



Sovereign Suites Limited v Sovereign Springs Limited & 4 others (Civil Suit 26 of 2023) [2025] KEELC 4593 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
CIVIL SUIT 26 OF 2023
JM ONYANGO, J
JUNE 18, 2025**

BETWEEN

SOVEREIGN SUITES LIMITED PLAINTIFF

AND

SOVEREIGN SPRINGS LIMITED 1ST DEFENDANT

CHIEF LANDS REGISTRAR 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

CHARLES GATHURI KINYUA 4TH DEFENDANT

JANE MURUGI GATHURI 5TH DEFENDANT

RULING

1. The Plaintiff initiated this suit through a plaint dated 21st March 2023. Together with the plaint, the Plaintiff filed a notice of motion application of an even date under certificate of urgency. Subsequently, the 1st Defendant filed a notice of motion dated 10th July 2023. The two applications are the subject of this ruling.
2. The Notice of Motion dated 21st March 2023 is brought under the provisions of Section 3A of the *Civil Procedure Act* and Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules. Through the said application, the Plaintiff is seeking the following orders:
 1. Spent
 2. Spent
 3. THAT pending the hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction to restrain the 1st Defendant and its servants and/or agents



from entering, evicting, remaining on, selling or in any other way interfering with, alienating, disposing of or dealing with the premises known as L.R No. 1X6/X1.

4. THAT pending hearing and determination of this Application, this honourable court be pleased to issue a temporary injunction restraining the 2nd Defendant, his servants and agents, employees, or anyone authorised by him or acting on his behalf from processing and issuing the 1st Defendant with title ownership of all that parcel of land known as L.R No. 1X6/X1 and/or doing any other such acts as to give the 1st Defendant ownership of the said parcel of land.
5. THAT pending hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction restraining the 2nd Defendant, his servants and agents, employees, or anyone authorised by him or acting on his behalf from processing and issuing the 1st Defendant with title ownership of all that parcel of land known as L.R No. 1X6/X1 and/or doing any other such acts as to give the 1st Defendant ownership of the said parcel of land.
6. THAT the costs of this Application be provided for.
3. The application is premised on the grounds on the face of it and supported by the affidavit of Abdul Dawood Hassan, a director of the Plaintiff, company sworn on 21st March 2023.
4. He avers that vide a sale agreement dated 10th August 2016, the Plaintiff entered into an agreement with one Mary Wanjiku Kanyotu (vendor), being a beneficiary and administrator of the estate of James Kanyotu, to purchase 6.6 acres to be subdivided and excised from land reference number 1X6/5 Redhill for a consideration of Kshs 230,000,000. The vendor was to sub-divide L.R Number 1X6/5 into two portions, namely portion A and B. At the time of the agreement, the Plaintiff was a lessee on portion A, measuring 6.6 acres, where it operates a hotel known as Sovereign Suites.
5. He deposes that on 20th July 2020, the High Court of Kenya in Succession Cause Number 1239 of 2008 issued an order confirming that the beneficiaries of the estate of James Kanyotu (Deceased) could sell a 6.6-acre portion of land reference number 1X6/5 to the Plaintiff. He further deposes that through a deed of novation and variation of agreement dated 14th August 2020, the parties varied the sale agreement dated 10th August 2016 by including the names of all the beneficiaries of the estate of the late James Kanyotu as vendors. Secondly, the purchase price was increased to Kshs 300,000,000.
6. He states that the vendors subsequently subdivided L.R. Number 1X6/5, and the portion of 6.6 acres identified as L.R. Number 1X6/X1(the suit property) was sold to the Plaintiff. He further states that in order to facilitate the transfer of the suit property to the Plaintiff, the vendors proceeded to execute forms LRA 39, 42 and 33. The Plaintiff's director contends that during the process of registration of the transfer, they discovered that the 1st Defendant/Respondent had lodged fake and forged documents for registration at the land registry alleging to have bought the suit property from the Administrators of the Estate of the Late James Kanyotu and that the title to the suit property had consequently been transferred to the 1st Defendant.
7. He states that the Administrators of the Estate of the Late James Kanyotu have confirmed that none of them has ever signed any transfer in favour of the 1st Defendant.
8. He avers that upon realising that the suit property was about to be transferred to the 1st Defendant, the Plaintiff reported the matter to the Directorate of Criminal Investigations for further investigations. Thereafter, the vendors and the Plaintiff applied to register a restriction and caution against any further dealings on the suit property. However, they later discovered that the suit property had already been transferred to the 1st Defendant.



