



Ouko & another v Kenya Industrial Estates Limited & another; Eden Homes Construction Limited (Interested Party) (Civil Suit E033 of 2025) [2025] KEHC 17191 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E033 OF 2025
PM MULWA, J
NOVEMBER 20, 2025**

BETWEEN

AARON TAFARI OUKO 1ST PLAINTIFF

ROSELYN DOLA OUKO 2ND PLAINTIFF

AND

KENYA INDUSTRIAL ESTATES LIMITED 1ST DEFENDANT

PHILLIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT

AND

EDEN HOMES CONSTRUCTION LIMITED INTERESTED PARTY

RULING

1. This matter comes before me on the Notice of Motion dated 20th January 2025, filed by the Plaintiff Applicant seeking interim reliefs as follows:
 - i. A temporary injunction restraining the 1st and 2nd Defendants from selling, advertising for sale, transferring, disposing of, alienating, or otherwise interfering with the Plaintiffs' ownership or title to the suit property (L.R. No. 3589 41 Nairobi Block 149 (Langata) 1874 in Karen)
 - ii. An order compelling the 1st Defendant to supply all necessary documents relating to the alleged loan financial facilities with the Interested Party.
 - iii. Costs of the application to be borne by the Defendants.



2. The application is supported by the affidavit of Aaron Tafari Ouko, wherein he avers that he and the second Plaintiff are the registered and beneficial owners of the land parcel known as L.R. No. 3589 41, along with associated titles.
3. The deponent avers that the 1st and 2nd Defendants, allegedly acting at the behest of the 1st Defendant, issued a notice of sale of the suit property scheduled for 22nd January 2025. The Plaintiffs deny any involvement in or knowledge of the said loan transactions or the purported sale. They assert that the Defendants' conduct is unlawful, offends the provisions of the *akn ke act 2012 6 Land Act*, 2012, the *akn ke act 2012 3 Land Registration Act*, 2012, and Articles 40 and 47 of *akn ke act 2010 constitution the Constitution*, and violates mandatory statutory requirements on notices and valuation prior to the exercise of a statutory power of sale. They urge that unless restrained, the Defendants' actions will occasion them irreparable harm. They undertake to abide by any orders as to damages.
4. The Defendants did not file any replying affidavit or grounds of opposition to the application. The Applicants subsequently filed written submissions in support of their motion.
5. The Applicants submit that they have established a prima facie case with a probability of success, that they stand to suffer irreparable harm if the injunction is not granted, and that the balance of convenience tilts in their favour. They rely on the principle that land is a unique and irreplaceable asset which, if alienated, cannot be adequately compensated by damages.
6. They pray that the application be allowed with costs.

Analysis and determination

7. The principles for granting an injunction were succinctly stated in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 where the Court held that an applicant must demonstrate:
 - a) A prima facie case with a realistic prospect of success;
 - b) That irreparable harm will occur unless an injunction is granted;
 - c) That, if in doubt, the court should favor granting the injunction on a balance of convenience.
8. The Court of Appeal in *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR restated that these requirements are sequential and interdependent, such that failure to satisfy the first test is fatal to an application for an injunction.
9. The Applicants have exhibited certificates of title in their names. Under Section 26(1) of the *akn ke act 2012 3 Land Registration Act*, a certificate of title is prima facie evidence of ownership, unless procured through fraud, misrepresentation, or illegality. No evidence to the contrary has been presented. The Defendants' failure to respond to serious allegations concerning the purported loan facilities and impending sale leaves the Applicants' evidence uncontroverted.
10. I therefore find that the Applicants have established a prima facie case with a probability of success. The absence of any challenge by the Defendants further strengthens this conclusion.
11. The suit property is immovable land. Kenyan courts have consistently acknowledged that the loss of ownership or proprietary interest in land constitutes irreparable harm because such rights are unique and cannot be adequately compensated by damages. (See *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and *Olympic Sports House Ltd v School Equipment Centre Ltd* [2012] eKLR).



12. I am further guided by the principle applied in *Mwangi & 3 Others v Ndunyu & 2 Others* [2025] KEELC, where the Court held that the threatened sale of land, in the face of disputed underlying transactions, amounts to irreparable harm incapable of monetary redress.
13. A sale of the property at this stage, without clarity on the lawfulness of the loan transactions or compliance with statutory prerequisites, would expose the Applicants to serious and irreversible loss. I therefore find that the second limb of Giella is satisfied.
14. The purpose of an interlocutory injunction is to preserve the subject matter pending the hearing and determination of the suit. The balance of convenience in this matter favours maintaining the status quo. The Defendants stand to suffer no prejudice by being restrained temporarily, while the Applicants risk losing their land if the injunction is withheld.
15. Consequently, the third limb also weighs in the Applicants' favour.
16. In light of the foregoing, I find that the Applicants have satisfied the requirements for the grant of a temporary injunction. Accordingly, I proceed to make the following orders:
 - i. A temporary injunction is hereby issued restraining the Defendants, whether by themselves, their agents, servants, or any persons acting on their instructions, from selling, advertising for sale, transferring, disposing of, alienating, or in any way interfering with the Plaintiffs' ownership or title to L.R. No. 3589 41 (Nairobi Block 149 (Langata) 1874) pending the hearing and determination of the main suit.
 - ii. The 1st Defendant is hereby directed to produce and supply to the Plaintiffs all documents relating to the alleged loan or financial facilities with the Interested Party within fourteen (14) days of the date hereof.
 - iii. Costs of this application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 20TH DAY OF NOVEMBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Ms. Musatai h b for Mr. Oduk for Plaintiff Applicant

N A for Defendants

Court Assistant : Carlos

