



REPUBLIC OF KENYA



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Hybrid Kenya Planters Limited & another v Kenya Conference of Catholic Bishops (Environment and Land Case E027 of 2024) [2025] KEELC 7311 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E027 OF 2024
LA OMOLLO, J
OCTOBER 23, 2025**

BETWEEN

HYBRID KENYA PLANTERS LIMITED 1ST PLAINTIFF

AGRO DEVELOPMENT LIMITED 2ND PLAINTIFF

AND

KENYA CONFERENCE OF CATHOLIC BISHOPS DEFENDANT

RULING

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 5th November, 2024. It is expressed to be brought under Sections 1A, 1B, 3, 3A, 63 (c) & (e) of the [Civil Procedure Act](#) and Order 40 Rules 1, 2, 3 & 4 of the Civil Procedure Rules.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this suit, an order of injunction do issue restraining the Respondent whether by itself or its representatives, servants, agents, and/or assigns from howsoever selling, alienating, disposing off, and/or in any other manner whatsoever interfering with the Applicants quiet possession or otherwise dealing with the subject property measuring six hundred and two acres (602) acres out (sic) LR Number 9848 and 9849 (IR No. 17094 and 17226 respectively).
 - d. That this Honourable Court do issue an order for the immediate return and/or release of the Applicants Motor Vehicles Registration Numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D and farm machinery & equipment including 100 hoes, 100 slashers, 1 three side



chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 cctv cameras, 5 computers and 7 chairs to the Applicants by the Respondent.

- e. That this Honourable Court do issue an order that there shall be maintained peace and tranquility by all the parties and their agents at the subject property at all time during the pendency of this suit until it is heard and determined.
 - f. That the costs of this application be borne by the Respondent.
3. The application is based on the grounds on its face and the supporting affidavit of Liljehall Alf Rune Haakan, a director of the Plaintiffs/Applicant sworn on 5th November, 2024.

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Complaint dated 5th November, 2024 where they seek the following prayers;
- a. A permanent injunction restraining the Defendant whether by itself or its representatives, servants, agents and/or assigns from howsoever selling, alienating, disposing off, and/or in any other manner whatsoever interfering with the Plaintiffs' quiet possession or otherwise dealing with the subject property measuring six hundred and two acres (602) acres out of LR Number 9848 and 9849 (IR No. 17094) and 17226 respectively) for the lease period of twenty years (20) as anticipated in the Letter of Offer dated 9th December, 2020.
 - b. The immediate return and/or release of the Plaintiffs' motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D and farm machinery & equipment including 100 hoes, 100 slashes, 1 three side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 cctv cameras, 5 computers and 7 chairs to the Plaintiffs by the Defendant.
 - c. Cost of this suit together with the interest at Courts (sic) rate.
 - d. Any other relief the Court may find deem (sic).
5. As at the time of writing this ruling, the Defendant/Respondent has not filed its Statement of Defence.
6. The application under consideration first came up for hearing on 6th November, 2024. The Court directed that it be served upon the Defendant/Respondent.
7. The application came up for hearing on 4th December, 2024 which hearing was rescheduled to 13th February, 2025.
8. On 13th February, 2025, the Defendant/Respondent was given more time to file a response to the application.
9. On 24th February, 2025 the Court directed that the application be heard by way of written submissions. It was mentioned to confirm filing of submissions and reserved for ruling on 26th March, 2025.

The Plaintiffs/Applicants Contention.

10. The affidavit in support of the application is sworn by Liljehall Alf Rune Haakan a Director of the Plaintiffs/Applicants.



11. He contends that on 9th December, 2020 the Defendant/Respondent offered to lease to the 1st Plaintiff/Applicant six hundred and two acres of LR No. 9848 and 9849 (I.R No. 17094 and 17226 respectively) for purposes of planting coffee. He adds that the 1st Plaintiff/Applicant accepted the offer on 23rd December, 2020.
12. He also contends that the letter of offer was dated 9th December, 2020 and upon acceptance of the offer, the Defendant/Respondent gave the 1st Plaintiff/Applicant vacant possession of the land.
13. He further contends that the 1st Plaintiff/Applicant, on the basis of the letter of offer, paid the Defendant/Respondent USD 36,000 as deposit which amount of money was to also be deemed as rent. He goes on to state that the payment was acknowledged by the Defendant/Respondent.
14. It is his contention that the 1st Plaintiff/Applicant thereafter planted coffee on the said parcel of land.
15. It is also his contention that after planting coffee, the parties engaged in a lot of deliberations with a view of entering into a substantive lease agreement which process was frustrated by the Defendant/Respondent leading to a stalemate.
16. It is further his contention that during deliberations, the 1st Plaintiff/Applicant stated that it was ready to comply with its rental obligations upon execution of the lease agreement in order to protect its rights. He goes on to state that the same was not actualized because of lack of goodwill from the Defendant/Respondent.
17. He contends that on 12th April, 2022 the 1st Plaintiff/Applicant entered into a deed of assignment with the 2nd Plaintiff/Applicant and transferred all the accruing rights, liabilities and responsibilities arising out of the letter of offer dated 9th December, 2020.
18. He also contends that the 2nd Plaintiff/Applicant invested further into the coffee project by purchasing motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D, 100 hoes, 100 slashers, a three-side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 cctv cameras, 5 computers and 7 chairs.
19. He further contends that on 25th October, 2024 the Defendant/Respondent took possession of the said parcel of land without levying distress for rent or getting an order of the Court.
20. It is his contention that on the same day, the Defendant/Respondent also took possession of the 2nd Plaintiff/Applicant's farm machinery, equipment and motor vehicles that were on the said parcel of land.
21. It is also his contention that the Defendant/Respondent without any regard of the law or the executed letter of offer dated 9th December, 2020, begun plucking the ripe coffee cherries that had matured with the aim of selling them for its own benefit.
22. It is further his contention that the suit parcel is in possession of the Defendant/Respondent in contravention of the letter of offer dated 9th December, 2020 and the provisions of the Land Act.
23. He contends that the Defendant/Respondent's actions show that it has no intention of completing its obligations under the Letter of Offer and/or formalizing a substantive lease agreement.
24. He ends his deposition by stating that the orders sought in the application under consideration are meant to further the objects of the law by protecting the Plaintiffs/Applicants rights and/or interest to land.



