



**Maingi (Suing as a Personal Representative Estate of the Late Maingi Wathome Nguta - Deceased) v Nzioka (Sued as a Personal Representative Estate of the Late David Nzioka Mbai - Deceased) & another (Environment and Land Case E067 of 2024) [2025] KEELC 6449 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6449 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E067 OF 2024**

**AY KOROSS, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**BERNARD KIMATU MAINGI ..... PLAINTIFF  
SUING AS A PERSONAL REPRESENTATIVE ESTATE OF THE LATE MAINGI  
WATHOME NGUTA - DECEASED**

**AND**

**RACHEAL KAILU NZIOKA (SUED AS A PERSONAL REPRESENTATIVE  
ESTATE OF THE LATE DAVID NZIOKA MBAI - DECEASED) . 1<sup>ST</sup> DEFENDANT  
KATELEMBO ATHIANI MUVUTI FARMING ANDRANCHING SOCIETY  
LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated 3/09/2024 filed by the plaintiff, expressed to have been moved within the provisions of Sections 3A and 63(e) of the *Civil Procedure Act* and Orders 40, Rule 1 of the Civil Procedure Rules, and all other enabling provisions of the law. The plaintiff seeks the following reliefs from this court: -
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. A temporary injunction does issue restraining the defendants, either by themselves and/or through their authorised agents, servants and/or employees or persons claiming under them, from entering, trespassing, constructing, interfering, subdividing, alienating and/or in any



other manner from dealing with the parcels of land known as plot nos. 3482, 3483 and 3484 all held at Katelembo Athiani Muvuti Farming and Ranching Society Limited, belonging to the late Maingi Wathome Nguta, including but not limited to facilitating the issuance and processing of title deeds relating to the suit properties pending the hearing and determination of this suit.

- e. The costs of this motion be provided for.
2. The motion is supported by the grounds set out in the body thereof and the plaintiff's affidavit sworn on the instant date. In a nutshell, he informed the court that
    - a) he is the son of the late Maingi Wathome Nguta (deceased plaintiff), who was the rightful and legal owner of plot nos. 3482, 3483 and 3484 (suit properties) all held at Katelembo Athiani Muvuti Farming and Ranching Society Limited;
    - b) the deceased plaintiff's dependents had always been in continuous and quiet possession and occupation of the suit properties up until sometime around the year 2019 when the 1<sup>st</sup> defendant herein started claiming ownership; and
    - c) On investigation, it was found that David Nzioka Mbai (deceased defendant), as the 2<sup>nd</sup> defendant's chair, had, around 30/12/2003, fraudulently transferred the suit properties to himself. Yet, the deceased plaintiff and his wife, Esther Ngwinya Maingi, had long passed on;
    - d) the plaintiff was issued with letters confirming plot nos. 3482 and 3483 had been allocated to the deceased plaintiff and plot no. 3484 to his wife;
    - e) the 2<sup>nd</sup> defendant is in the process of issuing title deeds for the benefit of all the individuals who own parcels of land held by it, and he is apprehensive that title deeds for the suit properties will be registered in the 1<sup>st</sup> defendant's name to the detriment of the deceased plaintiff.
  3. The 2<sup>nd</sup> defendant did not oppose the motion; nonetheless, the 1<sup>st</sup> defendant opposed it by filing her replying affidavit of 23/09/2024, where, in summary, she maintained as follows:
    - a) it was true that the deceased plaintiff and his wife were allocated plot nos. 3483 and 3484 by the 2<sup>nd</sup> defendant;
    - b) However, the deceased plaintiff sold these particular properties to the deceased defendant at an agreed purchase price of kshs. 200,000/- whereby a deposit of kshs. 60,000/- was paid on 2/08/2000 and the payment of kshs. 20,000/- was made to the deceased plaintiff on 18/12/2000; and  
Lastly,
      - c) Upon payment of the full purchase price, the deceased plaintiff presented his plot allocation cards for plot nos. 3483 and 3484 to the deceased defendant for onward transmission to the 2<sup>nd</sup> defendant for it to effect the transfers.
  4. As directed by the court, the motion is canvassed by written submissions that the court received from the law firm of Ms. Kyalo, Muia & Co. Advocates for the plaintiff, dated 6/03/2025. Accordingly, counsel's arguments shall be taken into consideration in the analysis and determination of the issue at hand, which is whether the motion has met the legal threshold to warrant the grant of interlocutory reliefs. Additionally, careful thought will be given to the motion, its grounds, and affidavits.



5. Reverting to the issue for determination, the plaintiff's motion is brought under Order 40, Rule 1 of the Civil Procedure Rule (CPR), which guides this court in handling applications of this nature, and this provision of the law provides: -

“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 orders.”

