



**Mtidai & another v County Government of Narok & 3 others (Environment and Land Petition E001 of 2025) [2025] KEELC 6792 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6792 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND PETITION E001 OF 2025  
LN GACHERU, J  
OCTOBER 9, 2025**

**BETWEEN**

**MARTIN KONCHELLA MTIDAI ..... 1<sup>ST</sup> PETITIONER**

**LESALON OLE ASHIRE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NAROK ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY DIRECTOR OF PHYSICAL PLANNING AND LAND USE  
NAROK ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER (RESPONSIBLE FOR  
PHYSICAL AND LAND USE PLANNING) ..... 3<sup>RD</sup> RESPONDENT**

**MEMBER OF COUNTY ASSEMBLY (MCA) ILDAMAT  
WARD ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The matter for determination is the Notice of Motion Application dated 9<sup>th</sup> July 2025, brought by the Petitioners/ Applicants herein, Under Article 40 of the Constitution, Rules 13 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and all other enabling provisions of law), wherein the Applicants have sought for these orders;
  - a. That pending inter parties hearing and determination of this petition this court be pleased to issue an order of temporary injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent their agents, servants and/or employees or whomsoever acts on their instructions from allocating afresh selling, beaconing, generating a new physical plan, or in any way interfering with all those parcels of land known as Oletukat Location Plot No.72 and Oletukat Location Plot No.69.



- b. That pending hearing and determination of this Petition, this court be pleased to issue an order of temporary injunction restraining 2<sup>nd</sup> Respondent from registering any further dealing in respect of plot No. Oletukat Location Plot No.72 And Oletukat Location Plot No.69 or in the alternative a temporary order do issue compelling the 2<sup>nd</sup> Respondent to register a caveat against all parcels of land known as Oletukat Location Plot No.72 And Oletukat Location Plot No.69.
  - c. That this court be pleased to issue such further order(s) as may deem just.
  - d. That the costs of this application be awarded to the Petitioner.
2. The application is supported by the Affidavit of Martin Konchella Mtidai, and the grounds raised in the main Petition. The Deponent averred that he has been granted authority by his Co-Petitioner/ Applicant to swear this affidavit on his behalf.
  3. The 1<sup>st</sup> Applicant alleged that he is the beneficial owner of all that parcel of land known as Oletukat Location Plot No. 72(herein known as the suit property).
  4. Further, that his right to acquire the suit property arose after the 2<sup>nd</sup> Respondent allocated the said property to him in the year 2022. He also averred that the 2<sup>nd</sup> Petitioner is the beneficial owner of all that plot known as Oletukat Location Plot no 69(also known as the suit property), which right to acquire the said suit property arose in 2022, after the 2<sup>nd</sup> Respondent allocated the said property to him.
  5. The applicant further averred that the Petitioners/Applicants and twenty other allottees were shown their suit plots on 25<sup>th</sup> January 2022, as beneficiaries of Enaramatishoreki Trading Centre alongside twenty others beneficiaries, by the 2<sup>nd</sup> Respondent.
  6. Further, he claimed that before they were shown the plots, they each paid Ksh 10,000/= as allocation fees, and along with the other beneficiaries, they paid a total of Ksh.200,000/= on 14<sup>th</sup> February 2022, which money was deposited to Narok County Revenue Collection Account, as is evident from MKM2.
  7. The Applicant stated that upon payment by all the twenty(20) deserving beneficiaries of the plots allocated in the Enaramatishoreki trading centre, the 1<sup>st</sup> Respondent generated a plot allocation list of the rightful allottees marked MKM3. Thereafter, the allottees were issued with receipts by the 2<sup>nd</sup> Respondent after confirming payment of Kshs.200,000/=, who among the were 1<sup>st</sup> and 2<sup>nd</sup> Petitioners and were allocated plots No. 72 and 69 lawfully, with their receipts being (“MKM4(a) and MKM4(b). That despite payment 1<sup>st</sup> respondent is yet to fully issue plots allocation receipts to all the twenty (20) deserving beneficiaries.
  8. That 2<sup>nd</sup> and 3<sup>rd</sup> Respondents subsequently proceeded to generate a physical planning map “MKM 5” of the Enaramatishoreki trading centre showing the plot allocation to all the beneficiaries who included the Petitioners. Further, on 2<sup>nd</sup> and 3<sup>rd</sup> July 2025 the 4<sup>th</sup> Respondent Mr. Elijah Kutingala instructed the 2<sup>nd</sup> Respondent to proceed on the ground and do a fresh physical plan of the Enaramatishoreki trading centre. That in ensuing visit, the 4<sup>th</sup> Respondent ordered goons to uproot beacons placed on the ground by the surveyors during the plot allocation exercise in the year 2022.
  9. It is the Applicants allegation that the 2<sup>nd</sup> Respondent under the instruction of the 4<sup>th</sup> Respondent intend to do a fresh allocation so that their plots can be allocated to the individuals who voted and supported the 4<sup>th</sup> Respondent in the 2022 General elections. The applicant claimed that 4<sup>th</sup> Respondent is usurping powers not donated to him by *the Constitution* or any relevant Kenyan law by attempting to allocate land to individuals he deems are his political supporters.



