



Kenya Railways Corporation v Lally Farm Limited & 2 others (Environment and Land Case E316 of 2024) [2025] KEELC 8177 (KLR) (24 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8177 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E316 OF 2024
TW MURIGI, J
NOVEMBER 24, 2025**

BETWEEN

KENYA RAILWAYS CORPORATION PLAINTIFF

AND

LALLY FARM LIMITED 1ST DEFENDANT

PRUDENTIAL BUILDING SOCIETY 2ND DEFENDANT

ETHICS & ANTI CORRUPTION COMMISSION 3RD DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 29th July 2025 brought under Sections IA, 1B, 3A, 63(e) of the *Kenya Civil Procedure Act 1924* and Order 40 Rule 1 of the Civil Procedure Rules in which the Plaintiff Applicant seeks the following orders;
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the main suit, a conservatory order be issued restraining the 1st and 2nd Defendants, whether by agents, servants, and through any party whatsoever, from entering, selling, disposing of, or leasing L.R. 209 12781.
 4. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Christine Macharia sworn on even date.



The Plaintiff's Case

3. The deponent averred that the Plaintiff was allocated a surveyed plot, L.R. No. 209 9533 vide a letter of allotment dated 11th June 1984. She further averred that, prior to the allotment, the property was designated as a workshop for the corporation's use.
4. She stated that the Plaintiff learned the 1st Defendant was allocated part of its property measuring 0.84 acres and was issued a title which used it to secure a loan with the 2nd Defendant. She further stated that the 1st Defendant had defaulted on the loan, resulting in a notice of sale being issued by Philips International Auctioneers.
5. She asserted that the land where title No. L.R 209 12781 is located has been occupied by the Plaintiff since 1970, and she added that the 1st Defendant has never occupied the property. She urged the court to preserve the suit property to determine the validity of the title for the said property.
6. The 1st Defendant did not file any response to the application.

The 2nd Defendant's Case

7. The 2nd Defendant filed a replying affidavit sworn on 19th February 2025 by Jeremiah Simba in opposition to the application.
8. The deponent stated that the 1st Defendant is the registered owner of the suit property, which is collateral for a loan secured by the 2nd Defendant.
9. He further averred that the Regional Government Surveyor from the Ministry of Lands, Public Works and Housing conducted a survey and boundary verification, which confirmed that the suit property is recorded in the Ministry of Lands records. In addition, he stated that the boundary verification confirmed that the permanent structures on L.R. No. 209 9533 had encroached on 0.1177 hectares of the suit property.
10. He contended that the allegations of impropriety and improper motives in financing the 1st Defendant are unfounded. He insisted that the application lacks merit and should be dismissed with costs.
11. The application was canvassed by way of written submissions.

The Plaintiff's Submissions

12. The Plaintiff filed its submissions dated 19th June 2025. On behalf of the Plaintiff, Counsel outlined the following issues for the court's determination:-
 - a) Whether the Plaintiff Applicant has established a prima facie case?
 - b) Whether the Plaintiff Applicant will suffer irreparable injury loss that cannot be compensated by an award of damages if the application for temporary injunction is not allowed?
 - c) In whose favour does the balance of convenience lie?
13. On the first issue, Counsel relied on the case of *Giella v Cassman Brown* (1973) EA 358 and *Kenleb Cons Ltd v New Gatitu Service Station Ltd & another* (1990) eKLR to submit on the principles governing the grant of an injunction. Counsel submitted that the Plaintiff has established a prima facie case, as the suit property is public land and has been allocated to the Plaintiff.
14. Regarding the second issue, Counsel submitted that the Plaintiff has occupied the suit property since 1984 and has constructed a building thereon. It was further submitted that the 1st Defendant has



never occupied the suit property. Counsel submitted that the building on the suit property would be demolished and that the Plaintiff would be evicted if an injunction is not granted.

15. Regarding the third issue, Counsel submitted that the balance of convenience favours the Plaintiff because they are in possession of the suit property.