The Defendant/Respondent's Response

25. The Defendant/Respondent filed a Replying Affidavit sworn by Aurephena Wanjala its Legal and Civil Affairs Officer on 21st February, 2025.
26. She deposes that the Defendant/Respondent is the registered proprietor of LR 9848/1 and LR 9849 and adds that the Defendant/Respondent was registered as the owner on 20th April, 2011 upon a successful registration of the transfer dated 18th April, 2011 from the Registered Trustees of the Monastery Our Lady of Victoria.
27. She also deposes that vide a letter of offer dated 9th December, 2020, the 1st Plaintiff/Applicant and the Defendant/Respondent entered into a lease agreement over the said parcels of land.
28. She further deposes that the lease was for a term of twenty years renewable on mutual agreement between the parties. She goes on to state that the lease was to commence on 1st January, 2021 with rent of USD 18,000.
29. It is her deposition that the rent was to increase at a compound rate of 5% on the 10th and 16th year and goes on to state that the rent was to be paid annually in advance for the first ten years and five years in advance from the 11th year.
30. She deposes that the 1st Plaintiff/Applicant was required to pay a security deposit of USD 36,000 before commencement of the lease.
31. She also deposes that clause 10 paragraph 2 of the letter of offer prohibited the tenant from offering the land to third parties for farming or any other use so as to encourage any claim of adverse possession or squatting (sic).
32. She further deposes that clause 16 of the said agreement provided that should rent remain unpaid for thirty days from the date it becomes payable, the tenant would be in breach of the lease and the Defendant/Respondent will repossess the land. She goes on to state that the lease would thereafter determine without prejudice to any rights that had accrued to the Defendant/Respondent.
33. She deposes that in December, 2020 the 1st Plaintiff/Applicant paid USD 36,000 to the Defendant/Respondent as per the letter of offer dated 9th December, 2020.
34. She also deposes that clause 21 of the letter of offer provided that until such time as the lease is executed and registered, all conditions, covenants and rent shall be deemed to have been incorporated in the letter of offer.
35. She further deposes that the Defendant/Respondent gave the 1st Plaintiff/Applicant vacant possession of the said land but the 1st Plaintiff/Applicant despite taking possession breached its rent obligations.
36. It is her deposition that the 1st Plaintiff/Applicant failed to pay the advance rent of USD 18,000 in the year 2022, USD 50,000 in the year 2023 and USD 60,000 in the year 2024 making the total outstanding rent to be USD 126,000.
37. It is also her deposition that the 1st Plaintiff/Applicant offered the land to third parties for farming and living despite clause 10 of the letter of offer expressly prohibiting it. She goes on to state that the said individuals are alien to the agreement for lease between the 1st Plaintiff/Applicant and the Defendant/Respondent.
38. It is further her deposition that the Defendant/Respondent wrote several letters to the 1st Plaintiff/Applicant requesting for payment of the outstanding rent arrears.



