



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLC NO. E486 OF 2024

REV. WILLIAM GEOFFREY KITHINJI.....

.....PLAINTIFF

=VERSUS=

EMBAKASI RANCHING COMPANY LIMITED.....1ST

DEFENDANT

DANIEL MWANGI WANDERI.....2ND

DEFENDANT

GABRIEL GITONGA.....3RD

DEFENDANT

JOHN KAMAU KARANJA.....4TH

DEFENDANT

RULING

1. By a Notice of Motion dated 22nd November 2024 brought under Sections 1A and 1B of the Civil Procedure Act, Order 40 and 51 of the Civil Procedure Rules, Sections 4 and 19 of the Environment and Land Court Act and Article 40(2) of the Constitution, the Applicant seeks the following orders:-

a) Spent.

b) Spent.

c) THAT pending the hearing and determination of this suit, this Honourable court be pleased to issue a temporary injunction restraining the 4th Defendant/Respondent by himself, his agents, servants, employees, anybody/authority working under him or otherwise howsoever from entering, encroaching into, trespassing, constructing and or in any other way interfering with the Plaintiff/Applicant's quiet enjoyment and proprietary rights over the suit properties L.R. NAIROBI BLOCK 136/7807, L.R. NAIROBI BLOCK 136/7813 AND L.R NAIROBI BLOCK 136/7814.

d) Spent.

e) THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order compelling the 4th Defendant/Respondent to immediately vacate the suit properties known as L.R. NAIROBI BLOCK 135/7808, L.R. NAIROBI BLOCK 136/7813, and L.R. NAIROBI BLOCK 136/7814, remove any structures built thereon, and hand over vacant possession to the Plaintiff/Applicant.

f) THAT an order do issue to the Officer Commanding Station Ruai to ensure compliance with the orders therein.

g) THAT this Honourable Court be pleased to issue any other order and further orders that it considers appropriate.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Rev William Geoffrey Githinji sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that he is the registered proprietor of the suit properties, having purchased them in 1991 from the 1st Defendant. He averred that the 2nd and 3rd Defendants issued him three plots from the 1st Defendant, and on 15th September, he was issued a plot ownership certificate for the suit properties after paying the allotment fees. He further averred that the 4th Defendant unlawfully trespassed onto the suit properties by uprooting his crops and building a house there despite his efforts to restrain him.
4. He argued that the 4th Defendant's actions constitute trespass and violate his right to property under Article 40 of the Constitution.

THE 4TH DEFENDANT'S CASE

5. The 4th Defendant filed a replying affidavit dated 13th December 2024 in opposition to the application.
6. He asserted that he is the registered owner of L.R. Nos Nairobi/Block 136/7807 and 136/7813, having purchased them from Peter Maina Kangara in 2000. He averred that after paying the requisite fees to the 1st Defendant, he took possession of the suit and built a residential house. He confirmed that he has no claim over land parcel No. Nairobi/Block 136/7808. He urged the court to dismiss the application with costs.

THE RESPONSE

7. In a further affidavit dated 27th March 2025, the Applicant denied the contents of the replying affidavit. He stated that he purchased the properties in 1991 and that they were later allocated to him by the 1st Defendant. He claimed that the 4th Respondent's affidavit is intended to mislead the court, as the sale agreement does not specify when it was signed by the parties. He reiterated that the 4th Respondent has unlawfully trespassed on the suit properties.

8. The application was canvassed by way of written submissions. Both parties filed their submissions, which I have duly considered.

ANALYSIS AND DETERMINATION

9. Having considered the application, the respective affidavits, and the rival submissions, the only issue that arises for determination is whether the Applicant has met the threshold for the grant of an injunction.
10. The principles governing the granting of an injunction were laid down in the celebrated case of **Giella v 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.***
11. The first issue for determination is whether the Applicant has established a *prima facie* case with a probability of success.

A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd vs First American Bank of 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.”

12. It is not in dispute that both parties are claiming ownership of the suit properties. The Applicant’s claim of ownership is anchored on the letters of allocation and certificates of ownership from the 1st Defendant. In contrast, the 4th Defendant's claim is anchored on the certificate of lease for Nairobi/Block 136/7807 and Nairobi/Block 136/7813.
13. In the case of **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.”

14. Similarly, in the case of **Edwin Kamau Muniu vs Barclays Bank of Kenya Ltd**, 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.”

15. At the interlocutory stage, the court is not required to make final findings on the contested matters. The issues of ownership and sale can only be determined through a full trial, where the parties will have the opportunity to present evidence and have it challenged through cross-examination.
16. Based on the material that is on record, I find that the Applicant has not established a prima facie case with a probability of success.
17. In an application for interlocutory injunction, the Applicant has to satisfy the three conditions before an injunction is granted.
18. In the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal stated as follows: -

“...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and

logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If a prima facie case is not established, then irreparable injury and the balance of convenience need no consideration.

- 19.** Having found that the Applicant has failed to establish a *prima facie* case with a probability of success, it will be immaterial to consider the other factors in granting a temporary injunction. In so finding, I am persuaded by the holding in the case of **Commercial Finance Co. Ltd vs Afraha Education Society & Others C A Civil Appeal No. 142 of 1999**, where the court held that:-

“.....the judge should address himself sequentially on the conditions for granting an

injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success, no interlocutory injunction would be available.”

20. The upshot of the foregoing is that the application dated 22nd November 2024 is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF NOVEMBER 2025.

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:

Ms Muema for the Applicant

Kuyo holding brief for D. K Thuo for the 4th Respondent