



**Muhammed (Administrator of the Estate of Mohamud Mohamedman  
(Deceased)) v Mathi Investment Limited & 2 others (Environment and Land  
Case E058 of 2024) [2025] KEELC 6325 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6325 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E058 OF 2024  
MD MWANGI, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**HIBO MAHAMUD MUHAMMED ..... APPLICANT  
ADMINISTRATOR OF THE ESTATE OF MOHAMUD MOHAMEDMAN  
(DECEASED)**

**AND**

**MATHI INVESTMENT LIMITED ..... 1<sup>ST</sup> RESPONDENT  
KAJIADO MULTI-INVESTMENTS COMPANY LIMITED ... 2<sup>ND</sup> RESPONDENT  
KAJIADO LAND REGISTRY ..... 3<sup>RD</sup> RESPONDENT**

*(In respect of the Plaintiff's Notice of Motion application dated 11th June  
2024 pursuant to Order 40 of the Civil Procedure Rules seeking for an order  
of temporary injunction pending the hearing and determination of the suit)*

**RULING**

**Introduction**

1. Before this court for determination is the Plaintiff/Applicant's Notice of Motion dated 11th June 2024, in which the following reliefs are sought:
  - a. Spent
  - b. Spent
  - c. That the Honourable Court be and is hereby pleased to issue a temporary order of injunction restraining the Defendants jointly and severally either through themselves, their agents, servants, and anyone claiming under them from alienating, selling, offering for sale,



charging, mortgaging, trespassing, advertising for sale, or in any manner interfering with land parcel No. KJD/Dalalekutuk/577 and the subdivisions thereof being land parcels Nos. 16595/96/97/98/99, 16600-16615 and the further subdivision of 16607 being 17355 and 17356 pending the hearing and determination of the suit.

- d. That the Honourable Court be and is hereby pleased to issue such further or other orders as it may deem just and fit to grant.
  - e. That the costs of the application be borne by the Defendants/Respondents.
2. The application is predicated upon grounds set out on its face and supported by the Affidavit of the Plaintiff/Applicant sworn on 11<sup>th</sup> June 2024, wherein it is contended that the Plaintiff, being the legal administrator of the estate of the late Mohamud Mohamed Eman, is the lawful proprietor of land parcel number KJD/Dalalekutuk/577 (“the suit property”), the same having devolved to the estate upon the demise of the registered owner.
  3. It is the Plaintiff/Applicant’s case that the deceased neither alienated nor disposed of the suit property during his lifetime, and no authority has ever been granted to any person to deal with the same on behalf of the estate. The Applicant avers that, through fraudulent machinations, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants caused the Land Registrar, Kajiado, to open a parallel file and green card in respect of the suit property in the name of the 1<sup>st</sup> Defendant, who thereafter caused it to be transferred to the 2<sup>nd</sup> Defendant. It is further deposed that the 2<sup>nd</sup> Defendant has since purported to subdivide the suit property into numerous parcels, namely KJD/Dalalekutuk/16595 to 16616 and further subdivision of parcel number 16607 into KJD/Dalalekutuk/17355 and 17356.
  4. The Plaintiff/Applicant contends that in Kajiado ELC Case No. 38 of 2019, the Court issued orders preserving the status of the suit property, and the matter was ultimately determined in favour of the Plaintiff. The subsequent attempt by the 2<sup>nd</sup> Defendant to set aside the said orders was dismissed. Nevertheless, it is alleged that the 2<sup>nd</sup> Defendant has blatantly disobeyed the subsisting preservation orders and is in the process of disposing of the resultant subdivisions to third parties, an action which, if not restrained, will occasion irreparable loss to the estate and the beneficiaries thereof.
  5. In opposition to the Plaintiff’s Notice of Motion dated 11<sup>th</sup> June 2024, the 2<sup>nd</sup> Defendant, Kajiado Multi-Investments Company Limited, filed a Replying Affidavit sworn on its behalf by one of its directors, Mohamed Rashid Hussein, duly authorized by the company to depose therein on its behalf.
  6. The 2<sup>nd</sup> Defendant contends that the Plaintiff’s application is incompetent, devoid of merit, misconceived, and an abuse of the court process. It is argued that the application seeks to unlawfully curtail or interfere with the 2<sup>nd</sup> Defendant’s lawful ownership, use, and enjoyment of the suit property — being land parcels resulting from the subdivision of KAJIADO/Dalalekutuk/577 — without lawful justification.
  7. The 2<sup>nd</sup> Defendant avers that it was the lawful registered proprietor of KAJIADO/Dalalekutuk/577 before subdivision into parcels Nos. 16595–16616, having acquired good title from the Agricultural Finance Corporation (AFC). The deponent recounts the history of the property, stating that AFC became the registered proprietor following the default of the 1<sup>st</sup> Defendant (pursuant to a loan facility of Kshs. 4,200,000 advanced in 1992 and secured by a charge over the property). AFC as chargee thereafter sold the land to the late Mohammed Sharif Abdullahi, a director of the 2<sup>nd</sup> Defendant, who subsequently assigned all rights, title, and interest in the property to the company.
  8. The acquisition is said to have followed the due process — with due diligence conducted, stamp duty paid, and registration effected in April 2008 — making the 2<sup>nd</sup> Defendant a purchaser for value without



notice of any defect in title. It is further contended that AFC complied with the procedure under section 33 of the [Agricultural Finance Corporation Act](#) in exercising its statutory power of sale.