39. She deposes that in the letter of offer, it was agreed that the 1st Plaintiff/Applicant was to submit architectural and structural drawings of fixtures and fittings to the Defendant/Respondent for approval before installation and goes on to state that the 1st Plaintiff/Applicant instead proceeded to construct a coffee processing plant on the suit land.
40. She also deposes that after persistent follow ups by Counsel for the Defendant/Respondent, the 1st Plaintiff/Applicant made partial payments towards the outstanding rent arrears and explains that it paid USD 3,600 on 24th April, 2023 and USD 6,900 on 19th April, 2023.
41. She further deposes that as at the year 2024, the outstanding arrears were at USD 117,500 and goes on to state that despite several follow ups the 1st Plaintiff/Applicant failed to clear the outstanding arrears.
42. It is her deposition that due to the 1st Plaintiff/Applicant's unresponsiveness, the Defendant/Respondent issued a 60-day notice for the 1st Plaintiff/Applicant to vacate the leased land.
43. It is also her deposition that despite the said notice to vacate, the 1st Plaintiff/Applicant continued to be in occupation notwithstanding the arrears owed.
44. It is further her deposition that on 2nd August, 2024 the 1st Plaintiff/Applicant surrendered the lease back to the Defendant/Respondent and the Defendant/Respondent took possession of the land.
45. She deposes that she is advised by Counsel for the Defendant/Respondent that as per clause 16 of the Letter of Offer, the Defendant/Respondent's rights and remedies that had accrued against the 1st Plaintiff/Applicant with respect to non-payment of rent did not diminish upon determination of the lease.
46. She also deposes that in August, 2024 the Defendant/Respondent initiated the process of exercising distress for rent against the 1st Plaintiff/Applicant.
47. She further deposes that the Defendant/Respondent instructed J.K Wanderi Auctioneers to sell the 1st Plaintiff/Applicant's assets via public auction in order to recover the rent arrears of USD 117,500. She goes on to state that the Defendant/Respondent formalized the issuance of instructions vide the letter dated 6th September, 2024.
48. It is her deposition that on 10th September, 2024 the Auctioneers issued the 1st Plaintiff/Applicant a notice of proclamation of distraint of Moveable property.
49. It is also her deposition that on diverse dates including 24th October, 2024 and 25th October, 2024, the auctioneers issued a Notice of Intention to sell movable property to the 1st Plaintiff/Applicant.
50. It is further her deposition that on 29th October, 2024 the Auctioneers published a seven days' notice of sale in the Standard Newspaper of the same date which notice lapsed on 5th November, 2024.
51. She deposes that on 30th October, 2024 the Auctioneers conducted a valuation of the proclaimed movable assets through Union Assessors and Contractors Limited and subsequently shared the valuation report with the 1st Plaintiff/Applicant.
52. She also deposes that on 6th November, 2024 the auctioneers conducted a public auction and realized a sum of Kshs. 542,200/=.
53. She reiterates that the 1st Plaintiff/Applicant did not make any payments after paying the security deposit.



54. She deposes that she is not aware of any efforts by the 1st Plaintiff/Applicant or any frustrations by the Defendant/Respondent with regard to the alleged actualization of the substantive lease. She goes on to state that the Court should refer to paragraph 1 of Clause 21 of the Letter of Offer.
55. She reiterates that the 1st Plaintiff/Applicant assigned the lease to the 2nd Plaintiff/Applicant without the consent of the Defendant/Respondent.
56. She also reiterates that the 1st Plaintiff/Applicant has rent arrears of USD 117,500.
57. She deposes that she is a stranger to the assertions at paragraph 9 of the affidavit in support of the application and in response to paragraph 10 of the affidavit in support of the application, she reiterates that the 1st Plaintiff/Applicant surrendered the lease.
58. She also deposes that the Defendant/Respondent is not in possession of the listed items that are alleged to belong to the 2nd Plaintiff/Applicant. She goes on to state that the Defendant/Respondent through its auctioneers proclaimed goods belonging to the 1st Plaintiff/Applicant as per the proclamation notice.
59. She denies the averments at paragraph 12 of the affidavit in support of the application and deposes that the Defendant/Respondent and/or its employees and agents have not harvested any coffee planted on the suit parcel.
60. In response to paragraph 13 of the affidavit in support of the application, she reiterates that the Defendant/Respondent took possession of the suit property after the 1st Plaintiff/Applicant voluntarily forfeited the lease vide the letter dated 2nd August, 2024.
61. In response to paragraph 14 of the affidavit in support of the application, she reiterates that there is no existing lease agreement between the parties for the Defendant/Respondent to suggest formalization of a substantive lease agreement as the subject lease was forfeited by the 1st Plaintiff/Applicant on 2nd August, 2024.
62. In response to paragraph 15 of the affidavit in support of the application, it is her deposition that the Plaintiff/Applicant (sic) concealed material facts from the Court. She goes on to state that the Plaintiff/Applicant (sic) failed to disclose that the lease was voluntarily surrendered, that the rent arrears stood at USD 117,500 and that an auction had been undertaken by the Defendant/Respondent.
63. It is her deposition that the Plaintiffs/Applicants have not met the threshold for grant of the reliefs sought and adds that this is in response to paragraphs 10, 11, 12 and 13 of the affidavit in support of the application.
64. It is also her deposition that she has been advised by the Defendant/Respondent's Counsel on record that for a party to be granted an interlocutory injunction, the said party must establish a prima facie case, demonstrate irreparable injury if the injunction is not granted and if the Court is in doubt, determine the application on a balance of convenience.
65. She ends her deposition by reiterating that the 1st Plaintiff/Applicant has rent arrears of USD 117,500 which were not fully recovered by the Defendant/Respondent when it conducted the public auction and therefore the balance of convenience does not tilt in favour of the Plaintiffs/Applicants.

