



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)
AT NAIROBI, MILIMANI LAW COURTS
ELC CASE NO. 241 OF 2025

WILFRED OBIERO NYANGAU.....1st
PLAINTIFF/APPLICANT
JOSHUA NYAMBARIGA OBIERO.....2nd
PLAINTIFF/APPLICANT

-VERSUS-

MOSES WENANI.....1st
DEFENDANT/RESPONDENT
THE CHIEF OFFICER - NAIROBI COUNTY
MARKETS & TRADING SERVICES.....2nd
DEFENDANT/RESPONDENT
THE CHIEF OFFICER - NAIROBI COUNTY
BUSINESS & HUSTLER OPPORTUNITIES.....3rd
DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 15th May 2025, brought by the Plaintiffs/Applicants pursuant to Articles 22, 23, 40, 47 and 50 of the Constitution, Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 40 Rules 1 and 2, and Order 51 of the Civil Procedure Rules.
2. The Applicants seek the following substantive orders:

- a) Spent.
- b) That pending the hearing and determination of this Application inter parties, a temporary injunction do issue restraining the Respondents by themselves, their agents, proxies or servants from evicting, interfering with, accessing, trespassing on or in any manner dealing with the premises known as Toilet Block T1 at Kenyatta Market, or otherwise interfering with the Applicant's quiet possession thereof.
- c) That pending the hearing and determination of the suit, a conservatory order do issue preserving the Applicants' rights of occupation and business operations at Toilet Block T1, Kenyatta Market, and restraining the Respondents from carrying out any eviction, demolition or confiscation of property therein.
- d) That this Honourable court be pleased to issue an order directing the Respondents to forthwith restore the Applicant into peaceful possession of Toilet Block T1.
- e) That this Honourable Court be pleased to issue an Order directing the OCS at Capitol Hill Police station, Upper Hill, Nairobi to enforce the Orders issued and provide adequate police protection to the Plaintiff/Applicants from any further acts of harassment or invasion by the 1st Respondent and /or any person acting at their behest.
- f) That the costs of the application be provided for.
- g) Any other orders the Court may deem fit and just.

3. The said application was based upon the grounds set out on the face of the motion and supported by the affidavit of Wilfred Obiero Nyangau sworn on even date. It was contended by the Applicants that the 1st Plaintiff is the lawful allottee and long-standing beneficial occupier of *Toilet Block T1*, having allegedly been issued with a Letter of Allotment dated 1st February 2008 by the then Director of Social Services and Housing, pursuant to which he paid the requisite acceptance fee and thereafter remitted monthly rent to Nairobi City County for over three decades.
4. The Plaintiffs asserted that their occupation has been peaceful, continuous, and supported by substantial investments in water tanks, plumbing and other infrastructural improvements, and that the Respondents particularly the 1st Respondent acting in concert with County officials unlawfully, violently and without due process invaded the premises, vandalized installations, confiscated property, and forcibly evicted them on 6th May 2025, thereby infringing their constitutional rights under **Articles 28, 29, 40 and 47**. They therefore urge the Court to preserve their occupation pending determination of the suit, restore them into possession, and restrain any further interference.

Response

5. The 2nd and 3rd Defendants opposed the application through a Replying Affidavit sworn on 25th July 2025 by Joshua Otieno, a Principal Market Officer, who averred that Toilet Block T1 is public property situated within the Kenyatta Market Tenant Purchase Scheme and managed under the authority of the elected Market Welfare Committee for the benefit of traders and the general public.

