



**Braeburn Limited v Mboya & 3 others (Sued through its Officials  
being the 1st, 2nd and 3rd Respondents) (Environment and Land Case  
E532 of 2024) [2025] KEELC 6999 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6999 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E532 OF 2024  
JG KEMEL, J  
OCTOBER 9, 2025**

**BETWEEN**

**BRAEBURN LIMITED ..... APPLICANT**

**AND**

**HABAKUK MBOYA ..... 1<sup>ST</sup> RESPONDENT**

**ANGIE CHEKOKO ..... 2<sup>ND</sup> RESPONDENT**

**IVANA UNLUOVA ..... 3<sup>RD</sup> RESPONDENT**

**AMBOSELI LANE RESIDENTS ASSOCIATION ..... 4<sup>TH</sup> RESPONDENT**

**SUED THROUGH ITS OFFICIALS BEING THE 1ST, 2ND AND 3RD  
RESPONDENTS**

**RULING**

1. What is before the court is the applicant’s notice of motion dated 18/12/2024 seeking orders for a temporary injunction to restrain the respondents, their servants, agents, and persons authorised from denying the applicant, its servants, agents, and persons duly authorised access to all that property known as LR No 330/204 (“the suit land’), situated within Lavington Block 14 (Hatheru) along Amboseli Lane, pending the hearing and determination of the suit.
2. The application is based on the grounds appearing on its face and the affidavit of Mafrick Munene, the Chief Legal Officer of the applicant. Briefly, he stated that;
  - a. The applicant is the registered owner of the suit land, having acquired it in 2003, where they operate a school.



- b. The 1st to 3rd respondents are members of the 4th respondent's estate Association and are registered owners of the properties neighbouring the applicant's property along Amboseli Lane.
  - c. The applicant has used the said land over the years to access its school and for its operations, and has had to periodically repair the road with the approval of the Nairobi City County Government. A case in point was in 2024 when it repaired a section of the said road to the disappointment of the respondents who expected it to carry out more extensive repairs with contributions from its members.
  - d. That after the completion of the repairs, the applicant was denied access by the respondents on the grounds that the applicant refused to repair the whole lane, heavy traffic congestion hindered the respondents' members from accessing their properties along the lane, Amboseli land was a private road restricted to the use and access of the members of the 4th respondent.
  - e. Several meetings held between the respondents and the County representatives failed to achieve anything in terms of allowing the applicant to access the lane.
3. The respondents opposed the application through the replying affidavit sworn on 14/1/25 by Habakuk Mboya, its chairman. In a nutshell, he averred that;
- a. He has been the registered owner of House No B1 on LR NO 330/383, Tofina 2 Estate, Amboseli Lane, Lavington, since 2000.
  - b. The applicant is the registered owner of the suit land, which was acquired for residential purposes for its head teacher and staff. The property is located at the end of Amboseli Lane, a cul-de-sac that terminates at the suit land, with access via Amboseli Lane.
  - c. The suit land is adjacent to the property where Braeburn School is located, which has a student population of over 1000.
  - d. Access to the school is via four gates on Gitanga Road, catering for the student and staff population, and not through Amboseli Lane. The applicant has unlawfully and irregularly created an access gate to the school on Amboseli Lane by demolishing the fence that previously separated the suit land from the property where Braeburn School is situated. No land amalgamation has been carried out for the two properties. As it stands, the suit land is designated as residential, while the school land is classified as commercial. Therefore, the suit land cannot serve as a proper access point to the institution, which caters for a large student population.
  - e. The road was repaired in 2024 by the county, which informed him that Amboseli Lane is a residential road designed to accommodate light traffic for residents' ingress and egress; therefore, the road's width would be specified as 5 metres.
  - f. There are about 400 vehicles in the morning and evening dropping and picking up students through Amboseli Lane, hindering free access to the residents, causing environmental degradation, and leading to wear and tear of the access road.
  - g. Several meetings were held by representatives from all the parties, including the county government, to resolve the issue, but to no avail. In the end, the respondents agreed to allow the applicants' service vehicles and staff members to use Amboseli Lane, while the parents were to use Gitanga Road during drop-off and pick-up times. Unsatisfied, the applicant still demanded access to their school through the said lane.



- h. It is not true that the applicant has used the lane for the past 20 years, noting that they started accessing the school through it in 2015.
4. Mafrick Munene, in a supplementary affidavit dated 18/3/25, stated that the respondents have continued to defy the orders of the court issued on 24/12/4.
5. In a further affidavit sworn on 14/3/25, Habakuk Mboya avowed that no change of user has been sought or obtained for the suit land. He also stated that the applicants' persistent use of the lane is causing irreparable harm to the respondents.
6. The interested party, through the affidavit of Eng. Bob Ariemba, sworn on 21/3/25, stated that Amboseli Lane is a 9-metre-wide cul-de-sac, classified as a local access road serving plots numbered 1-16 on Block 14 Hatheru, starting from Amboseli Road and ending at plots 12, 13, 14, 15, 16, and 17 along Amboseli Lane.

