



**Pothiwala v Ultra-Modern Homes Limited (Land Case E099 of 2024)  
[2025] KEELC 6279 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6279 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
LAND CASE E099 OF 2024  
YM ANGIMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**HUSSEIN H POTHIWALA ..... PLAINTIFF**

**AND**

**ULTRA-MODERN HOMES LIMITED ..... DEFENDANT**

**RULING**

1. By a notice of motion dated 22.11.2024 filed pursuant to Order 40 Rules 1, 2 3 and 4 of the [Civil Procedure Rules](#), 2010, Sections 1A, 1B, and 3A of the [Civil Procedure Act](#), the inherent jurisdiction of the court and all other enabling provisions of the law the plaintiff sought an interim injunction to restrain the defendant from undertaking any further construction or development activities on Title No. Mombasa/Block X/381 belonging to the defendant.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on 22.11.2024. It was alleged that the defendant was undertaking construction on parcel 381 in a negligent manner with the consequence that its acts had resulted into damage to the plaintiff's adjacent property being Mombasa/Block X/401. It was contended that the defendant's activities had resulted into damage to the plaintiff's residential house, water tank, perimeter wall, and two motor vehicles.
3. The plaintiff further pleaded that the defendant had negligently allowed some metals, stones and other material to fall into parcel 401 thereby threatening his safety and the safety of his children. It was contended that the defendant had failed to take precautions+ to prevent dust, noise and debris from interfering with the plaintiff's use and quiet enjoyment of his property.
4. The defendant field a replying affidavit sworn by Hassan Said Boboo on 15.01.2025 in opposition to the application. It was pleaded that some accidental damage had occurred to the plaintiff's property but it was contended that every precaution to prevent any future occurrence had been put in place.



- It was further pleaded that the defendant had offered to compensate the plaintiff for the damage and loss suffered through negotiations.
5. It was the defendant's case that it had obtained all the necessary approvals for its construction project and that it was constructing the 12<sup>th</sup> out of 17 floors of the building. It was also contended that the loss suffered by the plaintiff was purely material damage hence it was capable of quantification and settlement in monetary damages. It was thus contended that the plaintiff had not satisfied the principles for the grant of an injunction.
  6. When the application was listed for directions 13.03.2025 it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the defendant's submissions were filed on 05.06.2025 but the plaintiff's submissions were not on record by the time of preparation of the ruling.
  7. The principles for the grant of a temporary injunction were enunciated in the case of *Giella v Cassman Brown and Co. Ltd* [1973] EA 358 as follows;
    - a. First, an applicant must demonstrate a *prima facie* case with a probability of success at the trial.
    - b. Second, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be compensated by an award of damages.
    - c. Third, in case the court is in doubt on the second principle it shall decide the application on a balance of convenience.
  8. It is evident from the material on record that the plaintiff is a co-owner of parcel 401 hence entitled to enjoy quiet possession thereof. The defendant does not claim any portion thereof since it is developing its own parcel No. 381. The defendant has conceded that there was some damage occasioned to the plaintiff's property during the construction on parcel 401. It has indicated that it has taken additional precautions to prevent future damage. There is no further affidavit on record to show that additional damage has been occasioned to the plaintiff's property since the suit was filed on 22.11.2024. There is also no indication that the defendant has threatened to cause further damage to the plaintiff's property.
  9. The court takes the view that the purpose of an interim injunction is to prevent present and future threats and not to remedy past actions. The damage which occurred before the filing of the suit cannot be remedied through an injunction unless there is some evidence that the defendant has threatened to cause further damage.
  10. The material on record shows that the plaintiff's losses are in the nature of material damage to property. In fact, the plaintiff has quantified and given particulars of such losses in both his plaint and application. The court is thus of the view that whatsoever losses the plaintiff has suffered or may suffer in future can be adequately compensated in damages.
  11. The court is thus of the view that the plaintiff has failed to satisfy the first two principles for the grant of a temporary injunction. Even if the court were to consider the third principle on balance of convenience, the court would still find that the balance of convenience tilts in favour of the defendant. The material on record indicates that the defendant has built about 12 out of the 17 floors. The court is of the view that the defendant shall suffer greater hardship and losses by granting an injunction to stop the project than the plaintiff shall suffer by denying the injunction.



12. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to satisfy the principles for the grant of the temporary injunction sought. As a consequence, the plaintiff's notice of motion dated 22.11.2024 is hereby dismissed with costs in the cause.

It is so ordered.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**Y. M. ANGIMA**

**JUDGE**

In the presence of:-

Court assistant Gillian

Ms. Gadimu for the plaintiff

Mr. Michael Ngure for the defendant