9. The 2<sup>nd</sup> Defendant further alleges that the Plaintiff's claim is tainted with fraud and misrepresentation, including the alleged fabrication of a certificate of title, forged green cards, and misrepresentation to KETRACO Limited with the aim of securing wayleave compensation. It is asserted that the rectified Certificate of Confirmation of Grant obtained in February 2019 was procured through false statements and in the absence of the property from the original list of assets in the succession proceedings for the estate of the late Mohamud Mohamed Eman.
10. The 2<sup>nd</sup> Defendant also cites Kajiado ELC Case No. 38 of 2019, in which an inhibition order was issued over KAJIADO/Dalalekutuk/576 but not over the suit property. It contends that the subdivision of parcel 577 in May 2021 was undertaken lawfully and without breach of any court order, citing its proprietary rights under Article 40 of [the Constitution](#) and section 26 of the [Land Registration Act](#).
11. In response to the allegations of fraud, the 2<sup>nd</sup> Defendant emphasizes that fraud must be strictly proved to a standard above that of a balance of probabilities, and mere suspicion is insufficient to establish fraud. It argues that the Plaintiff has not established a prima facie case with a probability of success, since any loss occasioned can be adequately compensated by damages, and that the delay of over 18 years in asserting the claim amounts to laches. The balance of convenience, it submits, lies in favour of the 2<sup>nd</sup> Defendant, which has heavily invested in the property. Accordingly, the 2<sup>nd</sup> Defendant urges the Court to dismiss the Plaintiff's application in its entirety with costs, terming it unfounded in law and fact, and a calculated attempt to frustrate and blackmail the lawful proprietor of the suit property.

### **Directions**

12. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the same and have considered them in the writing of this ruling.

### **Issues for determination**

13. The Court has considered the pleadings, affidavits, annexures and submissions of counsel, together with the applicable law. The sole issue for determination is whether the application meets the threshold for the grant of an interlocutory order of injunction.

### **Analysis and Determination**

14. The principles for the grant of interlocutory injunctions were settled in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358, where the court stated that:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, 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.”



15. These principles were further affirmed by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, where the Court 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 (a) or (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the platform of order 40 Rule 1 (supra)... If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”

16. The Plaintiff alleges that the subdivision and transfer of KAJIADO/Dalalekutuk/577 to the 2<sup>nd</sup> Defendant was fraudulent and unlawful. The 2<sup>nd</sup> Defendant on the other hand asserts that it acquired the land lawfully from the Agricultural Finance Corporation after the corporation exercised its statutory power of sale following default on a loan that was secured by the title of the suit property.

17. Section 26(1) of the *Land Registration Act*, No. 3 of 2012, provides that:

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except— (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

18. In this case, the affidavit evidence adduced by the 2<sup>nd</sup> Defendant materially challenges the veracity of the Plaintiff’s allegations. The 2<sup>nd</sup> Defendant has exhibited the charge Instrument in favour of the Agricultural Finance Corporation, the statutory notices issued under Section 90 of the *Land Act*, 2012, and the Transfer executed following the exercise of the statutory power of sale by the corporation. These documents, if ultimately proved at trial, would lend weight to the presumption of indefeasibility under Section 26(1) of the *Land Registration Act*.

19. As the Court observed in *Kinyanjui Kamau v George Kamau* [2015] eKLR,

“It is trite law that fraud must be pleaded and strictly proved... something more than a mere balance of probabilities is required.”

20. At this interlocutory stage, the evidence presented by the 2<sup>nd</sup> Defendant significantly undermines the Plaintiff’s ability to demonstrate a prima facie case with a probability of success. The Plaintiff’s allegations, which are contested by the 2<sup>nd</sup> Defendant with material evidence are only supported by affidavit evidence and documents whose probative value can only be determined after a full trial. The statutory presumption under Section 26(1) in favour of the 2<sup>nd</sup> Defendant as the registered proprietor remains intact.

21. As to irreparable harm, the Court of Appeal in *Nguruman Limited* (supra), explicitly stated that:

“If the injury or damage is compensable by an award of damages, then an injunction should not be granted, however strong the applicant’s claim appears at that stage.”



22. The 2nd Defendant has indicated willingness to compensate the Plaintiff by way of damages if the Plaintiff ultimately succeeds, which militates against the claim of irreparable harm. Order 40 Rule 1(a) and (b) of the Civil Procedure Rules provides that:

“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.”

23. From the evidence presented before the court, the Plaintiff has not demonstrated that the suit property is presently ‘in danger of being wasted, damaged, or alienated’, beyond what has already occurred prior to the filing of the suit.

24. The equitable nature of the remedy also requires diligence and clean hands. The Court of Appeal in *Mbui Mukangu v Gerald Mutwiri Mbui* [2004] eKLR, emphasized that:

“Equity aids the vigilant and not the indolent.”

25. The events preceding the filing of this suit trace back over a decade ago yet no plausible explanation has been given for the delay in bringing this suit.

26. Lastly, the balance of convenience was defined in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, in the following words;

“The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendant if the injunction is granted and the suit is ultimately dismissed”

27. This court is persuaded that the balance of convenience favours maintaining the current state of affairs, possession by the registered proprietors until final determination.

28. Applying the above principles and statutory provisions, and considering the circumstances of this case, I find that the Plaintiff has failed to establish a prima facie case with a probability of success, has not demonstrated irreparable harm, and the balance of convenience tilts in favour of the 2<sup>nd</sup> Respondent. Accordingly, the Notice of Motion dated 11<sup>th</sup> June 2024 is hereby dismissed with costs to the 2<sup>nd</sup> Defendant.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:



Mr. Omar for the 2<sup>nd</sup> Defendant/Respondent

N/A by the Plaintiff, 1<sup>st</sup>, and 3<sup>rd</sup> Defendants

Court assistant: Mpoye

