



**Mwangi v Skyview Gardens Limited (Environment and Land Case
E295 of 2025) [2025] KEELC 6916 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6916 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E295 OF 2025**

**CG MBOGO, J
OCTOBER 13, 2025**

BETWEEN

NANCY NYAWIRA MWANGI PLAINTIFF

AND

SKYVIEW GARDENS LIMITED DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 19th June, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under Sections 1A, 1B & 3A of the Civil Procedure Act, Order 40 Rules 1 & 2, Order 51 Rule 1 of the Civil Procedure Rules, Articles 40 & 50 of the Constitution of Kenya and Section 76 of the Land Act seeking the following orders: -
 1. Spent.
 2. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue a temporary injunction restraining the defendant/respondent, whether by itself, its agents, servants, employees or any other person acting under its authority, from evicting, harassing, intimidating, interfering with, or in any other manner whatsoever dispossessing the plaintiff/applicant from Apartment A22 situated at Skyview Gardens, Nairobi.
 3. That pending the hearing and determination of this suit, this honourable court be pleased to issue a temporary injunction in the same terms as prayer (2) above.
 4. That this honourable court be pleased to issue an order preserving the status quo as of the date of filing this application, namely: that the plaintiff/ applicant shall remain in peaceful possession and occupation of Apartment A22, and that the defendant/respondent shall not take any further steps to evict or interfere with her possession or quiet enjoyment thereof, pending the hearing and determination of this suit.



5. That this honourable court be pleased to issue a mandatory injunction compelling the defendant/respondent to furnish the plaintiff/applicant with a full and reconciled statement of account clearly detailing all payments received, any interest calculations or arrears claimed and the basis thereof.
6. That the costs of this application be awarded to the plaintiff/applicant.
2. The application is premised on the grounds inter alia that while the matter was pending in court, the defendant/respondent has threatened to issue the plaintiff/applicant with an eviction notice.
3. The application is supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that she entered into an agreement dated 15th July, 2020 with the defendant/respondent for the sale and purchase of apartment A22 at an agreed sum of Kshs. 21,000,000/-. That following the said execution, she has performed her obligations by making payment which now stands at Kshs. 11,574,000 which is more than 55% of the total purchase price. She also took occupation of the same, and has been living on the suit property with her children.
4. The plaintiff/applicant deposed that she has been issued with an eviction notice without the leave of the court as contemplated in Clause 11 of the agreement, and that the sudden acceleration of eviction efforts is an attempt to circumvent judicial scrutiny and render the suit otiose. She deposed that the defendant/ respondent has refused to issue a clear reconciled statement, yet she is not opposed to meeting her contractual obligations.
5. The plaintiff/applicant deposed that she is apprehensive that she will be evicted despite having invested on the suit property, and prays for an order of status quo to preserve her continued occupation of the suit property.
6. The application was opposed by the defendant/respondent through the replying affidavit of Robert Nicholas Darby sworn on 23rd June, 2025. The defendant/ respondent deposed that it granted the plaintiff/applicant a conditional licence to take possession of the suit property pending completion of the purchase price. However, the plaintiff/applicant began defaulting on the same sometime in May, 2021, and that parties held meetings to deliberate on the same. The defendant/respondent deposed that the arrears continued to accumulate and despite it bending backwards several times to accommodate the plaintiff/applicant, she has failed in her contractual obligations and from September 2024, she stopped making the said payments.
7. The defendant/respondent deposed that when the arrears accumulated to KShs. 4,632,183/- they invoked Clause 12 of the sale agreement which the plaintiff/ applicant acknowledged. That she also sought for a statement of accounts which was given to her. Further, it was deposed that on 9th April, 2025, the plaintiff/applicant had not complied and the sale agreement was automatically rescinded. That since the plaintiff/applicant was in occupation, they had to issue a notice to vacate dated 23rd May, 2025. In response, the plaintiff/applicant sought to vacate on 30th June, 2025 which request was granted. It was deposed that she has deliberately withheld the fact that a 21- day notice was issued on 19th March, 2025 and failed to comply with the same.
8. The defendant/respondent deposed that the plaintiff/applicant will not be rendered homeless owing to her willingness to vacate on her own terms, and further any loss to be suffered can be remedied by an award of damages.
9. The plaintiff/applicant filed her supplementary affidavit sworn on 27th June, 2025. The plaintiff/ applicant reiterated the contents of her supporting affidavit and further deposed that despite the issuance of the completion notice, the defendant/ respondent continued to accept substantial