Plaintiffs/Applicants Response to the Defendant/Respondent's Replying Affidavit.

66. The Plaintiffs/Applicants filed a Supplementary Affidavit sworn by Liljehall Alf Rune Haakan on 3rd March, 2025.



67. He deposes that in response to paragraphs 3 to 15 of the Defendant/Respondent's Replying Affidavit, he reiterates the averments at paragraphs 2 to 9 of the affidavit in support of the application.
68. He reiterates that the Defendant/Respondent demonstrated lack of goodwill in actualizing the substantive lease agreement between it and the 1st Plaintiff/Applicant.
69. He deposes that the Defendant/Respondent wanted the 1st Plaintiff/Applicant to comply with its rental obligations while denying the 1st Plaintiff/Applicant a substantive lease agreement. He goes on to state that the Defendant/Respondent's inactions towards the formalization of a tangible lease agreement led to a situation where the Defendant/Respondent was 'having its cake and eating it'.
70. He also deposes that the Deed of Assignment dated 12th April, 2022 did not lead to subletting of the leased property as alleged by the Defendant/Respondent at paragraph 9 and 10 of the Replying Affidavit.
71. He further deposes that any purported arrears owing to the Defendant/Respondent were due to a lack of a tangible lease agreement between the parties. He goes on to state that the Defendant/Respondent has not provided any financial statement of accounts that show the alleged arrears. This is in response to paragraphs 16 and 17 of the Defendant/Respondent's Replying Affidavit.
72. It is his deposition that the Plaintiffs/Applicants are not aware of any letter dated 2nd August, 2024 emanating from the 1st Plaintiff/Applicant purporting to surrender the lease back to the Defendant/Respondent. He goes on to state that this is in response to paragraphs 18 and 19 of the Defendant/Respondent's Replying Affidavit.
73. It is also his deposition that he is advised by the Plaintiffs/Applicants advocates on record that any decision purported to have been made by the 1st Plaintiff/Applicant ought to have been accompanied by minutes and a resolution as per part XIII of the *Companies Act*. He goes on to state that this is in response to paragraphs 18 and 19 of the Defendant/Respondent's Replying Affidavit.
74. It is further his deposition that the letter dated 2nd August, 2024 by Geoffrey Chepkwony is fraudulent and does not represent the position of the 1st Plaintiff/Applicant as it is not supported by the 1st Plaintiff/Applicant's minutes and/or resolutions.
75. He deposes that he has been advised by Counsel for the Plaintiffs/Applicants that the process adopted by the Defendant/Respondent of exercising distress for rent upon the 1st Plaintiff/Applicant and the subsequent public auction is an illegality. He goes on to state that this is in response to paragraphs 20 to 29 of the Defendant/Respondent's Replying Affidavit.
76. He also deposes that the said process was an illegality because the letter voluntarily surrendering the lease was fraudulent and not the 1st Plaintiff/Applicant's official position.
77. He further deposes that during the proceedings for distress for rent in Nakuru CMCC Misc. Appl No. E218 of 2024 J.K Wanderi Auctioneers vs Hybrid Kenya Ltd, the 1st Plaintiff/Applicant was not served with any pleadings. He goes on to state that the said matter proceeded without its involvement and therefore any orders emanating therefrom cannot be relied upon by this Court.
78. It is his deposition that the Defendant/Respondent failed to serve the 1st Plaintiff/Applicant with the proclamation of Distrain of Movable Property dated 10th September, 2024 and the two Notification of Sale of Movable Property dated 25th October, 2024 and 24th October, 2024. He goes onto state that the 1st Plaintiff/Applicant was not aware that it was being distressed for rent and being auctioned contrary to the Provisions of the *Distress For Rent Act*.



79. It is also his deposition that the entire catalogue of movable property described in paragraphs 24 to 28 of the Defendant/Respondent's Replying Affidavit that is purported to have been owned by the 1st Plaintiff/Applicant was actually owned by the 2nd Plaintiff/Applicant. He goes on to state that the said property was wrongly put up for auction by the Defendant/Respondent's agent without proper investigation as to ownership thus occasioning the 2nd Plaintiff/Applicant loss.
80. It is also his deposition that in response to paragraphs 30 to 40 of the Defendant/Respondent's Replying Affidavit, he reiterates his averments in paragraphs 6 to 16 of this affidavit and paragraphs 6 to 9 of his affidavit in support of the application.
81. He reiterates that the letter of voluntary surrender of the lease dated 2nd August, 2024 is fraudulent and the subsequent auction founded on the said letter was illegal. This is in response to Paragraph 41 of the Defendant/Respondent's Replying Affidavit.
82. He deposes that he is advised by the Plaintiffs/Applicants Counsel on record that the Plaintiffs/Applicants have met the threshold required for granting of an interlocutory injunction. He goes on to state that this is in response to paragraphs 42 to 46 of the Defendant/Respondent's Replying Affidavit.
83. He ends his deposition by urging the Court to allow the Plaintiffs/Applicants application as prayed.

Issues for Determination.