6. He deposed that the facility has never been subject to private ownership, lease or alienation, and that any authority previously exercised by the 1st Plaintiff arose solely from his former position as Chairperson of the Market Welfare Committee in the early 2000s, which authority was administrative, conditional, revocable, and incapable of conferring proprietary rights.
7. It was asserted that the Plaintiff failed to remit the required monthly remittances during his tenure, prompting the County to repossess the facility around 2010, after which new leadership took over. He further deposed that the alleged Letter of Allotment of 1st February 2008 is immaterial and, if it exists, was linked to the Plaintiff's tenure in office and lapsed upon his removal. County rent records, he stated, show that no rent has been paid since 2010, and thus no tenancy or licence in favour of the Plaintiff subsists.
8. Mr. Otieno further averred that in 2014 the County lawfully rehabilitated the facility through a Build-Operate-Transfer (BOT) project awarded to Kipekee Enterprises under Tender No. NCC/DOE/T/250/2013-2014, after which management was formally handed over to the elected Market Welfare Committee pursuant to County policy. He contended that the Plaintiffs' re-entry in April 2025 was unlawful, caused confusion and disruption of essential sanitation services, and necessitated a lawful enforcement and repossession exercise on 6th May 2025.
9. He characterized the Plaintiff's renewed claim as an attempt to unlawfully appropriate public infrastructure, pointing to past litigation, including Judicial Review No. 277 of 2012, as evidence of a pattern of obstruction. He denied the allegations of harassment, loss, or assault, terming them unsubstantiated, and stated that the County acted strictly within its

mandate to safeguard public health and infrastructure. He therefore urged the Court to dismiss the application as unmerited, misleading, and contrary to public interest.

10. The 1st Respondent, Moses Wenani, also opposes the application through his affidavit sworn on 22nd July 2025. He states that he has been improperly sued in his personal capacity despite having no individual interest in the suit facility, which is a public sanitation block managed for the benefit of traders under the elected market welfare committee. He asserts that the 1st Applicant previously served as the welfare committee chair approximately 18 years ago and was allowed to manage the facility only in that capacity, as a trustee for traders, and under temporary, revocable local arrangements with the County. He avers that the Applicant breached those management terms in 2009, leading to termination and subsequent election of new committee leadership, including a fresh management agreement in 2012. The Respondent also notes that past litigation by the 1st Applicant over the same property including MCCC No. 2878 of 2008 and JR No. 277 of 2012 was unsuccessful and demonstrates a pattern of attempting to seize the public facility.
11. He disputes the Applicants' allegation of ownership, contending that no legal title, lease or valid allocation exists in their favour and that the alleged 2008 allotment letter is inconsistent and incapable of conferring private rights over a public utility. He further notes contradictions in the Applicants' pleadings regarding the alleged duration of occupation and lack of evidence for claims of assault or damages. He maintains that the Application is speculative, misleading and unsupported by credible evidence. The 1st Respondent therefore prays that the Motion be dismissed and indicates an intention to seek the striking out of his name

from the suit and to pursue costs based on abuse of process.

12. The application proceeded by way of written submissions. In their submissions, counsel have substantiated their clients' respective positions stated in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.

13. I have considered the Notice of Motion, the affidavit in support and the annexures thereto. I have also considered the written submissions of counsel and the authorities cited and the following are the issues for determination: -

(i) Whether or not the plaintiff's/applicant's application meets the threshold for grant of temporary injunction pending the outcome of the suit.

(ii) Who should bear costs?

Analysis and determination

14. It is now established in Kenya that the principles for consideration in determining whether temporary injunction can be granted or not is well settled in the case of **Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358** as follows: "First, 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."

