



**Nzau v Ahmed & 2 others; Chief Land Registrar & another (Interested Parties)  
(Land Case E016 of 2025) [2025] KEELC 7924 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7924 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E016 OF 2025  
CG MBOGO, J  
NOVEMBER 17, 2025**

**BETWEEN**

**JONATHAN MUSYOKA NZAU ..... PLAINTIFF**

**AND**

**ABDIRIZACK AHMED ..... 1<sup>ST</sup> DEFENDANT**

**BELON CONSTRUCTION COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**KENYA URBAN ROADS AUTHORITY ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**CHIEF LAND REGISTRAR ..... INTERESTED PARTY**

**COUNTY GOVERNMENT OF NAIROBI ..... INTERESTED PARTY**

**RULING**

1. Before me is the notice of motion dated 20<sup>th</sup> January, 2025 filed by the plaintiff applicant, and it is expressed to be brought under Order 51, Order 40 Rules 2, 3 and 8 of the Civil Procedure Rules and Sections 3A and 63 (c) and (e) of the *akn ke act 1924 3 Civil Procedure Act* seeking the following orders: -
  1. Spent.
  2. Spent.
  3. Spent.
  4. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respondents by themselves or through their agents, servants, employees and or any person claiming through them be restrained by way of a temporary injunction from evicting or interfering with the plaintiff applicants, its servants, agents, tenants, occupants and or employees quiet enjoyment and or trespassing, demolishing,



developing, and or dealing in anyway with the property known as Nairobi Block 59 341 pending the hearing and determination of this suit.

5. That the 3<sup>rd</sup> defendant respondent by themselves or through their agents, servants and or employees be restrained by way of a temporary injunction from approving any application and or giving any approval, consent and or license for the development of an access road on the property known as Nairobi Block 59 341 pending the hearing and determination of this application.
  6. That the 3<sup>rd</sup> defendant respondent by themselves or through their agents, servants and or employees be restrained by way of a temporary injunction from approving any application and or giving any approval, consent and or license for the development of an access road on the property known as Nairobi Block 59 341 pending the hearing and determination of this suit.
  7. That an order of Mandamus does issue compelling the 3<sup>rd</sup> defendant respondent to recall and or cancel the irregular approval of an access road issued by them to the 1<sup>st</sup> and 2<sup>nd</sup> defendants respondents or any other person with respect to the property known as Nairobi Block 59 341 pending the hearing and determination of this application.
  8. That an order of Mandamus does issue an order compelling the 3<sup>rd</sup> defendant respondent to recall and or cancel the irregular approval of an access road issued by them to the 1<sup>st</sup> and 2<sup>nd</sup> defendant respondent or any other persons with respect to the property known as Nairobi Block 59 341 pending the hearing and determination of this suit.
  9. That the OCPD Industrial Area Police Station be ordered to ensure compliance with this honourable court's and or ensure maintenance of peace and order.
  10. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of the application. It is further supported by the affidavit of the plaintiff applicant sworn on even date. The plaintiff applicant deposed that he is the registered owner of the property known as Nairobi Block 59 341 measuring approximately 0.1064 hectares - the suit property. He deposed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants respondents applied and received approval from the 3<sup>rd</sup> defendant respondent to construct an access road on the suit property which remains a private property. Further, that the approval was without his consent. The plaintiff applicant deposed that he is not aware of any formal resolutions by the 2<sup>nd</sup> interested party authorizing the construction of an access road on his property, and that neither was he given notice of any proposed construction.
  3. The plaintiff applicant deposed that following the demolitions on the suit property on 8<sup>th</sup> January 2024, the 1<sup>st</sup> and 2<sup>nd</sup> defendants respondents have begun the said construction, and that if it is not halted, it has the effect of subdividing his property into two portions rendering his title obsolete. Further, he deposed that there is no public road on the suit property to attract the mandate of the 3<sup>rd</sup> defendant respondent to grant any approval on the same. He further objected to the said approvals on 13<sup>th</sup> January, 2025. He deposed that the 1<sup>st</sup> and 2<sup>nd</sup> defendants respondents have an alternative route to their property, and there is no prejudice should the court grant the orders sought.
  4. The 2<sup>nd</sup> interested party filed its response to the application vide the replying affidavit of Tom Achar, the Director of Urban Planning and Development sworn on 24<sup>th</sup> February, 2025. The 2<sup>nd</sup> interested party deposed that it has no legal mandate over matters of land ownership, compulsory acquisition or demolition orders as they are under the jurisdiction of the 3<sup>rd</sup> defendant respondent. It was deposed that the 2<sup>nd</sup> interested party did not approve any road construction or demolition, and that it was only



