

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC E.P. CASE NO. E006 OF 2025**

**BEYENE FESEHAYE .....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....DEFENDANT**

**RULING**

1. The plaintiff has moved this court vide his application dated 1<sup>st</sup> April 2025 and brought under the provisions of Article 40 of the Constitution, Section 69 (c) and (e) of the Civil Procedure Act and Order 40 Rules 1 and 2 of the Civil Procedure Rules. The Plaintiff asks to be granted orders:

**a. Spent**

**b. Spent**

**c. That a temporary order of injunction in rem does issue against all those street vendors and taxi operators operating outside the suit rental premises erected on the plaintiff's parcel of land known as no. 36/VII/478 situate in Eastleigh within the county of Nairobi pending hearing and determination of the suit.**

**d. That pending hearing and determination of the application and the suit a temporary order does issue compelling the respondent to evict all those street vendors and taxi operators operating**

**immediately outside the plaintiff's rental suit premises erected on all that parcel of land known as L.R. No. 36/VII/478.**

**e. Costs of the application be provided for.**

2. The application is premised on the facts pleaded on the face of the application and reiterated in the affidavit sworn by the Plaintiff Beyene Fesehaye. The facts stated include;

- i. *that a group of street vendors and taxi operators have been invading and illegally occupying the street space right outside Plaintiff's said building thus effectively blocking and obstructing his tenants' businesses on the ground floor and access into the residential rooms.*
- ii. *Photograph showing the building was annexed as "BF-2" and "BF-3" is the letter of complaint lodged with the respondent.*
- iii. *that the said illegal occupation, blockage and obstruction of his suit property frontage has adversely and negatively impacted his said business as the same discourages customers to come to his building, the safety of his building, his tenant's tenants and their businesses and residences have highly been compromised.*
- iv. *that as a result of the said obstruction to his suit premises his own adversely affected tenants have been defaulting in paying rent thus as of the time of filing the suit he had incurred enormous loss of Kshs.*

*2,000,000/= and continues to incur further losses and suffers irreparable damage.*

3. The application was not opposed, although the affidavit of service on record refers to service on the Defendant only, despite the orders sought are to be applied in rem. For an applicant to qualify for an order of temporary and/or mandatory injunction as sought in the present application, the applicant must demonstrate that he has a prima facie case, or that he is likely to suffer irreparable loss, or that the balance of convenience tilts in his favour. In addition, he must show that the case is so clear.
4. The Applicant submitted that the honourable Court take judicial notice that street vendors and taxi operators are not fixed in their places of work; they roam around and shift to different places due to the nature of their businesses in constant fear of crackdown by the city “askaris.” Hence the reason it was, and still is, virtually and humanly impossible to specifically identify street and taxi vendors, as they keep changing every other time and every other day.
5. The Applicant maintains that he has convincingly demonstrated that he is the registered owner of the suit property, and that there has been unlawful occupation, trespass, obstruction, and blockage of access to his property. He submitted that he has appropriately provided photographic evidence of his property and the acts of nuisance and obstruction; that he has sworn under

oath about the nature of the tort feasons, namely street vendors and taxi operators, and the details of their violations.

6. There is no doubt that the applicant is the registered owner of the suit property as shown in the title deed annexed as BF-1. Second, the claim before the court does not concern ownership but alleged trespass and/or blockade of access to the property. Therefore, it is my considered opinion that the evidence of such a blockade would constitute a prima facie case.
7. The Applicant relies on the photograph of the property, which he deposes illustrates the evidence of the interferences by the taxis/boda boda operators. I have looked at the annexed photograph that was taken at 19:21 presumed to time of the day but bears no date on. It also not clear (even the coloured copy from the CTS) to discern the proximity of the persons whose backs are captured to the said access of that building.
8. Due to the illegibility of the photograph, which is the sole evidence relied on to persuade this court on the alleged violations of the property right, I find the same as insufficient to mount a prima facie case.
9. The Applicant also deposes to irreparable loss resulting from his tenants' failure to pay their monthly rent due to the activities complained of. Nothing was annexed to show a demand for arrears of rent due from the said tenants, and the said tenants responded that they were unwilling to pay as a consequence of the blockade by the boda boda operators.

10. Lastly, on whether the court can issue mandatory orders against the respondent compelling them to remove the offending boda bodas and taxi operators. The Applicant relies on a letter addressed to the Respondent's County Secretary dated 16.10.2024. No explanation is offered on how this letter was delivered to the Respondent, as there is no receiving stamp on the copy filed in court.

11. The Applicant may have a genuine complaint, but this court is not satisfied that a proper foundation has been laid, particularly in pursuing the offices of the Respondent to enforce the by-laws. He has also failed to show the extent of the blockade of the access. It is for this reason that I hold the application falls below the threshold for the grant of a mandatory injunction.

12. The result is that I hold the application to be without merit and dismiss it with no order as to costs since it is undefended.

**Dated, Signed and Delivered at Nairobi this 30<sup>th</sup> day of October, 2025**

**A. OMOLLO**  
**JUDGE**