15. In relying on the case above, I wish to interrogate whether the Plaintiff has made out a prima facie case with a probability of success. The Plaintiff is seeking injunctive orders based on the fact that he is the alleged lawful allottee and long-standing occupier of *Toilet Block T1*, relying principally on an alleged Letter of Allotment dated 1st February 2008 and his assertion of continuous occupation, investment and payment of rent to the County. He contends that the Respondents unlawfully evicted him, vandalized his installations, and interfered with his rights under Articles 40 and 47 of the Constitution. However, these assertions stand in direct conflict with the Respondents' evidence, which shows that *Toilet Block T1* is a **public sanitation facility**, forming part of a County-managed Tenant Purchase Scheme, whose management has always been vested in the elected Market Welfare Committee, and not subject to private ownership or individual allotment.
16. In the case of ***Mrao Limited -vs- First African Bank Limited and 2 others [2003] KLR 125***, the Court of Appeal in determining what amounts to a prima facie case stated; "so what is a prima facie case? I would say that in a civil application, it is a case which on the material presented to the court, a tribunal properly directed 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"
17. In this instance, the Plaintiffs have not placed before this Court material capable of demonstrating the existence of such a right. The alleged Letter of Allotment is unsupported by any acceptance form or subsequent correspondence from the allocating authority; nor is there evidence of continuous rent remittance as claimed. On the contrary, the Respondents

have produced official County records confirming that the Plaintiffs ceased making payments in 2010, and that the facility was subsequently rehabilitated in 2014 under a County Build-Operate-Transfer project, after which it was formally handed back to the Market Welfare Committee. These uncontested facts significantly weaken the Plaintiffs' assertion of a continuing proprietary or equitable interest.

18. Moreover, the contradictions in the Plaintiffs' own account alternating between claims of 13, 17, and 35 years of occupation further erode the credibility of their claim. The documentary gaps, inconsistencies, and absence of a legally recognizable title or licence capable of protection under interlocutory orders lead this Court to the conclusion that the Plaintiffs have not established any apparent right that has been infringed, as contemplated in **Mrao Limited -vs- First African Bank Limited and 2 others [2003] KLR 12**. Their occupation, on the evidence before the Court, appears to have been purely administrative during the 1st Plaintiff's tenure as chair of the Welfare Committee and lapsed automatically when he left office and failed to meet mandatory remittance obligations.
19. The Court is also guided by **Njenga -Vs- Njenga [1991] KLR 401**, where Bosire J (as he then was) held that "*an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles.*" In the present matter, the Plaintiffs have not provided credible, consistent, or persuasive evidence to ground the exercise of that discretion in their favour. Rather, the material before the Court overwhelmingly points to the suit premises being public property, administered under an established County framework, with no identifiable legal or equitable right accruing to the Applicants capable of protection at this stage. In light of the foregoing, I am not persuaded by the facts presented by the Plaintiffs/Applicants that

they deserve the orders sought.

20. The plaintiff/applicant has also failed to demonstrate that he will suffer irreparable injury which cannot be by an award of damages. The harm alleged loss of income, interruption of business operations, and damage to fittings is in its nature pecuniary, and therefore quantifiable should the Plaintiffs ultimately succeed at trial. No evidence has been placed before the Court to show a harm so permanent or incapable of compensation as to justify the exceptional remedy of an interlocutory injunction.
21. The Court is guided by **Kenleb Cons Limited -vs- New Gathitu Service Station Limited & Another [1990] KOLR 557** Bosire J (as he then was) held that: “to succeed in an application for injunction an applicant must not only make full and frank disclosure of all relevant facts to the just determination of the application but must show he has a right, legal or equitable, which requires protection by injunction”
22. In the present matter, the Applicants have not demonstrated such a right. Their evidence is neither full nor frank, and the inconsistencies in their account particularly regarding the duration of occupation, the alleged allotment, and the absence of rent payments since 2010 further undermine the credibility of their claim. Without proof of a protectable legal or equitable right, the Court cannot invoke its equitable jurisdiction in their favour.
23. For these reasons, I am not satisfied that the Applicants herein deserve the protection of an interlocutory injunction. They have not established a prima facie case, they have not shown irreparable harm, and the balance of convenience does not favour of the Plaintiffs.

24.All in all, I find that the application has failed to meet the threshold for the grant of a temporary injunction. The same lacks merit and is hereby dismissed with costs to the Respondents.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **Nairobi** on this **13th** day of **November, 2025.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

..... for the Plaintiff/Applicant

..... for the Defendants/Respondents

Philomena W. Court Assistant