84. Both the Plaintiffs/Applicants and the Defendant/Respondent filed their submissions on 7th March, 2025.
85. The Plaintiffs/Applicants reiterate the averments of their affidavit in support of the application and submit on whether the Court should issue a temporary injunction pending hearing and determination of this suit.
86. The Plaintiffs/Applicants rely on Order 40 Rule 1 of the Civil Procedure Rules and the judicial decision of *Giella vs Cassman Brown & Co. Ltd* [1973] EA and submit that they must first demonstrate a prima facie case.
87. The Plaintiffs/Applicants rely on the judicial decision of *Nrao (sic) Limited vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR 125 and while reiterating the averments of their affidavit in support of the application and the supplementary affidavit, submit that the Defendant/Respondent violated their right to quiet possession of the leased property by forcefully evicting the 1st Plaintiff/Applicant.
88. The Plaintiffs/Applicants also submit that the Defendant/Respondent's Counsel issued the Plaintiffs/Applicants with a Notice to Vacate dated 13th March, 2024.
89. The Plaintiffs/Applicants further submit that the said Notice to Vacate was the final document served upon their Counsel.
90. The Plaintiffs/Applicants submit that their eviction, the Defendant/Respondent taking possession of the suit parcel and the auctioning of the 2nd Plaintiff/Applicant's farm machinery and equipment was illegal and it violated their rights.
91. The Plaintiffs/Applicants reiterate that the entire process of eviction did not conform to the procedure set out under Sections 4 and 6 of the *Distress for Rent Act*.
92. The Plaintiffs/Applicants therefore submit that they have demonstrated a prima facie case.



93. On whether they will suffer irreparable loss, the Plaintiffs/Applicants rely on the judicial decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR and reiterate that they were forcefully evicted from the suit land.
94. It is the Plaintiffs/Applicants submissions that they stand to suffer a lot as they were evicted from the suit land and that there is a difficult economic situation in the Country.
95. It is also the Plaintiffs/Applicants submissions that they have no alternative and will be forced to go back to the drawing board as they have lost business, customers, farm machinery and equipment.
96. It is further the Plaintiffs/Applicants submissions that they are apprehensive that if the orders sought are not granted, the Defendant/Respondent will lease the property to another tenant.
97. The Plaintiffs/Applicants submit that they will suffer irreparable loss as they have business costs that are serviced by the continuous operation of the coffee farm that is on the leased property.
98. The Plaintiffs/Applicants also submit that no form of compensation can remedy the irreparable loss they stand to suffer due to the loss of the twenty-year lease and the perishable coffee they have planted on the land.
99. It is the Plaintiffs/Applicants submissions that they have never benefited from the coffee they planted on the leased property because of the actions of the Defendant/Respondent.
100. On whether the balance of convenience tilts in their favour, the Plaintiffs/Applicants rely on the judicial decisions of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018]eKLR, Amir Suleiman vs Amboseli Resort Limited [2004]eKLR and submit that unless the orders sought are granted, the Defendant/Respondent will continue to evict the 1st Plaintiff/Applicant and lease the said land to a third party thereby rendering the present suit nugatory.
101. The Plaintiffs/Applicants therefore submit that the balance of convenience tilts in their favour.
102. The Plaintiffs/Applicants also submit that the Court should grant order (d) so that the attached property of the 2nd Plaintiff/Applicant can be returned.
103. It is the Plaintiffs/Applicants submissions that the Defendant/Respondent's agent J.K Wanderi Auctioneers had attached the said property.
104. The Plaintiffs/Applicants conclude their submissions by urging the Court to allow their application as prayed.
105. The Defendant/Respondent submits on the following issues;
 - a. Whether the Applicants have satisfied the conditions for grant of temporary prohibitory injunction.
 - b. Whether the Applicants have satisfied the conditions for grant of interlocutory mandatory injunction.
106. On the first issue, the Defendant/Respondent relies on Order 40 Rule 1 of the Civil Procedure Rules, the judicial decision of Giella vs Cassman Brown & Co. Ltd [1973] EA 358 as was cited in Gehlot & another v SK Sports and Recreational Limited t/a Momentum Fitness & 2 Others [2025] KEHC 1132 (KLR) and submits that the Plaintiffs/Applicants must first demonstrate a prima facie case.
107. The Defendant/Respondent relies on the judicial decisions of Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR, Nguruman Limited vs Jan Bonde Nielson & 2 Others [2014]