9. He states that they further learnt that in yet another fraudulent scheme aimed at denying the Plaintiff its interest in the suit property, the 1st Defendant and others purported to file a suit, being Thika ELC Number 119 of 2022, in which the said 1st Defendant sued Charles Gathuri Kinyua and Jane Murugi Gathuri, both of whom were previously directors of the 1st Defendant. The parties in that suit entered into a Consent Order issued on 25th November 2022 in the following terms:

“That Judgment be and is hereby entered against the two (2) Defendants in the following terms:

- a. That the Defendants do vacate the suit land, that is, L.R. No.1X6/X1 Original No.1X6/5/6 measuring 2.663 Hectares situated in Kiambu County on/or before 10th November 2022 and upon giving vacant possession the Defendants either by themselves, their servants, agents and/or assignees be enjoined from re-entering the suit land;
- b. That a sum of Kenya Shillings Two Million (Kshs.2,000,000/-) only be paid as mesne profits calculated from the date of completion 6th September 2022;
- c. That in default of (a) above, Officer Commanding Station Tigon Police Station be and is hereby directed to assist in evicting the Defendants without any further reference;
- d. That each party to bear its own costs;

II. That the Judgment shall bind only the Plaintiff and the two (2) Defendants (Charles Gathuri Kinyua and Jane Murugi Gathuri);

III. That this file shall be marked as closed upon extracting the Consent Order.

10. In conclusion, he contends that the Plaintiff faces a great risk of being evicted from the suit property by the 1st Defendant.
11. The 1st Defendant opposed the application through Grounds of Opposition dated 4th July 2023. The 1st Defendant contends that the Plaintiff does not have the title deed or any identifiable interest in the suit property hence it lacks locus standi to sustain the suit or the application.
12. The 1st Defendant faults the Plaintiff for using the orders issued by this court on 23rd March 2023 to illegally and fraudulently acquire a title deed to the suit property. It maintains that the Plaintiff and the court did not have locus standi and jurisdiction respectively to interfere with the judgment issued in ELC No. E119 of 2022. The 1st Defendant adds that this court is functus officio in regard to ELC No. E119 of 2022, hence it had no jurisdiction to review or reopen the said matter.

Application dated 10th July 2023.

13. The 1st Defendant’s application dated 10th July 2023 is supported by the affidavit of Daniel Macau Ndonga (a director of the 1st Defendant) sworn on an even date. Through the application, the 1st Defendant seeks the following orders:
1. Spent
 2. THAT the honourable court be pleased to issue an order of injunction, preventing any kind of dealings in the suit property L.R No. 1X6/X1 (Org No. 1X6/5/6) pending the hearing and determination of the Application herein.



