



**Kinuthia (Suing on His Behalf and on Behalf of Members of Njoro East Mau CBO) v State Law Office & 3 others (Environment and Land Case E033 of 2025) [2025] KEELC 6863 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6863 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E033 OF 2025  
A OMBWAYO, J  
OCTOBER 9, 2025**

**BETWEEN**

**JOHN NJOROGI KINUTHIA (SUING ON HIS BEHALF AND ON BEHALF OF MEMBERS OF NJORO EAST MAU CBO) ..... PLAINTIFF**

**AND**

**STATE LAW OFFICE ..... 1<sup>ST</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION & 2 OTHERS & 2**

**OTHERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**BRIEF FACTS**

1. The Plaintiff/Applicant filed the instant application dated 21st March, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That an Order for temporary injunction is hereby issued against the Defendant/Respondents herein either by themselves, their agents, employees and/or servants from proceeding with the resettlement of Internally Displaced Persons on the parcel of Land known as Kisima Dairy Farm  
L.R NO. 9216 pending hearing and determination of the suit.
  4. That the costs of this Application be provided for.



- 2 The Application was based on grounds set out and supported by the Affidavit of John Njoroge Kinuthia a member of the Plaintiff sworn on 21st March, 2025. He stated that sometimes in 2012 the government through the Settlement Fund Trustee purchased the parcel of land known as Kisima Farm L.r No. 9216 for the purpose of resettling IDPs who were at Pipeline area and others. He further stated that in 2014 some persons filed a case being Nakuru ELC NO 342 OF 2014 that sought consideration in the resettlement plans and to benefit from the 30% of the land despite them not being IDPs. He stated that the land was to resettle the IDPs only thus the Plaintiffs in Nakuru ELC NO 342 OF 2014 were not entitled to benefit. He went on to state that they had numerous meetings with the local administration and a list of the beneficiaries was to be prepared and submitted for consideration. He stated that from the meeting held on 13th March, 2023, it was resolved that 100 members of the Plaintiff was to benefit from the resettlement plan. He stated that they later learnt that the list was prepared and submitted to the 1st Defendant were they have been left out from the list contrary to the prior agreement in the meeting. He stated that they learnt that the parties in Nakuru ELC NO 342 OF 2014 intended to record a consent that they be considered in the resettlement plan and in exchange, they withdraw the suit. He stated that the Respondents were at the tail end of the resettlement process and unless the orders sought are granted, they will be left out and suffer irreparable loss and damage.

### **Response**

3. The 1st, 2nd, 4th, 5th and 6th Respondents filed their grounds of opposition on the following grounds:
1. That the application falls short of meeting the three essential requirements for the grant of a temporary injunction as established in the case of *Giella vs. Cassman Brown & Co. Ltdd* (1973] EA 358.  
  
These requirements are the existence of a prima facie case, the likelihood of suffering irreparable harm, and the balance of convenience. The pleadings do not disclose any legal or equitable right that would warrant protection by way of an injunction.
  2. That the Applicant has not stated nor demonstrated any form of irreparable harm that would justify the grant of a temporary injunction and neither have they established whether they are part of the verified and documented list of IDP's.
  3. That the filing of this Application and the entire suit is an afterthought and meant to delay Nakuru ELC No. 342 of 2014 which clearly was filed over 10 years ago.
  4. That the Applicants cannot purport to claim that they just discovered they are IDP's displaced during the 2007-2008 Post-Election violence and thus seeking to be resettled over 17 years later on the suit property which was budgeted for and purchased for resettlement of four hundred and thirty- three (433) IDP's in respect of whom the Government acquired the land.
  5. That the Government has not entered into any consent with any party and neither has it included any other IDP's in the list aside from the four hundred and thirty-three (433) IDP's in respect of whom the Government acquired the land as approved.
  6. That there is no justification as to why the Applicants would sleep on their rights (if any) and purport to seek the Courts intervention over 17 years later yet they knew very well that the suit property which was purchased in 2012 was for resettlement of a specific number of IDP's.
  7. That it is in public domain that some IDP's were being compensated either monetarily or in kind through allocation of land in various areas such as Haji, Donga Farm, Rose Farm others



so the Applicants cannot insist on being considered in the resettlement plans at Kisima Farm L.R 9216 (suit property).

8. That the balance of convenience tilts in favor of the Respondents herein, who stand to suffer greater prejudice if the orders sought are granted, including disruption of their statutory duties.
9. That the orders sought in the application are vague, ambiguous, and overly broad. The Applicant has not specified the precise actions or conduct they seek to restrain. Injunctions must be specific and clear.
10. That the Applicant seeks to use interim injunctive relief to fetter statutory and lawful acts of the 1st, 2nd, 4th and 5th Respondents without any legal basis. Injunctions cannot be used to stop lawful execution of duties unless a violation of rights is clearly shown.

### **Submissions**

4. Parties did not file submissions. Analysis and Determination
5. This court has considered the application and the grounds of opposition and is of the view that the main issue for determination is whether the Plaintiff/Applicant is entitled to an order of temporary injunction.
6. The principles upon which the court should grant an injunction were set out in the case of *Giella V Cassman Brown & Company Ltd* 1973 EA 358 as follows:

"First, the applicant must show that he has 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 damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience."

7. The member for the Plaintiff/Applicant organization claims that they stood to be left out from being resettled on the suit parcel by the Plaintiffs in Nakuru ELC NO 342 OF 2014. The Respondents vide their grounds of opposition contend that the Applicant did not meet the threshold for grant of a temporary injunction.
8. In the case of *Mrao V First American Bank of Kenya Limited* (2003) eKLR Bosire JA (as he then was) stated as follows:

"A prima facie case is one 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"

9. The existence of a prima facie case in favor of the plaintiff is necessary before a temporary injunction can be granted. It is this court's view that a prima facie case has been explained to mean that a serious question is to be tried in the suit and in the event of success, if the injunction be not granted the Applicant would suffer irreparable injury. It is my view that the burden lies on the Applicant to satisfy the court through evidence that he has a prima facie case in his favor of him.
10. This court finds that the Applicant has not established that they are the proprietors of the suit property. It is arguable that the Applicants have unregistered rights in the property since they are awaiting a government process for them to be settled. To fortify this point, it is not in dispute that there is currently no title in the Applicant's name to prove ownership.



11. On the other hand, irreparable harm means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant contends that if the Respondents are not estopped from continuing with the resettlement process, they stood to be left out completely thus suffer loss and damage. It is not in dispute that the Applicant has based this apprehension on speculation yet the process of resettlement is yet to be finalized. I therefore find that this limb has not been fulfilled by the Applicant.
12. On the balance of convenience, it is for the Applicant to show that the inconvenience caused to them would be greater than that which may be caused to the Respondents. Further, should the inconvenience be equal, the Applicant stood to suffer. In the instant case, the Respondents' mandate is solely to ensure a government process is done for the benefit of the Applicant. I find that the Respondents are not interested in ownership of the suit parcel and thus this limb fails in its entirety. The upshot of the foregoing is that the Applicant has failed to meet the requirements for grant of a temporary injunction. The application dated 21st March, 2025 lacks merit and is therefore dismissed with costs. It is so ordered.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. Nakuru ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

**The Judiciary of Kenya**

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