- KECA 606 (KLR) and submits that the Plaintiffs/Applicants have not established a prima facie case with a probability of success.
108. The Defendant/Respondent submits that it did not infringe upon the Plaintiffs/Applicants right to quiet possession of the leased property as they (Plaintiffs/Applicants) had voluntarily surrendered the property back through the letter dated 2nd August, 2024.
 109. The Defendant/Respondent also submits that the 1st Plaintiff/Applicant's rights were not infringed as the 1st Plaintiff/Applicant was in breach of the lease agreement by failing to pay rent.
 110. The Defendant/Respondent relies on Sections 3, 4 and 5 of the *Distress for Rent Act* and submits that the process for distress of rent done vide the public auction was done in accordance with the law.
 111. The Defendant/Respondent reiterates that the 1st Plaintiff/Applicant was issued with a Notice of Proclamation of Distrain of Moveable Property on 10th September, 2024, a Notification of Intention to sell movable property on 24th and 25th October, 2024 together with a Notice of Sale on the Standard Newspaper on 29th October, 2024 which lapsed on 5th November, 2024.
 112. The Defendant/Respondent also reiterates that the 1st Plaintiff/Applicant was served with the valuation of the proclaimed movable assets before the said property was sold at a public auction on 6th November, 2024.
 113. The Defendant/Respondent submits that the 1st Plaintiff/Applicant's possession of the suit land was extinguished vide the letter dated 2nd August, 2024 when the lease was surrendered.
 114. The Defendant/Respondent then reiterates its averments in the Replying Affidavit with regard to the assigning of the leased property to the 2nd Plaintiff/Applicant and the alleged rent arrears.
 115. The Defendant/Respondent submits that the Plaintiffs/Applicants have not demonstrated that they stand to suffer irreparable injury which cannot be adequately compensated by an award of damages if the orders sought are not granted.
 116. The Defendant/Respondent relies on the judicial decisions of *Nguruman Limited v Jan Bonde Nielson & 2 Others* [2014] KECA 606 (KLR), *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR and submits that the Plaintiffs/Applicants will not suffer irreparable injury as they are not in possession of the leased land.
 117. The Defendant/Respondent also submits that the Plaintiffs/Applicants right to possession of the leased property was extinguished by the breach of the lease agreement which prompted the Defendant/Respondent to exercise its right to distress for rent.
 118. The Defendant/Respondent further submits that the alleged loss of farm machinery and loss of income from coffee is quantifiable and can be adequately compensated by an award of damages.
 119. The Defendant/Respondent submits that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants as they have not established a prima facie case and neither will they suffer irreparable damage.
 120. The Defendant/Respondent relies on the judicial decisions of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] KEELC 2424 (KLR), *Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 2 Others* [2016] eKLR and submits that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants as they have outstanding rent arrears of USD 117,500 and they are not in possession of the land.



121. On the second issue, the Defendant/Respondent submits that the Plaintiffs/Applicants are seeking for a mandatory injunction and an order of the release of various motor vehicles, farm machinery and equipment.
122. The Defendant/Respondent also submits that the Plaintiffs/Applicants have not demonstrated the existence of the items in question and neither have they demonstrated that they were proclaimed by the Defendant/Respondent.
123. The Defendant/Respondent further submits that the Plaintiffs/Applicants have not met the necessary conditions for the grant of an interlocutory mandatory injunction.
124. It is the Defendant/Respondent's submissions that it properly proclaimed goods belonging to the 1st Plaintiff/Applicant through J.K Wanderi Auctioneers.
125. The Defendant/Respondent relies on the judicial decisions of Malier Unissa Karim versus Edward Oluoch Odumbe [2015]eKLR, Wambugu & another v Administrators of the Estate of Kaiho Karugo & 4 Others (Environment & Land Case E136 of 2023) KEELC 905 (KLR), Lucy Wangui Gachara v Minudi Okemba Lore Civil Appeal No. 4 of 2015, Locabail International Finance Ltd v Agroexport [1986] 1 ALL E.R 901 in support of its submissions.
126. The Defendant/Respondent concludes its submissions by urging the Court to dismiss the Plaintiffs/Applicants application with costs.

Analysis and Determination.

127. I have considered the Plaintiffs/Applicants application, the response thereto and the rival submissions.
128. It is my view that the following issues arise for determination;
 - a. Whether the Plaintiffs/Applicants have met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.
 - b. Whether the Court should issue an order for the return and/or release of the Plaintiffs/Applicants motor vehicles, machinery and farm equipment.
 - c. Whether the Court should issue an order for peace and tranquility on the leased property pending hearing and determination of this suit.
 - d. Who should bear costs of the application.

A. Whether the Plaintiffs/Applicants have met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.

129. In the judicial decision of Giella vs. Cassman Brown [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally 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.”