3. THAT the honourable court be pleased to order that the title deed of this suit property L.R No. 1X6/X1 (Org No. 1X6/5/6) revert to the status it was on the 22nd March 2023, pending the hearing and determination of this suit.
4. THAT the cost of this Application be provided for.
14. The 1st Defendant's director contends that the 1st Defendant is the registered owner of the suit property since 5th May 2022. He further contends that the Plaintiff was neither the registered owner of the suit property nor was it in possession thereof as at 22nd March 2023 when it filed the suit and application dated 21st March 2023, therefore, it did not have locus standi to file the suit.
15. He deposes that despite the foregoing, on 23rd March 2023, the honourable court issued the Plaintiff with ex parte orders which are prejudicial to the 1st Defendant. He explains that the said ex parte orders barred the 2nd Defendant from issuing the 1st Defendant with a title deed to the suit property or registering it as the owner of the suit property, even though the 1st Defendant had already been registered as the owner of the suit property.
16. He maintains that the ex parte orders issued by the honourable court on the 23rd March 2023 were therefore a nullity, given that they had been overtaken by events. He states that armed with the ex parte orders mentioned above, the Plaintiff conspired with the 2nd Defendant to illegally cancel the Applicant's title to the suit property and proceeded to issue the Plaintiff with a fresh title in its name on the 4th April 2023, during the pendency of this suit.
17. It is his position that the 2nd Defendant illegally usurped this honourable court's powers in allegedly conducting parallel proceedings with the proceedings before this honourable court and in the absence of the 1st Defendant.
18. He adds that the 1st Defendant's advocates informed the 2nd Defendant that it would not attend the illegal proceedings scheduled on the 4th April 2023, because the dispute was already before this court.
19. He contends that the Plaintiff illegally achieved its prayer to have the suit property registered in its name. He urged the court to quash the decision by the 2nd Defendant, given that he acted without authority.
20. The Plaintiff opposed the application through a replying affidavit sworn by its director Abdul Dawood Hassan, on 30th October 2023. He deposes that the Plaintiff is the bonafide and current duly registered owner of the suit property and that the Plaintiff has been in occupation of the same since 2016.
21. He explains that prior to the Plaintiff instituting this suit, the 1st Defendant had instituted Thika ELC Case No. 119 of 2022, against the 4th and 5th Defendants in which he procured a consent judgment in his favour issued on 25th November 2022. It is his claim that the said judgment was a result of a well-orchestrated scheme by the 1st Defendant, whereby prior to the institution of Thika ELC Case No. 119 of 2022, the 4th and 5th Defendants resigned from the 1st Defendant and in turn, Legend Industrial Park Ltd and Daniel Macua Ndonga were appointed as directors.
22. He contends that despite the 1st Defendant being aware that the Plaintiff was in occupation of the suit property, he sued the 4th and 5th Defendants and deliberately failed to include it in the suit. He reiterated that, upon realisation that the 1st Defendant had been fraudulently registered as the owner of the suit property, the Plaintiff reported the matter to the Director of Criminal Investigations for investigations. He adds that soon thereafter, the Plaintiff, 1st, 4th and 5th Defendants together with the Administrators of the Estate of the Late James Kanyotu were summoned to appear before the Assistant Chief Land Registrar on 30th March 2023 for the hearing of an application for registration



of a restriction on the suit property. However, the 1st, 4th and 5th Defendants did not attend the proceedings on 30th March 2023.

23. He asserts that the investigations conducted by the Land Registry in Nairobi found the alleged registration in favour of the 1st Defendant to be fraudulent, and as a result, it was cancelled. He further asserts that vide a letter dated 19th April 2023, the firm of Costin and Webster Law, alleged to have drafted the transfer between the Administrators of the Estate of James Kanyotu (deceased) and the 1st Defendant, denied ever drawing or attesting the said transfer. In conclusion, he states that the 1st Defendant approached this court with unclean hands and that he neither deserves audience or the orders sought.

Submissions.

24. The application was canvassed by way of written submissions. The Plaintiff filed written submissions dated 4th April 2025 and further submissions of an even date. The 1st Defendant filed written submissions dated 10th February 2025.

Analysis and Determination.

25. Having considered the issues raised in the two applications, the responses to the applications and the rival submissions, the main issues for determination are:
- i. Whether the application by the Plaintiff seeking injunctive relief, is merited.
 - ii. Whether the Plaintiff lacks locus standi to institute the suit or file the application.
 - iii. Whether the court should issue an order to that the title deed of the suit property revert to the status it was on 22nd March 2023.

Whether the application by the Plaintiff seeking injunctive relief, is merited.

26. 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.”



27. The conditions for the grant of applications for injunctions were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) E A 358, 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.”

28. In order to determine whether the application meets the required threshold the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [2014] eKLR, where the court held 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 vs 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.”

a. Whether the Applicant has established a prima facie case

29. The court shall examine whether the Plaintiff has fulfilled this first limb to determine whether the court shall take into consideration the rest of the requirements. The case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 123 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.”

30. The Plaintiff has contended that it has been in occupation of the suit property since before 2016, initially as a lessee and later as the legal owner, having entered into an agreement for sale dated 10th August 2016 with the administrators and beneficiaries of the estate of James Kanyotu (deceased), who was the registered owner.