10. That the 4<sup>th</sup> Respondent has already instructed the new prospective beneficiaries to pay a plot allocation fee of Kshs.30,000=, each which exercise is still on going to facilitate the fresh plot allocation.
11. That the fresh plot allocation exercise is currently being conducted by the 4<sup>th</sup> Respondent as from the 10<sup>th</sup> July 2025, and has already instructed the new prospective beneficiaries to pay a plot allocation fee of Kshs. 30,000/= . The aforesaid exercise may bring a huge confrontation since they could not accept new allottees to take over their plots.
12. They averred that the Applicants and other beneficiaries face imminent danger of eviction noting that the 4<sup>th</sup> Respondent together with 2<sup>nd</sup> Respondent visited the plot on 2<sup>nd</sup> and 3<sup>rd</sup> July 2025, and uprooted beacons that had been earlier on placed by the surveyor around 2022 and commenced the process of placing new beacons to the new beneficiaries.
13. They alleged that there is likelihood of a bloody confrontation ensuing if the current state of affairs is not properly adjudicated upon and that the illegal allotment of the suit properties to new allottees by 2<sup>nd</sup> Respondent will amount to arbitrary deprivation of property and the petitioners shall be subjected to continued infringement of their constitutional right to protection of property.
14. They claimed that as a consequence of the foregoing, they are at risk of suffering irreparable loss and damage and that the act of commission and omission by the Respondents amount to infringement of their right and not to arbitrarily deprived of property.
15. The petitioner further stated that it would be only fair, just and in the interest of speedy dispensation of justice that this application be allowed wholly and reliefs sought be granted.
16. This application was filed under certificate of urgency and the Respondents were served with the Application as is evident from the affidavit of service of Daniel K. Kihara sworn on 15<sup>th</sup> July 2025. However, they failed to enter appearance and or file a response to the instant application.
17. The application proceeded for hearing *ex parte* whereas the Petitioners/Applicants filed brief written submissions in support of their application. The applicants alleged that they are the beneficial owners of Oletukat Location Plots No. 72 and 69, which plots were allocated to them by the 2<sup>nd</sup> Respondent herein.
18. In their submissions the Petitioners/ Applicant identified two issues being
  - i. Whether the petitioners are entitled to an award of the orders of temporary injunction.
  - ii. Who should bear the costs of this application.
19. On whether the applicants are entitled to the orders sought, they relied on the case of *Giella vs Cassman Brown & Co. Ltd*, [1973]E.A 385 where the court held;

“The conditions for the grant of an interlocutory injunction are 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 should 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.”



20. On Prima-facie case, the applicants relied on the case of Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003]KLR 123, where the court held that:

“..... a case in 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... a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

21. It was their submissions that they have demonstrated the ownership of the suit properties by production of receipts marked DMKM 4(a) and MKM 4(b) in their Supporting Affidavit which receipts confirmed that they were allocated the suit properties, that is Plots No. Oletukat Location No.72 and 69 by the 2<sup>nd</sup> Respondent.

22. The Applicants further submitted that prior to allocation of the two plots, they paid Ksh.10,000/= each and the said payments were confirmed vide annexure MKM2. It was their further submissions that they had availed a list of the rightful allottees of the allocated Plots in Enaramatishoreki trading centre, which list was marked as MK3. Therefore, the applicants have established that they have ownership rights to the suit properties, and hence have established a Prima facie case with probabilities of success at the trial.

23. On whether the applicants will suffer irreparable loss/harm if the orders sought are not granted, apart from relying on the case of Giella vs Cassman Brown(Supra) they also relied on the case of American Cyanamid Co. vs Ethicon Ltd [1975]AC 396, where the court held;

“The court must weigh the injustice to the applicant if the injunction is refused, against the injustice to the respondent if it is granted.”

24. They also relied on the case of Kenlab Cons. Ltd vs New Gatitu Service Station Ltd[1990]KLR, where the court held;

“To justify a temporary injunction, there must be real danger that the applicant will suffer injury, and the court must consider whether the respondent will suffer more by the injunction than the applicant would without it.”

25. The applicants submitted that they paid for the allocation of the alleged plots and were shown the two plots. They therefore had legitimate expectations that their right to property would not be interfered with by any irregular exercise that seeks to allocate the said plots to other beneficiaries.