130. The Plaintiffs/Applicants must first establish a prima facie case. A prima facie case was defined in the judicial decision of Mrao Limited vs. First American Bank of Kenya & 2 Others [2003] eKLR as follows;
- “A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
131. The Plaintiffs/Applicants contend that the 1st Plaintiff/Applicant signed a letter of offer dated 9th December, 2020 with the Defendant/Respondent where it leased six hundred and two acres of LR No’s 9848 and 9849 respectively.
132. The Plaintiffs/Applicants further contend that upon the signing of the letter of offer, the 1st Plaintiff/Applicant paid the Defendant/Respondent USD 36,000.
133. It is the Plaintiffs/Applicants contention that the 1st Plaintiff/Applicant was willing to continue paying the rent subject to a formal lease agreement.
134. It is also the Plaintiffs/Applicants contention that the Defendant/Respondent frustrated the process of actualization of a formal lease agreement.
135. It is further the Plaintiffs/Applicants contention that on 12th April, 2022, the 1st Plaintiff/Applicant entered into a deed of assignment with the 2nd Plaintiff/Applicant and transferred all its rights, liabilities and responsibilities contained in the letter of offer.
136. The Plaintiffs/Applicants contend that on 25th October, 2024 the Defendant/Respondent took possession of the leased land and the 2nd Plaintiff/Applicant’s motor vehicles, farm machinery and equipment. This led to the filing of the present suit and the application under consideration.
137. Among the documents attached to the affidavit in support of the application is a copy of a letter of offer dated 9th December, 2020. The Lessor is the Defendant/Respondent and the tenant is the 1st Plaintiff/Applicant.
138. It offers the 1st Plaintiff/Applicant a lease of 602 acres of LR No’s 9848 and 9849 for a term on twenty years. The letter of offer is drafted and signed by Mercy Mulwa the Chief Executive Officer, Square Meter Consultants Limited the Lessor’s agent.
139. The Letter of offer is also signed by Geoffrey Chepkwony and Apollo K. Cheruiyot who are directors of the 1st Plaintiff/Applicant on 23rd December, 2020.
140. In response, the Defendant/Respondent admits to leasing the said portion of land to the 1st Plaintiff/Applicant vide the Letter of Offer dated 9th December, 2020.
141. The Defendant/Respondent contends that the 1st Plaintiff/Applicant only paid the initial deposit of USD 36,000.
142. The Defendant/Respondent also contends that the 1st Plaintiff/Applicant did not pay rent for the years 2022, 2023 and 2024 leading to outstanding rent arrears of USD 117,500.
143. The Defendant/Respondent further contends that the 1st Plaintiff/Applicant surrendered the lease vide the letter dated 2nd August, 2024. Thereafter, the Defendant/Respondent took possession of the leased parcel of land.



144. It is the Defendant/Respondent's contention that thereafter it caused to be issued to the 1st Plaintiff/Applicant the requisite notices through J.K Wanderi Auctioneers for proclamation of its movable property in order to recover the rent arrears.
145. It is also the Defendant/Respondent's contention that the said movable property was sold for a sum of Kshs. 542,200/=.
146. In a rejoinder, the Plaintiffs/Applicants deny writing the letter dated 2nd August, 2024 and they also deny receiving any notices with relation to the process of distress for rent that were allegedly issued.
147. It is not disputed that the 1st Plaintiff/Applicant leased portions of LR No's 9848 and 9849 measuring six hundred and two acres.
148. It is also not disputed that the only sum of money paid by the 1st Plaintiff/Applicant was USD 36,000.
149. It is not disputed that the Defendant/Respondent took possession of the said parcel of land sometime in the year 2024.
150. It is further not disputed that properties belonging to the Plaintiffs/Applicants were sold at a public auction to recover the alleged rent arrears.
151. The following are disputed is
- a. Whether the Plaintiffs/Applicants wrote the letter dated 2nd August, 2024 that allegedly surrendered the lease to the Defendant/Respondent.
 - b. Whether the requisite notices were served upon the Plaintiffs/Applicants before the said movable property was sold at a public auction and
 - c. Whether the property that was sold at the public auction belonged to 2nd Plaintiff/Applicant and not the 1st Plaintiff/Applicant.
152. These issues are best addressed and shall be addresses during the hearing and determination of the suit.
153. Given the said circumstances, it is my view that the Plaintiffs/Applicants have not demonstrated a prima facie case.
154. The second condition for grant of orders of temporary injunction is that the Plaintiffs/Applicants must demonstrate that they will suffer irreparable injury that would not be adequately compensated by way of damages.
155. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is



such a nature that monetary compensation, of whatever amount, will never be adequate remedy.” (Emphasis mine)

156. The judicial decision in Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR provides an explanation of what is meant by irreparable injury. It is as follows;

“Irreparable injury 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 should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)

157. The Plaintiffs/Applicants submit that they will suffer irreparable injury if the orders sought are not granted as they were illegally evicted from the suit parcel.

158. The Plaintiffs/Applicants also submit that they will have to go back to the drawing board as they have lost business, customers, farm machinery and equipment.

159. The Plaintiffs/Applicants further submit that they are apprehensive that the Defendant/Respondent will lease the suit parcel to third parties thereby causing them irreparable loss.

160. It is the Plaintiffs/Applicants submissions that they planted coffee on the suit parcel which is perishable and which they have never benefited from because of the Defendant/Respondent’s actions.

161. The Defendant/Respondent on the other hand submits that the Plaintiffs/Applicants will not suffer irreparable damage which cannot be adequately compensated by an award of damages as they are not in possession of the suit parcel.

162. The Defendant/Respondent also submits that the Plaintiffs/Applicants voluntarily surrendered the leased land vide the letter dated 2nd August, 2024.

163. The Defendant/Respondent submits that the alleged loss of farm machinery is quantifiable and therefore the Plaintiffs/Applicants can be adequately compensated by an award of damages.