31. The Plaintiff has stated that on 20th July 2020, the High Court of Kenya in Succession Cause Number 1239 of 2008 issued an order confirming that the beneficiaries of the estate of James Kanyotu could sell the suit property to the Plaintiff. The Plaintiff has further stated that through a deed of novation and variation of agreement dated 14th August 2020, the parties varied the sale agreement dated 10th August 2016 by including the names of all the beneficiaries of the estate of the late James Kanyotu as vendors. Secondly, the purchase price was increased to Kshs 300,000,000. The Plaintiff has explained that during the process of registration of the transfer, they discovered that the suit property had been



fraudulently transferred to the 1st Defendant. As a result, the Plaintiff reported the matter to the DCI and the 2nd Defendant's office. The Plaintiff also filed this suit and the present application under the apprehension that he might be evicted from the suit property. Based on the aforementioned facts, I do find that the Plaintiff has established a prima facie case.

32. However, it has emerged from the pleadings that on 4th April 2023, during the pendency of the suit, but before the hearing of the application dated 21st March 2023, the 2nd Defendant cancelled the 1st Defendant's title to the suit property on the ground that it was obtained fraudulently, and proceeded to issue a fresh title to the suit property in the name of the Plaintiff. In essence, the Plaintiff's application has now been overtaken by events.

(ii) Whether the Plaintiff lacks locus standi to institute the suit or file the application.

33. Being aggrieved by the turn of events, the 1st Defendant filed its application dated 10th July 2023 seeking an injunction order to prevent any dealing in the suit property pending hearing and determination of this application. The said prayer is now spent.
34. The 1st Defendant also seeks an order that the suit property revert to the status it was on 22nd March 2023 pending hearing and determination of this suit and an order that the Plaintiff did not have locus to institute the suit given that he was not the registered owner of the suit property at the time of filing the suit.
35. On the issue of the Plaintiff lacking locus standi to institute the suit, the Plaintiff stated that he has been in possession of the suit property since before 2016, an allegation which has not been controverted by the 1st Defendant.
36. Locus standi is defined in Black's Law Dictionary, 9th Edition (page 1026) as
“ the right to bring an action or to be heard in a given forum”.
37. In the case of Alfred Njau and Others vs City Council of Nairobi (1982) KAR 229, the Court held that:
“ ...the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.
38. The fact that the Plaintiff's ownership and possession of the suit property was being threatened afforded him the right to bring this suit. Therefore, this court finds that the Plaintiff had the requisite locus standi to institute the suit.

(iii) Whether the court should issue an order that the title deed of the suit property revert to the status it was on 22nd March 2023

39. On the prayer that this court orders that the suit property revert to the status it was in on 22nd March 2023. The court notes that the actions by the 2nd Defendant offend the doctrine of lis pendens.
40. In the case of Mawji vs US International University and Another (1976) KLR 185, Madan J (as he then was) stated that:
“ The doctrine Lis Pendens is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice.”



41. Similarly in the case of Bernadette Wangare Muriu vs NSSF Board of Trustees & 2 others (2012) eKLR the court affirmed the necessity of the doctrine of Lis Pendens in adjudication of Land matters in the following words;

“The necessity of the doctrine of Lis Pendens in the adjudication of land matters pending before the court cannot be gainsaid, particularly for its expediency as well as the orderly and efficacious disposal of justice.”

42. However, given the unique circumstances of this case, this court is of the view that a status quo order is more appropriate for the purpose of preserving the subject matter of the suit. This court has the power to issue a status quo order under Rule 28 (K) of the Practice Directions on Proceedings in the Environment and Land Court. In Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic -vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel. The court stated as follows:

“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

43. Arising from all the above, this Honourable Court proceeds to make the following orders:

- a. That the status quo on the ground and in the register relating to the suit property as at the date of this ruling be maintained pending hearing and determination of the suit.
- b. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF JUNE 2025.

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J. M ONYANGO

JUDGE

In the presence of :

Ms Wangui Koech for the Plaintiff

Mr Mathenge for Mr Tumu for the 1st Defendant

Court Assistant: Hinga

