should also be guided by the principles in Giella vs. Cassman Brown [1973] EA 358.”
23. The principles for granting an injunction are well established in the case of Giella v Cassman Brown & CO. Ltd [1973] EA 358 where the Court stated as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally 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.”

22. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.

23. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR the Court of Appeal defined a prima facie case 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.”

23. The Applicant averred that the Respondent took possession of the suit property through unorthodox and illegal means as the orders of status quo were still in place

24. The Respondents on the other hand contends that she has executed the judgment and is in possession of the suit property.

25. From the evidence placed before me, it is apparent that the Applicant is claiming ownership of Plot No. H26B while the Respondent is claiming ownership of Plot No. H99 Huruma Estate Infills. The Respondent contended that Plot No H26B does not exist.

26. It is not in dispute that the Respondent is in possession of the suit property.

23. Based on the evidence placed before me. I find that the Applicant has not established a prima facie case with a probability of success.

24. The conditions set out in *Giella v Cassman Brown Case* (Supra) are to be considered sequentially.

25. In so finding I am persuaded by the holding in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court of Appeal stated as follows: -

“...these are the three pillars on which rest 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... 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 are 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”.

23. Having found that the Applicant has not established a prima facie case with a probability of success, it will be immaterial to delve into the other limbs that are to be considered for a grant of a temporary injunction.



24. In the case of Commercial Finance Co. Ltd v Afraha Education Society & Others C A Civil Appeal No. 142 of 1999 the court held that:-

“.....the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success no interlocutory injunction would be available.”

23. In the end I find that the Application dated May 22, 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF JUNE, 2025.

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Court assistant – Ahmed

The absence of the parties