164. It is not disputed that the Plaintiffs/Applicants are not in possession of the suit parcel.

165. They contend that they are apprehensive that the suit parcel will be leased out to third parties. This in my view, does not amount to irreparable injury. I find that the Plaintiffs/Applicants have failed to demonstrate that they will suffer irreparable loss which cannot be adequately compensated by an award of damages.

166. If after making considerations on the existence of a prima facie case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.

167. In the present application, the Plaintiffs/Applicants have failed to demonstrate a prima facie case and they have also failed to demonstrate that they will suffer irreparable injury which cannot be adequately compensated by an award of damages. I will therefore determine this application on a balance of convenience.

168. In Pius Kipchirchir Kogo v Frank Kimeli Tenai (supra) the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience



caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” (Emphasis mine)

169. In *Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR the Court while considering the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” (Emphasis mine)

170. In the present application, it is my view that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants. The Defendant/Respondent is likely to suffer greater inconvenience compared to the inconvenience likely to be occasioned to the Plaintiffs/Applicants if orders of temporary injunction are granted. This is especially because the Defendant/Respondent is owner of the suit parcels and is in possession of them.

B. Whether the Court should issue an order for the return and/or release of the Plaintiffs/Applicants motor vehicles, machinery and farm equipment.

171. The Plaintiffs/Applicants are seeking for the release of motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D, 100 hoes, 100 slashers, a three-side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 cctv cameras, 5 computers and 7 chairs.

172. The Plaintiffs/Applicants contend that the said properties belong to the 2nd Plaintiff/Applicant.

173. The Plaintiffs/Applicants also contend that the Defendant/Respondent took the said properties on 25th October, 2024.

174. In response, the Defendant/Respondent denies being in possession of the said items and submits that nothing has been placed before the Court to demonstrate that they have the said items.

175. I have noted that the Plaintiff, under prayer (b), the Plaintiffs/Applicants are seeking for the release of motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D, 100 hoes, 100 slashers, a three-side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 cctv cameras, 5 computers and 7 chairs.



176. My view is that this Court cannot, at this preliminary stage, consider the question whether or not the said items are in possession of the Defendant/Respondent and/or whether or not they should be released to Plaintiffs/Applicants.
177. Further, the prayer for release of motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D, 100 hoes, 100 slashers, a three-side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 CCTV cameras, 5 computers and 7 chairs is a substantive prayer in the Plaint and granting the said prayer is akin to determining the suit at an interlocutory stage.
178. That being the case, the question whether or not an order should issue for the release of motor vehicles registration numbers KTCC207D, KTCC205D, KTCC206D, KTCC204D, 100 hoes, 100 slashers, a three-side chisel, 10 soil auger machines, 3 trailers, 2 harrows, 2 CCTV cameras, 5 computers and 7 chairs shall be addressed during the hearing and determination of this suit.

C. Whether the Court should issue an order for peace and tranquility on the leased property pending hearing and determination of this suit.

179. Under prayer (e) of the application under consideration, the Plaintiffs/Applicants are seeking that the Court issues an order that peace and tranquility be maintained by all the parties on the leased property pending hearing and determination of the suit.
180. None of the parties have submitted on this issue.
181. In the judicial decision of Anyango (Suing as the Legal Representative of the Estate of John Douglass Omondi) v Thuku [2023] KEELC 15871 (KLR) the Court held as follows;

“69...I discern that the Plaintiff and the Defendant being neighbours (sic) and owners of adjacent plots, there will be need for both of them to recognize that and respect the fact that they all have proprietary rights to their private properties which are well protected under the Provision of Article 40 (1), (2), (3), (4), (5) and (6) of *the Constitution* of Kenya. Additionally, they have at all times uphold and sustain high standards of environmental management and conservation in order to attain a clean and health environment based on the provision of Article 42, 69 and 70 of *the Constitution* of Kenya. As emphasized herein, there will be need for the Plaintiff and the Defendant to maintain peace and tranquility. They will have to sustain good neighborhood at all costs for the rest of their living together in this area.”

182. In the above cited judicial decision, the Court observed that there was need for the parties to maintain peace and tranquility as they were neighbors with proprietary interests over their own parcels of land.
183. In the present matter, it would be futile to consider whether such an order should be granted. This is because by their own admission, the Plaintiffs/Applicants have stated that they are no longer in possession of the suit parcels.
184. Before penning off, I must mention that the Defendant/Respondent has extensively submitted on whether this Court can grant orders of mandatory injunction. It is important to note that the Plaintiffs/Applicants have not sought any orders of mandatory injunction.

D. Who should bear costs of the application

185. It is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21 Laws of Kenya). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.



Disposition.

186. Taking the foregoing into consideration, I find that that the Plaintiffs/Applicants application dated 5th November, 2024 lacks merit and it is hereby dismissed with costs.

187. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 23RD DAY OF OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of:

Mr. Kadima for the Plaintiffs/Applicants.

Mr. Ouko for Kor the Defendant/Respondent.

Court Assistant; Mr. Joseph Makori.