26. However, the 4<sup>th</sup> Respondent has threatened to allocate the said plots to new beneficiaries, who are his supporters and therefore if the said threat is actualized, the applicants will suffer irreparable loss which cannot be compensated by an award of damages. See the case of Harvells India Limited & another vs Songhong Freight Services Limited & another; Jie Xin Trading Limited (interested party)[2020]eklr where court held that: -

“I have no doubt that if the circuit breakers are released into the market, they are likely to cause the Plaintiffs’ substantial and irreparable harm to its goodwill and reputation which may not be compensated by an award of damages. Since protection of trademark is a statutory,



there is no need to prove actual damages as it is presumed and is indeed a commercial reality that infringement diminishes the proprietors' goodwill and reputation built over time.”

27. On the balance of convenience, the applicants submitted that it tilts in their favour and they relied on the case of *Kenlab Cons. Ltd vs New Gatitu Service Station (Supra)* where the court held;

The balance of convenience lies in favour of maintaining the status quo unless there is strong reason to disturb it.”

28. The applicants submitted they are in ownership of the suit properties and their continued occupation represents the status quo and interfering with the status quo would deprive the petitioners/applicant of their property rights and pave way for the Respondents to allocate the suit properties to new individuals, to the detriments of the Petitioners herein. They urged the court to preserve the status quo by restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from making any amendments to the list of beneficiaries of Enaramatishoreki Trading Centre. Therefore, it was their submissions that the balance of convenience tilts in their favour.

29. The court has considered the instant application and the Petition in general wherein the Petitioners/Applicants have alleged that they are the beneficial owners of all that parcel of land known as Oletukat Location Plots No. 69 and 72, situated at Enaramatishoreki Trading Centre, which plots were allocated to them by the 2<sup>nd</sup> Respondent after payment of the allocation fees.

30. However, on 3<sup>rd</sup> July 2025, the 4<sup>th</sup> Respondent instructed the 2<sup>nd</sup> Respondent to carry fresh physical plan of the said Enaramatishoreki Trading Centre and allocate the plots to new individuals.

The applicants have alleged that exercise is against their constitutional right to own property, and they urged the court to declare them the lawful allottees of the suit process and also quash the decision of the 2<sup>nd</sup> Respondent of cancelling the plots allocated to the applicants herein.

31. The Respondents did not respond to the application and did not controvert the applicant's allegations. Therefore, the Applicants annexures and allegations are more probable, and this court has no reason to doubt them

32. The applicants have annexed various receipts signifying that they paid for allocation of the said plots to themselves. They have also attached a list of allottees of plots at Enaramatishoreki Trading Centre and the applicants are owners of plots No.69 and 72 respectively.

There is no evidence called by the Respondents to dispute the applicants' allegations

33. The principles for grant of injunctive Orders are well settled in various judicial decisions. See *Giella vs Cassman Brown(supra)*.

The applicants herein needed to prove that they have a prima-facie case with probabilities of success, which they have done by attaching various documents to show that they were indeed allotted Plots No.69 and 72 at Enaramatishoreki Trading Centre and they paid for it. The applicants have therefore demonstrated that there is a serious question that needs to be tried and their claim is not frivolous or vexatious. The applicants have met the threshold for what amount to a prima-facie case with probability of success, as there are substantial issues to be adjudicated at the main trial.

34. On the irreparable harm or loss which cannot be adequately compensated by an award of damages, the applicants have demonstrated that they had legitimate expectation to own the said plots, and if the plots are allocated to new individuals, then their said legitimate expectations will be thwarted, thus causing irreparable loss which cannot be compensated by an award of damages.



35. On the balance of convenience, the court finds that the applicants have alleged that they are in possession of the suit properties, and that possession and occupation should be the status quo that should be maintained. Therefore, the status quo that should be preserved herein is to allow the applicants to continue being in occupation and possession of the suit plots until the Petition is heard and determined. Consequently, the balance of convenience tilts in favour of the applicants herein.
36. For the above reasons the court finds that the applicants have established the principles for grant of injunctive orders as set out in the case of Giella vs Cessman Brown and Co. Ltd (supra).
37. In conclusion, the court allows the applicants Notice of Motion application dated 9<sup>th</sup> July 2025 in terms of prayers No.3 and 4 with costs being in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of

Elijah Meyoki – Court assistant

Mr. Kariuki for the Petitioners/Applicants

N/A for 1<sup>st</sup> Respondent

N/A for 2<sup>nd</sup> Respondent

N/A for 3<sup>rd</sup> Respondent

N/A for 4<sup>th</sup> Respondent

L. Gacheru

Judge

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