



that on **8/9/2025**, the 1<sup>st</sup> respondent, without any lawful notice or authority, unlawfully entered into the suit land, proceeded to drill trenches, claiming that the government had acquired the land and was under acting instructions from the 2<sup>nd</sup> respondent.

- 3.** The applicant deposes that upon learning of the presence of the alleged entry and excavation works on his land, he wrote a formal demand letter to the respondents to cease acts of trespass and for reinstatement of the land to its original condition, which letter is annexed as **LK-(2)**. The 2<sup>nd</sup> respondent ignored, thus leading to this suit.
- 4.** Further, the applicant deposes that he intends to utilize the suit land for his own use and benefit, given he had applied for and approvals issued to construct a petrol station therein as per a letter annexed as **LK-(3)**, hence the alleged excavation and trenching works on his land by the authority of the 2<sup>nd</sup> respondent is not only unlawful, but in breach of his constitutional rights to use, develop and enjoy rights of his land the way that he intends or develop or plan for it.
- 5.** The applicant deposes that he had never been served with any notice of intention to compulsorily acquire his land, nor had he been contacted or compensated for

the same by the government or the 2<sup>nd</sup> respondent, reading the acts as blatant trespass and unlawful deprivation of his constitutional rights.

6. The applicant deposes that, unless the court intervenes, the interference with his parcel of land will continue to his great loss and damage, incapable of any monetary compensation.
7. The applicant deposes that the interest of justice tilts in granting orders to preserve the suit land; otherwise, the trespass shall continue, and he will be deprived of his rights to own, occupy, and use.
8. The affidavit of service dated **9/10/2025** by Daniel Shiraho indicates that the summons to enter appearance and the application were served upon the defendants on **8<sup>th</sup>** and **9<sup>th</sup> October, 2025**. The court is satisfied that the directions issued on **23/9/2025** were fully complied with.
9. Through written submissions dated **9/10/2025**, the applicant submitted that the suit is land before this court by dint of **Article 162, 2(b)** of the Constitution, **Section 13(3)** of the Environment and Land Court Act, for the value of the suit land is beyond **Kshs. 20,000,000/=**, as per the valuation report. Relying on **Azzuri Ltd -vs- Pink Properties Ltd [2017]**

eKLR, the applicant submits that matters of trespass and ownership fall within the jurisdiction of this court.

**10.** The applicant submits that he has proved ownership of the suit land measuring **2.5 acres** issued to him on **7/11/2014**, which he has peacefully occupied until the illegal entry into and commission of illegal acts on the land by the defendants.

**11.** Similarly, the applicant submits that he is entitled to the safeguarding or protection of his property rights, which are in danger of wastage, damage, and alienation by the defendants under **Order 40 Rule 1(a)** of the Civil Procedure Rules.

**12.** The applicant submits that he has met the ingredients of a temporary injunction as set out in **Giella -vs- Cassman Brown & Co. Ltd [1973] EA 358, Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others [2016] eKLR, Mrao Ltd -vs- First American Bank of (K) Ltd & Others [2003] KLR 125, Kenleb Cons. Ltd -vs- New Gatitu Service Station Ltd & Another [1990] KEHC 53 (KLR)** and **James Muigai Thungu -vs- County Government of Trans Nzoia & Others [2015] eKLR.**

- 13. Section 63(e)** of the Civil Procedure Act as read together with **Order 40 (1)** and **(2)** of the Civil Procedure Rules, grants this court power to issue temporary order of injunction, where it is proved through affidavit or otherwise, that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, to stay or prevent the wasting, damaging, alienation, sale, removal, or disposition as the court thinks fit until the suit is disposed of or until further orders.
- 14.** A mandatory injunction, on the other hand, is ordinarily granted after a full hearing when all evidence has been adduced and all facts presented before the court.
- 15.** It is only granted at the interlocutory stage where there are exceptional circumstances. See Vol. 24 Halsbury's Laws of England 4th Edn. para 948.
- 16.** For the grant of a temporary injunction to issue, a party must prove a prima facie case with a probability of success at the hearing. In ***Mrao Ltd -vs- First American Bank of (K)*** (*supra*), a *prima facie* case was defined as established where, on the material presented, a right exists, which has been infringed by the opposite party, calling for a rebuttal.