### **The written submissions**

7. The applicant stated that after acquiring the suit land, the school was accessible from both Gitanga and Amboseli Lane. They also stated that vehicles access the school via Amboseli Lane mainly during peak hours, leading to a lower volume of traffic since most of the school's traffic is directed towards Gitanga Road.
8. It was submitted that the respondent's denial of access through Amboseli lane was discriminatory since other businesses operating along Amboseli lane, such as Gracefield schools, Brinks Security, 207 lounge bar and Christian Churches Educational Association, are not subjected to the same treatment.
9. Regarding irreparable harm, the applicant submitted that the delay in reaching the school due to congestion on Gitanga Road is preventing students from accessing the premises. Furthermore, the traffic congestion is disrupting educational programmes at the school as well as posing safety concerns when students are dropped off campus and are required to cross the road on foot.
10. Further, the applicant admitted that currently access to the suit land is restricted through Amboseli Lane only to vehicles bearing a Braeburns sticker, in an effort to reduce traffic on the lane.
11. On balance of convenience, the court was urged that the respondents had not demonstrated any inconvenience caused to them.
12. The respondents submitted that the applicant has not demonstrated any right of access to the Amboseli lane to justify the issuance of the orders sought. It was argued that the applicant has failed to disclose that the school is not situated on the land in question. The school already has four designated access gates along Gitanga Road serving as its main entry points, and there is no legislation supporting the claim that Amboseli Lane is an alternative route to ease traffic congestion. The applicant has therefore created an illegal access road to the school via Amboseli Lane by unlawfully demolishing the fence that previously separated the suit land from the land on which the school stands, in order to facilitate vehicle movement through Amboseli Lane.
13. That the applicant has not demonstrated any irreparable harm it will suffer if traffic is restricted to its four designated gates. Lastly, the balance of convenience favours denying the orders sought.
14. The interested party, in support of the respondent's case, submitted that the applicants has not demonstrated any prima facie case with a likelihood of success. It added that the applicant has four designated access gates along Gitanga Road and has not shown how all these gates are congested to justify the need to use Amboseli Lane. In any event, the applicant had proposed restricting traffic



through Gitanga Road in its proposals. That Amboseli lane passes through the neighbourhood where all the respondents reside and terminates at several parcels of land, one of which is the appellants' premises. The road is classified as a local access road that can be accessed by both the applicants' and respondents' premises; however, it falls within a residential neighbourhood surrounded by homes and is a residential stand access road under the [Kenya Roads Act](#).

### **Analysis and determination**

15. Having read and considered the application, the single issue for determination is whether the applicant is entitled to the grant of orders of temporary injunction.
16. It is not in dispute that the applicant owns the suit land. It is also not in dispute that the suit land, like the respondents' properties, is situated along Amboseli lane, which is a 9-metre cul-de-sac terminating at the applicant's suit land, among others.
17. It has not been disputed that the applicant owns another parcel of land adjacent to the respondents in which it runs a commercial school. The applicant has not controverted the respondents claim that it demolished its school fence so as to create an access road into Amboseli lane without any licence from the relevant authorities.
18. The issue that the trial court will need to decide is whether, in the circumstances, the applicant has a right to access the school via Amboseli Lane. I will avoid saying much to prevent embarrassing the court that will ultimately decide the case. It is trite that at this stage, the court is not being asked to determine the merits of the case.
19. The principles that guide the Court in determining an application of such nature are found in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows: -
  - a. First the Applicant must show a prima facie case with a probability of success.
  - b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
  - c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
20. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010 is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;
  - “ 1. 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 Respondents 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 Respondents 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”.

21. Has the Applicant established a prima facie case with a probability of success? A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR 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.”

22. The applicant has admitted that four designated gates along Gitanga Road provide for the entry and exit to the school. It is to be noted that the respondents' grievance is not against the access by the head teacher and/or staff who reside on the suit land in the neighbourhood of the respondents' residential properties. Their opposition is to using the lane for student drop-offs and pick-ups on a road designed for low traffic, with an estimated 40 vehicles versus 400 vehicles every morning and evening. It is their case that these activities are restricting their access.

23. The affidavit of the interested party clearly states that the lane is designated for low traffic and for use by residents of the properties along the road, including the applicant. The interested party agreed with the respondents that the applicant has multiple alternatives, such as the four gates along Gitanga Road, and therefore they should not use the Amboseli lane for school ingress and egress. It is to be noted that, compared to the respondents, the applicant has alternative routes, whereas the respondents have only one access.

24. In my view, the totality of the evidence adduced is that the applicant has not established a prima facie case with a probability of success.

25. On irreparable harm, other than the inconvenience of long drop-offs and pickups of students, the applicant has not shown any irreparable harm that cannot be compensated with costs.

26. Since the respondents and the applicant (with respect to the suit land) are entitled to access Amboseli Lane, the balance of convenience favours allowing both to use and access the lane. The applicant will, however, limit or restrict its access to Amboseli Lane to its staff and their service vehicles, provided they submit a clear plan in collaboration with the respondents to manage traffic flow on Amboseli Lane. I order that the drop-offs and drop-ins be restricted to four gates along Gitanga Road pending the hearing and determination of the suit.

27. In the end, the status quo is hereby permitted in terms of paragraph No. 26 above.

28. Costs shall abide the conclusion of the suit.

29. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered Online in the Presence of;

1. Ms Mwaniki HB for Mr Mwangi for the Applicant



2. Mr Issa Mansur for the Respondents
3. Mr Kisigwa for the Interested Parties
4. C/A – Ms. Yvette Njoroge