- confronted with an application for a boundary wall approval which was deferred upon being served with court orders.
5. The 2<sup>nd</sup> interested party deposed that all developments within Nairobi require prior planning approvals and that at no point did it authorize the alleged road construction. Further, that it was not consulted during the acquisition process, and that neither was it involved in demolition or compensation issues. In conclusion, the 2<sup>nd</sup> interested party deposed that it has always acted within the law, complied with all court orders and remains a neutral entity in this dispute.
  6. In response thereto, the plaintiff applicant filed his affidavit sworn on 14<sup>th</sup> March, 2025. The plaintiff applicant reiterated the averments contained in his supporting affidavit, and further deposed that the admission by the 2<sup>nd</sup> interested party that it did not approve any road construction on his suit property confirms the illegality by the defendants respondents. Further, that an interested party cannot seek substantive reliefs that alter the core dispute between the principal parties in a suit. He deposed that no adverse claim has been raised against the 2<sup>nd</sup> interested party, and that it's request for substantive orders are inapplicable.
  7. On 14<sup>th</sup> November, 2025 the learned counsel for the 2<sup>nd</sup> defendant respondent and the 1<sup>st</sup> interested party informed the court that they are not opposed to the application.
  8. The application was canvassed by way of written submissions. The plaintiff applicant filed his written submissions dated 3<sup>rd</sup> April, 2025 where he raised two issues for determination as follows:-
    - a. Whether the plaintiff applicant has satisfied the conditions for temporary injunction set out under Order 40 Rule 1 of the Civil Procedure Rules.
    - b. Whether the court should issue an order of mandamus against the 3<sup>rd</sup> defendant respondent.
  9. On the first issue, the plaintiff applicant submitted that a prima facie case exists with a high probability of success arising from the defendants respondents alleged violation of his right to property. That unless an injunction is granted, he risks suffering irreparable harm, as an award for damages would be insufficient to remedy the permanent disruption and potential subdivision of the suit property. To buttress on this issue, the plaintiff applicant relied on the case of Mrao Ltd v First American Bank Ltd & 2 Others [2003] eKLR. He submitted that he has demonstrated lawful acquisition of the suit property which he obtained through transparent and legally sound procedures. Further, that none of the defendants respondents has produced any valid title to controvert his interest in the suit property.
  10. The plaintiff applicant further submitted that by demolishing the perimeter wall and commencing construction works, the defendants respondents have permanently altered the layout of his land causing permanent damage to its structure and utility. On a balance of convenience, he submitted that the same lies in his favour to protect his proprietary interests in this suit. He relied on the cases of Said Almed v Mannaseh Benga & Another [2019] eKLR, and Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR.
  11. On the second issue, the plaintiff applicant submitted that where the 3<sup>rd</sup> defendant respondents grants approval that manifestly contravene the rights of private landowners and fails to comply with the mandatory procedures governing road development, it falls upon this court to intervene and compel the authority to rectify its missteps. That in the circumstances, it is clear that no lawful basis exists for the 3<sup>rd</sup> defendant respondent to maintain an approval granted to a non-existent entity.
  12. The 2<sup>nd</sup> interested party did not file its written submissions. Be that as it may, I have considered the application, the replies thereof and the written submissions filed by the plaintiff applicant. In my view,



- the issue for determination is whether the plaintiff applicant has met the threshold for the grant of temporary injunctive orders.
13. The grounds for grant of interlocutory injunction were set out in the case of *Giella vs Cassman Brown Co. Ltd* (1973) 358 that the applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the application on a balance of probabilities.
  14. A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank Kenya Ltd & 2 others* [2003] eKLR as follows:

“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.”
  15. Also, in the case of *Dr. Simon Waiharo Chege vs. Paramount Bank of Kenya Ltd. Nairobi (Milimani) HCCC No. 360 of 2001*: it was held:-

“The remedy of injunction is one of the greatest equitable reliefs. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as appertains to the subject matter of the suit does not meet the approval of the eye of equity.”
  16. For the record, the instant application is not opposed by the defendants respondents and the 1<sup>st</sup> interested party. Equally so, the 2<sup>nd</sup> interested party has distanced itself with any alleged approvals and deposed that it did not approve any road construction or demolition. Further, that all developments within Nairobi require prior planning approvals and that at no point did it authorize the alleged road construction. From the material relied on by the plaintiff applicant, he is the registered owner of the suit property, a fact which has not been rebutted. On the first limb, I am satisfied that the plaintiff applicant has established a prima facie case.
  17. On whether the plaintiff applicant will suffer irreparable harm that cannot be compensated by way of damages, he argued that the 1<sup>st</sup> and 2<sup>nd</sup> defendants respondents have received approval from the 3<sup>rd</sup> defendant respondent and have commenced construction which has the potential of subdividing his property. On this issue, and in the absence of evidence to the contrary, it is likely that the plaintiff applicant will suffer irreparable harm.
  18. In *Nguruman Limited v Jan Bonde Nielson* [2014] KEHC 1718 (KLR), it was further observed:-

“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.”

19. On balance of convenience, it is my finding that the same lies in favour of the plaintiff applicant to enable the preservation of the suit property so that the parties ventilate their issues properly during the hearing.
20. On whether the orders of mandamus should issue at this stage, this court declines to grant the same especially in circumstances such as this where other orders can issue that would be sufficient pending the determination of the suit.
21. From the above, I find merit in the notice of motion dated 20<sup>th</sup> January, 2025 and I grant the following orders:-
  - i. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respondents by themselves or through their agents, servants, employees and or any person claiming through them are hereby restrained by way of a temporary injunction from evicting or interfering with the plaintiff applicant’s, its servants, agents, tenants, occupants and or employees quiet enjoyment and or trespassing, demolishing, developing, and or dealing in anyway with the property known as Nairobi Block 59 341 pending the hearing and determination of this suit.
  - ii. The 3<sup>rd</sup> defendant respondent by itself or through its agents, servants and or employees are hereby restrained by way of a temporary injunction from approving any application and or giving any approval, consent and or license for the development of an access road on the property known as Nairobi Block 59 341 pending the hearing and determination of this suit.
  - iii. The OCPD Industrial Area Police Station is hereby directed to ensure compliance with Order (i) and ensure maintenance of peace and order.
  - iv. The costs of this application shall be in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

17 11 2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Askaz Amor holding brief for Mr. Alosa for the Plaintiff Applicant

Mr. Motari for the 3<sup>rd</sup> Defendant Respondent and the 1<sup>st</sup> Interested Party – absent

