



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
PET NO. E053 OF 2024

GAMI PROPERTIES LIMITED
PETITIONER/APPLICANT

VS

CABINET SECRETARY, MINISTRY OF LANDS
PUBLIC WORKS HOUSING & URBAN

DEVELOPMENT

CHIEF LAND REGISTRAR

HON ATTORNEY GENERAL

KENYA AFRICAN NATIONAL UNION -

- **1ST RESPONDENT**

- **2ND RESPONDENT**

- **3RD RESPONDENT**

- **INTERESTED PARTY**

RULING

(In respect of the Petitioner's application dated 13/6/24)

1. What is before the Court is the Applicant's application dated 13/6/24 seeking, in the main, orders for;
 - a. A temporary injunction prohibiting the 1st and 2nd Respondents from cancelling or nullifying the petitioner's certificate of title No. Nbi /Block 79/782 (suit land).
 - b. Temporary injunction restraining the respondents, jointly by themselves, their agents, servants, or otherwise, from encroaching, trespassing, demolishing any construction, or in any other manner interfering with the proprietary rights, interests, and possession of the petitioners' property.
2. The applicant stated that it acquired the suit land from the interested party in 2017 and holds a title to the land, having been registered as the

owner in 2021. That the 2nd Respondent, via a letter dated 23/5/24, summoned it to surrender the title within 21 days, failing which the title would be cancelled. That the actions of the Respondents will unlawfully deprive it of its suit land and violate its rights to property, since the petitioner has been in occupation of the land since February 2021 and is currently in the process of developing the said land.

3. Additionally, the petitioner stated that it has learnt from reliable sources that, via a letter dated 8/4/24, the Senator of Nairobi County urged the Governor to revoke the development approvals granted to it and to halt all construction on the site.
4. For the above reasons, the petitioner is apprehensive that members of the public are being incited to evict it from the suit land without any justifiable reason and to compel them to cede ownership of the suit land through intimidation.
5. Lastly, the petition averred that it stands to suffer irreparable loss and harm if the orders sought are not allowed.
6. The Respondents oppose the application through the replying affidavit sworn by Timothy Waiyua Mwangi, Gordon O Ochieng, Charles Kipkurui Ngtich and Wilfred Muchae.
7. The deponents' affidavits outline that the suit land was designated for a community hall and therefore is public land, and was not available for allocation to the interested party.
8. The Interested party did not file any response to the application.
9. On 18/2/25, the parties elected to canvass the application by way of written submissions, after which the court directed the parties on the timeframes to do so. The Petitioners' submissions are dated 28/4/25, while those of the Respondents are dated 22nd July 2025. I have read and considered the said submissions.
10. The key issue for determination is whether the application is merited.
11. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the Civil Procedure Rules, 2010 is to stay and prevent the wasting,

damaging, alienation, the sale, removal or disposition of the suit property. The Order provides that;

“1. 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 Respondents 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 Respondents 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”.

12. An applicant seeking orders of temporary injunction must prove the ingredients set out in the case of **Giella vs Cassman Brown & Co Ltd [1973] EA 358** as follows: -

- a. First the Applicant must show a prima facie case with a probability of success.
- b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
- c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.

13. It is trite that a prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case 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. **See Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR**
14. In this case, it is not disputed that the petitioner holds a title to the suit land. The said title has been challenged by the respondents on the grounds that it should not have been allocated, as the land was unavailable as it was reserved for a community hall or public purpose.
15. It is trite that the Court is not required to make final findings of contested facts at this stage, as the Court should only weigh the relative strength of the parties' cases. See **Mbuthia Vs Jimba credit Corporation Ltd (1988) eKLR**.
16. What orders should the court then issue in the circumstances? The Applicants sought an alternative order of status quo. **Section 13(7) (a) of the Environment and Land Court Act, 2015 (2011)** abundantly provides for this court's mandate to grant interim preservation orders.
17. Practice Direction Number 32 of the Environment and Land Court Practice Directions, 2014 provides thus;
- “During interpartes hearing of any interlocutory application, where appropriate, parties are encouraged to maintain status quo----- after considering the nature of the case or hearing both sides, the judge shall exercise discretion to order for status quo pending the hearing and determination of the suit, keeping in mind the overriding interests of justice.”
18. The term “**status quo**” has been defined by the **Black's Law Dictionary 10th Edition** as; -
- “The situation that currently exists.”

19. The purpose of the status quo was stated in the case of **Kenya Airline Pilots Association (KALPA) Vs Cooperative Bank of Kenya Limited 7 Anor (2020) EKLK** as follows;

“ by maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored, thereby rendering nugatory its proposed decision.”

20. Final orders for disposal;

- a. In the end, to preserve the substratum of the suit land pending the hearing and determination of the petition, the status quo is hereby issued/maintained.
- b. Status quo means;
 - i) The Petitioner will remain in possession of the suit land pending the hearing and determination of the Petition.
 - ii) The petitioner is restrained from carrying out any construction/development on the suit land, nor demolishing any part of the community/memorial hall situate on the suit land, or doing anything to change the topography of the suit land pending the hearing and determination of the Petition.
 - iii) the Respondents are restrained from taking any adverse action, including cancellation of the title of the Petitioner pending the hearing and determination of the Petition.
 - iv) there shall be a restriction on the title prohibiting the registration of **ALL dealings**, including and not limited to alienation, disposition, selling, charging and encumbering the suit land in any manner pending the hearing and determination of the Petition.
- c. Costs shall abide the conclusion of the Petition.

21. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF
NOVEMBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI
JUDGE**

Delivered Online in the presence of:

1. Wachira H/B for TK Rutto for the Petitioner
2. Mr. Allan Kamau for the Respondents
3. N/A for the Interested Party
4. CA- Ms Yvette Njoroge