17. A party must also demonstrate irreparable loss or damage. In **Nguruman Ltd -vs- Jan Bonde Nielsen & Others [2014] eKLR**, irreparable damage was defined as one which is real, apparent, imminent, and which may not be quantified in monetary terms, or where monetary compensation or damages of whatever nature may not be adequate. Balance of convenience is what the applicant is likely to suffer, in the absence of an injunction, and ultimately, the suit succeeds, being greater than what the respondent could suffer if the injunction is granted but the suit fails. See **Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd (supra)** and **Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] eKLR**.
18. The purpose of an injunction is to preserve the subject matter of the suit. It is granted based on evidence and on sound legal principles. The court is not expected to conduct a mini-trial or make definitive findings of fact and the law.
19. All that is required is for the court to see whether the applicant has an arguable issue or question as to his right to be tried at the hearing. See **Mbuthia -vs- Jimba Credit Corporation Ltd [1988] KLR 1**. As held in **Kenleb Construction Ltd -vs- New Gatitu Service Station Ltd & Another (supra)**, this being

an equitable remedy, an applicant must make full and frank disclosure of all relevant facts to point to a legal or equitable right requiring protection by way of a temporary injunction.

20. A mandatory injunction, on the other hand, as held in **Maher Unissa Karim -vs- Edward Oluoch Odumbe (2015) eKLR** and in **Kenya Breweries Limited -vs- Washington Okeyo [2002] EA 109**, requires proof of special circumstances. The case must be clear and one where the court thinks it ought to be decided at once, or where the act done is simple and a summary one, or where the defendant has attempted to steal a march from the plaintiff.
21. What the applicant is complaining about is the entry into his land by the 2<sup>nd</sup> respondent, which is governed by the Kenya Road Act, Kenya National Highways Authority Regulations **2013**, and the Traffic Act, Cap **403**. The applicant has established a proprietary right on his land. See **Serah Mweru Muhu -vs- Commissioner of Lands [2014] eKLR**.
22. In **Kenya National Highway Authority -vs- Pandya (Suing as the legal administrator of the Estate of Lalitchandra Durgashankar Pandya) [2025]**, the court held that to hear and determine a matter of who is the rightful owner of the suit land

includes finding the legitimacy of a title and its ownership.

**23.** Compulsory acquisition of land for road expansion is governed by **Article 40(6)** of the Constitution. Forceful entry into land is against the law and amounts to trespass, as held in **Philip Ayaya Aluchio -vs- Crispinus Ngayo [2014] KEHC 7055 (KLR)** and **Abdulhamid Ebrahim Ahmed -vs- Municipal Council of Mombasa Council of Mombasa. [2004] eKLR.**

**24.** In this suit, the applicant's right of ownership of the suit land is not contested. **Section 3(3)** of the Trespass Act defines trespass as a violation of proprietary rights. Trespass is actionable *per se* without proof of suffering, loss, or damage. The applicant has denied permitting the respondents to his land. Evidence of the suit land falling on a road reserve is lacking. Trespass protects landowners against unauthorized entry and interference with their property. See **James Maina Gachie -vs- Republic [2005] KEHC 2503 (KLR).**

**25.** Looking at the circumstances of this suit, I think the applicant has established a *prima facie* case. Unless the acts of the respondents are stopped, the applicant risks suffering irreparable loss or damage. The

balance of convenience tilts in granting an order of temporary injunction. Exceptional circumstances to grant a mandatory injunction have not been established. The order shall last for **one (1) year**, from the date hereof.

**26.** Orders accordingly.

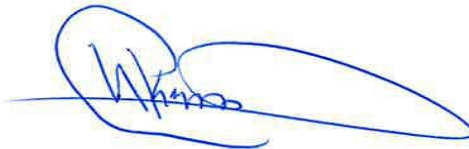
**Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 26<sup>th</sup> day of November 2025.**

**In the presence of:**

Court Assistant - Dennis

Meto for the Plaintiff/Applicant present

No appearance for the Respondents



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**