



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND CIVIL SUIT NO. E120 OF 2024

EMBAKASI INDUSTRIAL PROJECTS LIMITED.....
PLAINTIFF

VERSUS

EDWARD SHYLOCK OMWEGA NDEGE.....1ST
DEFENDANT

CEPHEI TRADING LIMITED.....2ND
DEFENDANT

PROGRESSIVE CREDIT LIMITED.....3RD
DEFENDANT

THE CHIEF LAND REGISTRAR,
MINISTRY OF LANDS AND HOUSING.....4TH
DEFENDANT

THE REGISTRAR OF TITLES,
MINISTRY OF LANDS AND HOUSING.....5TH
DEFENDANT

RULING

1. This ruling considers the unopposed notice of motion filed by the plaintiff dated 20/12/2024 and expressly made under the provisions of **Sections 1A, 1B, and 3A** of the **Civil Procedure Act (“CPA”)**, as well as **Order 40 Rules 1, 3, and 4** of the **Civil Procedure Rules (“CPR”) 2010** and all other applicable laws. It seeks the following reliefs from this court: -

a. Spent.

b. Spent.

c. Pending the hearing and determination of the instant suit a temporary injunction do issue restraining the 2nd defendant and its servants/agents from further constructing charging, selling, disposing, and or alienating or dealing with the two (2) parcels of land known as land reference number 12715/14862 and land reference number 12715/14863 being subdivisions from land reference number 12715/601.

d. THAT the cost of the motion be provided for.

2. The motion is supported by the grounds outlined in the body thereof and the very lengthy supporting affidavit of Galeb Gulam, sworn on the same date. In summary, it is averred that: a) the plaintiff is the duly registered owner of all that parcel of land known as **L.R. number 12715/601** situated in North West Athi River Township issued pursuant to a certificate of title registered as grant number **I.R. 45525**; b) The plaintiff

has been in possession of the suit property and has paid all statutory taxes relating to the property; c)The 1st defendant herein allegedly fraudulently obtained a provisional certificate of title for land reference number **L.R. number 12715/601** vide certificate of title registered as grant number **I.R. 49525/1** and fraudulently transferred the land to the 2nd defendant in 2020; and

3. D)The 2nd defendant has proceeded to allegedly fraudulently subdivide **L.R. number 12715/601** into two parcels of land known as **L.R. numbers 12715/14862**, and **L.R. number 12715/14863** and has proceeded to charge the latter to the 3rd defendant; finally, e) the plaintiff is apprehensive that unless restrained by the court, the 2nd defendant will proceed to charge further, sell, alienate or dispose of the suit property thereby taking it away from the reach of the plaintiff and causing it to suffer irreparable harm and also rendering the suit nugatory, if successful. Moreover, the balance of convenience lies in granting the orders sought to preserve the suit property. The plaintiff's supporting affidavit also presented several documents allegedly in support of these averments.
4. Regrettably, none of the parties submitted written arguments; therefore, after reviewing the motion, their grounds, affidavit, and annexures, the only issue that arises is **whether the plaintiff has satisfied the legal requirements to justify the granting of injunctive relief.**

5. On matters of law, the plaintiff's motion is filed in accordance with **Order 40, Rule 1** of the **Civil Procedure Rules (CPR)**, which governs this court's handling of applications of this nature. This statutory provision states: -

“Where in any suit it is proved by affidavit or otherwise—

***(a)that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
(b)that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,***

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

6. The principles guiding this court's exercise of discretion in granting a temporary injunction are now well established through authoritative pronouncements. The three key requirements are that the applicant, in this case the plaintiff, must: (a) establish a prima facie case; (b) prove that irreparable harm will occur if the injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience favours it. **See *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358**, reaffirmed in the Court of Appeal decision ***Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR)**. In this case, the court stated:

“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) ally any doubts as to (b) by showing that the balance of convenience is in his favour. 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.”

7. Consequently, the plaintiff must initially establish a prima facie case, which is defined in the Court of Appeal decision of **Mrao**

**Ltd v First American Bank of Kenya Ltd & 2 others
[2003] KECA 175 (KLR), as follows: -**

“So what is a prima facie case? I would say that in civil cases it is 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.”

8. Guided by the **Nguruman Ltd case (Supra)**, which stated that the court should exercise caution and avoid conducting a mini-trial, this court will not scrutinise the merits of the case in detail. Hence, what do the documents submitted by the plaintiff reveal? Has the plaintiff, who bears the burden of proving a prima facie case, met the legal requirements?
9. The plaintiff has provided two certificates of title, both showing a 99-year leasehold starting from 1/11/1983. The first registered owner is Syokimau Farm Ltd, with similar land reference numbers of land **12715/601**. However, the similarities end there. The first one, **I.R. 49525**, has allegedly changed hands several times: Syokimau Farm Ltd transferred it to Simon Maele, who then transferred it to the plaintiff. The second one, which is for **I.R. 45925**, allegedly demonstrates that it is a provisional certificate, which was transferred from Syokimau Farm Ltd to Eliud Simon Mwilu, then to Edward

Shylock Owega Ndege, before a final transfer to the 2nd defendant. However, again, the alleged certificates of title for **L.R. number 12715/14862 IR Nos. 222840** and **L.R. number 12715/14862 IR.222841**, which are registered in the 2nd defendant's name, indicate they are allegedly subdivisions of **I.R. 49525**.

10. These documents have shown that it is probable that there is a double allocation of land. Thus, this court finds the plaintiff, who is an alleged registered owner, has established a prima facie case and has shown a clear and undeniable right to protection that is directly at risk from the act being restrained.
11. However, as established in **Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] Vol. 1 EA 86**, even if the applicant proves a prima facie case, that alone does not justify granting an interlocutory injunction. The court must then consider whether the other conditions are met. Turning to the second requirement of irreparable injury, the defendants did not dispute the plaintiff's claim of possession. Therefore, the court finds that the second condition is satisfied, as there is no alternative remedy to prevent potential harm if the orders are not issued. Concerning the final factor, the court concludes that the balance of convenience favours the plaintiff.
12. Finally, this court finds the notice of motion dated 20/12/2024 merited, and since it is well established that costs

follow the event, costs shall be in the cause. Having made this determination, this court hereby issues the following disposal orders: -

- a) Pending the hearing and determination of the instant suit, a temporary injunction does issue restraining the 2nd defendant and its servants/agents from further constructing, charging, selling, disposing, and or alienating or dealing with the two (2) parcels of land known as land reference number 12715/14862 IR number 222840 and land reference number 12715/14863 IR number 222841 being subdivisions from land reference number 12715/601.***
- b) That parties are directed to comply with Order 11 of the Civil Procedure Rules.***
- c) That a mention date shall be given for purposes of pretrial directions***
- d) Costs shall be in the cause.***

Orders accordingly.

Delivered and Dated at Machakos this 11th day of November, 2025.

HON. A. Y. KOROSS

JUDGE
11.11.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Mutua holding brief for Mr. Sigomo for plaintiff.

Mr. Kuria for 4th and 5th defendants.

Mr. Muuo for 3rd defendant.