6. The principles for this court's consideration in the exercise of its unfettered discretion to grant an order of temporary injunction are now well settled in authoritative pronouncements and the triple requirements are that an applicant in this case the plaintiff must:

- (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 by showing that the balance of convenience is in his favour. See *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 and restated in the Court of Appeal decision of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).

7. As held in *Nguruman (Supra)*, temporary injunctions are equitable remedies solely to prevent grave and irreparable injury that is actual, substantial and demonstrable and cannot be adequately compensated by an award of damages. Furthermore, they are also meant to preserve the substratum of the suit pending the hearing and determination of the matter, and the grant of interlocutory injunctions is not meant to occasion prejudice to any party.

8. The Court of Appeal decision of *Kenya Commercial Finance Company Ltd -versus- Afraha Education Society Civil Appeal No. 142 of 1999 (Nakuru)* [2001]1 E.A. 86 the Court of Appeal page 86 that was cited with approval in the Court of Appeal decision of *Attorney General v Kenya Commercial Bank Ltd & 3 others* [2004] eKLR stated as follows on how these 3 pillars of injunctions are to be considered: -

“In dealing with the Application before him, the Learned Superior Court Judge skipped dealing with the first and second conditions referred to above and straight away proceeded to address himself on the third condition in regard to the Application before him. Had he sequentially addressed himself on these conditions he would, on the material before him, have found that the first and the second Respondents had no registered interest in the land comprised in title number Nakuru Municipality/Block 2/488 and therefore had not demonstrated that they have a prima facie case with a probability against the Appellant, third, fourth and fifth Respondents. If so, no interlocutory injunction would be available to them.”



9. Suffice it to say that it emerges that these 3 conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. As held in Nguruman (Supra), if a prima facie case is not established, then irreparable injury and balance of convenience need not be considered, as this first hurdle of a prima facie case has to be overcome before a consideration of the other grounds is undertaken.
10. In these circumstances and dealing with the 1<sup>st</sup> pillar of prima facie case, the plaintiff has presented letters from the 2<sup>nd</sup> defendant, all dated 13/10/2020, allegedly sanctioning that the deceased plaintiff is the owner of plot nos. 3482 and 3483, while his wife is the owner of plot no. 3484. The allotment cards presented by the 1<sup>st</sup> defendant also support this, as they show that plot nos. 3483 and 3484 are respectively in the names of the deceased plaintiff and his wife. Although the 1<sup>st</sup> defendant contends that they were transferred to the deceased defendant by an agreement for sale, the court has not sighted the transfer documents at this juncture of the proceedings. Consequently, this court finds that the plaintiff has met the 1<sup>st</sup> threshold.
11. Concerning the 2<sup>nd</sup> test, the plaintiff contends that the deceased plaintiff's family has always been in occupation of the suit properties. In response to this, the 1<sup>st</sup> defendant in her replying affidavit did not clearly state who was in possession, as she alluded that there was a neighbour known as Nicholas Musyoka who was also in occupation.
12. Be that as it may, the plaintiff's claim that the 2<sup>nd</sup> defendant is in the process of issuing title deeds for properties, which it allegedly holds in trust for its members, including the suit properties, was not disputed. As submitted by the plaintiff's counsel, and this court so finds, the event of issuing title deeds for the suit properties (if it pertains to the 1<sup>st</sup> defendant at all) will cause irreparable harm to the plaintiff that damages cannot compensate. Regarding the last criterion of the balance of convenience, this court finds it tilts in favour of the plaintiff.
13. Ultimately, this court finds the relief for a temporary injunction is merited. For the reasons and findings stated above, this court allows the notice of motion dated 3/09/2024 in the following terms: -
  - a. Pending the hearing and determination of this suit, a temporary injunction is hereby issued restraining the defendants, whether by themselves and/or through their authorised agents, servants and/or employees or persons claiming under them, from entering, trespassing, constructing, interfering, subdividing, alienating, or processing title deeds of plot nos. 3482, 3483 and 3484 and/or in any other manner from dealing with plot nos. 3482, 3483 and 3484 all held at Katelembo Athiani Muvuti Farming and Ranching Society Limited.
  - b. Costs shall be in the cause.
  - c. A mention date shall be given for purposes of pre-trial directions.

It is so ordered.

**DELIVERED AND DATED AT MACHAKOS THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**

**30. 09.2025**

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM**

In the presence of;



Mr. L. M. Wambua for defendants.

Mr. Munyao holding brief for Kyalo for plaintiff/applicant.

Ms Kanja- Court Assistant.