- payments, which payments were made against the backdrop of formal negotiations. She deposed that a refusal by this court to issue an order preserving the status quo, will amount to premature and prejudicial determination of the issues in controversy.
10. The plaintiff/applicant deposed that the orders sought are not final or disruptive but conservative in nature to prevent alteration of the current position. Further, that in demonstration of good faith, she has deposited a sum of Kshs.600,000 on 24th June, 2025 and commits to make a further payment of Kshs.500,000/-.
 11. The application was canvassed by way of written submissions. The plaintiff/applicant filed her written submissions dated 4th July, 2025 where she raised two issues for determination as follows: -
 - a. Whether the status quo should be maintained.
 - b. Whether the plaintiff/applicant has satisfied the legal threshold for the grant of temporary injunctive reliefs to forestall the threatened eviction.
 12. On the first issue, the plaintiff/applicant submitted that the existing state of things is clear. She reiterated that she is not a trespasser but a purchaser who is in possession of the suit property and who has paid over Kshs.12,000,000/- to the defendant/respondent who has continued to accept payments even after issuing a notice of rescission. In seeking for an order of status quo, the plaintiff/applicant submitted that the prayer is rooted in equity itself, owing to the threatened action by the defendant/respondent. To buttress on this issue, she relied on the cases of TSS Spinning & Weaving Company Limited v NIC Bank Limited & another [2020] eKLR, Fatuma Abdi Jillo v Kuro Lengessen & another [2021] eKLR and Muga v Kunga [1988] KLR 748.
 13. On the second issue, the plaintiff/applicant submitted that she has demonstrated through receipts and payments that she has paid over KShs. 12,000,000/- towards the purchase price of the suit property. Further, that she has been in peaceful possession and occupation of the suit property, a fact which has not been denied by the defendant/respondent. She further submitted that the main issues for determination is whether there exists a valid agreement between the parties and whether they are bound by the terms. Further, that the facts of this case revolve around the maxims of equity- he who seeks equity must do equity. She submitted that the defendant/respondent cannot approbate and reprobate by benefitting from the contract and denying its existence only when it suits a commercial objective. The plaintiff/applicant relied on the cases of Mbuthia v Jimba Credit Corporation Ltd [1988] KLR and Edwin Kamau Muniu v Barclays Bank of Kenya Ltd Nbi HCCC No. 1118 of 2002.
 14. The plaintiff/applicant further submitted that if the relief is not granted, they risk eviction and disintegration of stability for herself and her children which cannot be compensated by monetary terms. She submitted that the balance of convenience lies in her favour as she is the party likely to suffer greater hardship. Reliance was placed in the case of Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another (Civil Appeal No. 3 of 1987).
 15. The defendant/respondent filed its written submissions dated 7th July, 2025 where it raised two issues for determination as follows: -
 - a. Whether the injunctive orders sought ought to issue; and
 - b. Whether the orders of status quo ought to issue.
 16. On the first issue, and while relying on the cases of Housing Company of East Africa Limited v Board of Trustees National Social Security & Another (Civil Appeal No. 267 of 2016) and Onyango & Another v Njiriri [2022] KEELC 3701 (KLR), the defendant/respondent submitted that the plaintiff/



applicant has not come close to establishing a prima facie case that the sale agreement was not lawfully rescinded and that she had any right to the suit property that is deserving of a remedy of injunctive orders.

17. On the second issue, the defendant/respondent submitted that the law requires that status quo be issued only after all the relevant factors and circumstances are considered. That where the factors appear to be evenly balanced, such order will issue even without a formal application being made in that regard, and the same cannot issue where it will result in prejudice and hardship to another party. Reliance was placed in the case of Thugi River Estate Limited & Another v National Bank of Kenya Limited & 3 Others [2015] KEHC 5204 (KLR).
18. I have considered the application, the replies thereof and the written submissions filed by both parties. In my view, the issue for determination is whether the application has met the threshold for grant of the orders of temporary injunction.
19. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of Giella versus Cassman Brown (1973) EA 358. This position has been reiterated in numerous decisions from our courts and more particularly in the case of Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that:-

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”
20. It is not in dispute that the parties in this suit entered into a sale agreement dated 15th July, 2020. Within this agreement were terms which bound the parties. The plaintiff/applicant argued that she has been issued with a notice to vacate without the leave of the court. She argued that she has paid more than 55 per cent of the purchase price and having lived on the suit property with her family, she will suffer loss that cannot be compensated by an award of damages. On the other hand, the defendant respondent challenged the averments by providing demand notices, email exchanges, notice to vacate, and the statement of accounts. From the evidence supplied, and upon careful analysis of the supplementary affidavit, the plaintiff/applicant did not deny that she was in arrears, she did not challenge the validity of the notice of completion and the demand notices, she did not refute the email communications. This would easily make one to conclude that the defendant/respondent is justified in its actions against the plaintiff/applicant. However, and in a bid to sanitize her actions, the plaintiff/applicant during the course of this proceedings, she made further payments and an alleged pledge to pay a further sum. This pledge has not been acknowledged by the defendant/respondent. At this stage, let me point out that the court cannot make a definitive finding since most of the issues are subject to trial.
21. It is trite law that a person seeking an injunctive relief must prove or establish a prima facie case with a probability of success during the trial. It is also important to note that the court will not normally grant an interlocutory injunction unless it can be shown that the plaintiff/applicant is likely to suffer an injury which cannot adequately be compensated in damages. Lastly if the court is in doubt as to the existence, presence or otherwise of a prima facie case, it is bound to decide the case on a balance of convenience.



22. As it has been overly stated, an injunction is an equitable remedy and the court will decline to grant the same if it is shown that the plaintiff's/applicant's conduct in the suit fails to meet the approval and expectation of court of equity. In this case, while the plaintiff/applicant appeared to have dropped some of prayers i.e. request for a statement of accounts, she sought to refuge under equity, and strongly urged the court to consider an order of status quo. Having stated the above, the question is, has the plaintiff/applicant demonstrated a prima facie case? I think not. In my view, having defaulted on the terms of the agreement, and having been issued with demand notices, the plaintiff/applicant has rushed to court seeking intervention to prevent the said eviction. With all factors considered, the plaintiff/applicant has not shown any prima facie case that can be considered by the court. In fact, the defendant/respondent has admitted that it is capable of settling damages, if any.
23. It is clear to my mind that the claim by the plaintiff/applicant can be quantified as the amounts have been provided in the statements. It is my view, that a prima facie case has not been established. Having found that, I do not need to determine the rest of the conditions.
24. From the above, the notice of motion dated 19th June, 2025 lacks merit, and it is hereby dismissed with costs to the defendant/ respondent.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 13TH DAY OF OCTOBER, 2025.

HON. MBOGO C.G.

JUDGE

13/10/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Lanoi for the Plaintiff/Applicant

Mr. Omulama for the Defendant/Respondent