The 2nd Defendant's Submissions

16. The 2nd Defendant filed its submissions dated 16th June 2025. On behalf of the 2nd Defendant, Counsel relied on the case of Peter Gaitarau Peter Munya v Dickson Mwenda Kithinji to submit on the criteria for the grant of conservatory orders.
17. Counsel submitted that this matter does not explicitly disclose any public interest or create a constitutional controversy that would warrant the issuance of conservatory orders.
18. Counsel further submitted that the application lacks merit and is unlikely to succeed. It was submitted that the 2nd Defendant conducted two valuations of the suit property, which confirmed that the 1st Defendant is the registered owner.
19. It was also submitted that the Plaintiff has not established a prima facie case with a likelihood of success. To support this point, reliance was placed on the case of Centre for Rights Education and Awareness & 7 others vs Attorney General (HCCP No. 16 of 2011) and Board of Management of Uhuru Secondary School vs City County Director of Education Petition No. 359 of 2015 eKLR.

Analysis And Determination

20. Having considered the application, the respective affidavits, and the rival submissions, the issue that arises for determination is whether the Plaintiff has met the threshold for the grant of an injunction.
21. The principles for the grant of an injunction were laid down in the celebrated case of Giella vs- Cassman Brown & Co Ltd 1973 EA 358 as follows:-
 1. First, the Applicant must show a prima facie case with a probability of success.
 2. 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.
 3. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
22. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
23. In Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR, the Court of Appeal defined a prima facie case 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.”
24. The dispute between the parties herein centers on the ownership of the suit property. The Plaintiff's claim is based on the letter of allotment dated 11th June 1984. According to the Plaintiff, the 1st



- Defendant was fraudulently allocated a part of its property and issued a title that it used to secure a loan it has defaulted on repaying.
25. The 2nd Defendant maintained that the 1st Defendant is the registered owner of the suit property. The 2nd Defendant argued that valuations and records held at the Lands Office confirmed that the 1st Defendant is the registered owner of the suit property. In this regard, the 2nd Defendant relied on the title registered in the name of the 1st Defendant.
 26. In the case of *George Gikabu Mbuthia vs Jimba Credit Corporation Ltd* 988 KLR 1, the court held that;

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law, and the court should only weigh the relative strength of the parties’ cases.”
 27. Similarly, in the case of *Edwin Kamau Muniu vs Barclays Bank of Kenya Ltd* (2006), the court held that;

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality, all the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”
 28. At the interlocutory stage, the court is not required to make final findings on contested matters. Issues of ownership and sale can only be determined in a full trial, where the parties will have the opportunity to present evidence and to have it challenged by way of cross-examination.
 29. Based on the material that is on record, I find that the Applicant has established a prima facie case.
 30. On the second condition, the Applicant must demonstrate that it will suffer a harm which cannot be adequately compensated by an award of damages.
 31. The Court of Appeal in *Nguruman Limited Vs Bonde Nielsen & 2 Others* (2014) eKLR held that: -

“On the second factor, 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 facie, 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 stand 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.”
 32. The Applicant is apprehensive that it will be evicted from the suit property and the building on the property will be demolished if an order of injunction is not granted. It is not in dispute that the Plaintiff is in possession of the suit property. The Applicant’s fears are not baseless as Philips International Auctioneers has already issued a notice of sale for the suit property. This court is convinced that without an injunction, the Applicant will suffer irreparable harm if it is evicted from the suit property.



33. On balance of convenience, the court has to weigh the hardship to be borne by the Applicant by refusing to grant the injunction against the hardship to be borne by the Respondents by granting the injunction. Looking at the evidence presented by the parties.
34. I find that if the suit property is not preserved, it may be wasted away. The balance of convenience, therefore, tilts in favour of preserving the suit property.
35. In the end, I find that the application dated 16th January 2025 is merited and the same is hereby allowed in the following terms:-
 - a. The 1st and 2nd Defendants whether by their agents, servants and through any party whomsoever are hereby restrained from selling, disposing or leasing L.R No. 209 12781 pending the hearing and determination of this suit.
 - c) The Plaintiff is awarded costs of the application.

RULING DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER 2025 .

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HON. T. MURIGI

JUDGE

In The Presence Of: -

Aketch Elvira for the Plaintiff Applicant

Court assistant – Ahmed

