



Serene Hospital and Rehabilitation Centre v Mwangi & another (Environment and Land Case E271 of 2025) [2025] KEMC 195 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEMC 195 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
ENVIRONMENT AND LAND CASE E271 OF 2025**

P ACHIENG, CM

JUNE 12, 2025

BETWEEN

SERENE HOSPITAL AND REHABILITATION CENTRE PLAINTIFF

AND

JAMES NG'ANG'A MWANGI 1ST RESPONDENT

WRIGHT AUCTIONEERS 2ND RESPONDENT

RULING

1. The Plaintiff/Applicant filed the application dated 24th March 2025 seeking the following orders:-
 1. Spent
 2. Spent
 3. That the Honorable court be pleased to grant a temporary injunction restraining the Respondents whether by themselves, their agents and/or servants from proceeding with the intended further attachment, auction, sale, transfer, alienation or otherwise interfering, attaching or dealing with the tools of trade and properties belonging to the Plaintiff/Applicant including the properties listed in the Notification of sale dated 21st March, 2025 pending the hearing and determination of this Suit.
 4. That the Honorable Court be pleased to direct the 2nd Respondent to unconditionally release all the items listed in the Notification of Sale dated 21st March, 2025 to the Plaintiff/Applicant herein.
 5. That costs of this application be provided for.
 6. That honorable Court be pleased to make such further orders as it may deem just and expedient in the circumstances of this case.



2. The application is premised on the grounds on its face and is supported by an Affidavit sworn by the Plaintiff/Applicant. The Defendants/Respondents did not file any response to the application though they were given an opportunity to do so. I have considered the application and the written submissions filed by the Plaintiff/Applicant. The principles guiding the grant of an interlocutory injunction were set out in the case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358, where the court stated as follows: -

Firstly, 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 would 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.”

3. Further in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, the Court of Appeal expressed itself on the importance of satisfying all the three requirements as follows: -

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

4. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd v Afraba Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

Whether the Plaintiff/Applicant has demonstrated a prima facie case with a probability of success

5. The Plaintiff states that it entered into a lease agreement dated 7th September 2021 with the 1st defendant, in respect to land parcel number LR No. 7792/25 and LR No. 7792/26, where monthly rent payable was Ksh. 400,000/=. The Plaintiff states that it was paying the rent until sometime in 2025 when it began to experience financial difficulties and fell behind with the payment for the month of February. The Plaintiff admits being in rent arrears and states that it intended to give a payment plan to the 1st defendant.

6. Section 3(1) of the *Distress for Rent Act* Cap 293 provides as follows;

Right of distress

1. Subject to the provisions of this Act and any other written law, any person having any rent or rent service in arrear and due upon a grant, lease, demise or



contract shall have the same remedy by distress for the recovery of that rent or rent service as is given by the common law of England in a similar case.”

7. Section 3 of the *Distress for Rent Act* therefore entitles the landlord to distress for rent where the tenant is in rent arrears. The 1st defendant cannot be faulted for exercising his right under the said provision. An injunction being an equitable remedy is only available to a party who approaches the court with clean hands. The Plaintiff should not be indebted to the 1st defendant at the time of approaching the court to seek an injunction. In regard to the claim that the 1st defendant was holding an excess of Ksh. 1,800,000/= belonging to the Plaintiff, the court is not in a position to ascertain that fact at this juncture as determination of the same has to await hearing on the main suit.
8. In the case of *Samuel Kipkori Ngeno & Another v Local Authorities Pension Trust (Registered Trustees) & Another* (2013) eKLR , the High Court stated that;

A tenant’s first and main obligation is to pay rent as and when the same becomes due, for the landlord has the right to an income from his investment...”
9. The present application does not therefore meet the required threshold to warrant grant of an injunction as prayed.
10. I find no merit in the present application and proceed to dismiss the same with no order as to costs.

DATED DELIVERED AND SIGNED AT NAIROBI THIS 12TH DAY OF JUNE 2025

HON. P. ACHIENG

CHIEF MAGISTRATE

Plaintiff/Applicant - Absent

Defendants/Respondents – Absent

Court Assistant - Naeku

