



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI ENVIRONMENT AND LAND COURT
ELCLC SUIT E207 OF 2025

**ALUEL LUAL LUAL AKOL.....PLAINTIFF /
APPLICANT**

VERSUS

**EUNICE KAGENDO NAMU.....1st DEFENDANT /
RESPONDENT**
**CM ADVOCATES LLP2nd DEFENDANT /
RESPONDENT**

RULING

1. The Applicant moves this Court by a Notice of Motion dated 28th April 2025, brought under **Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act**, and all other enabling provisions of the law, seeking the following orders:

a) *Spent;*

b) *Spent;*

c) *“Pending the hearing and determination of this Application and Suit, this Honourable Court be pleased to issue an interim order by way of an injunction restraining the 1st and 2nd Defendants, whether acting by themselves, agents, servants, employees, security personnel, contractors and/or by any other persons*

whatsoever, offering for sale, selling, transferring, charging or in any other manner howsoever from interfering with the Applicant's quiet possession and proprietorship rights of that property known as Villa Number A3 situate on title number Nairobi/Block 2/121.”;

d) *“Pending the hearing and determination of this Application, this Honourable Court be pleased to issue such other orders and/or directions which it deems necessary, equitable, fair and just in light of the circumstances of the case.”; and*

e) *“The Respondents bears the costs of this Application.”*

2. In support of the Application, the Applicant relies on the Supporting Affidavit sworn on the same date, in which he avers that pursuant to a Deed of Assignment dated 12th August 2024, he duly paid the entire purchase price of USD 1,150,000 for Villa Number A3, and that despite fulfilling his contractual obligations, the Respondents have failed to procure and deliver the requisite completion documents, including the sectional title, thereby placing his proprietary rights at risk.

3. The Applicant contends that unless restrained, the Respondents may rescind the transaction or dispose of the suit property to third parties, actions which he asserts would be prejudicial and amount to a violation of his rights under the Agreement.

Response

4. In opposition to the Application, the 1st Defendant swore a Replying Affidavit on 3rd June 2025 contending that the Application is frivolous, misconceived and an abuse of the Court process. She avers that the Applicant is in material breach of the Deed of Assignment dated 12th August 2024, having failed to pay the balance of the purchase price

within the stipulated completion period, thereby necessitating the issuance of several reminders and two completion notices.

5. She further states that although the Applicant eventually settled the balance belatedly on 5th May 2025, he remains in arrears of accrued contractual interest, which she quantifies at USD 99,320, and is also liable for occupation charges arising from his possession of the suit premises from 30th August 2024.
6. The 1st Defendant maintains that the Applicant has not come to Court with clean hands, has not honoured his contractual obligations, and therefore does not merit the equitable remedy of injunction. She adds that the processing of the sectional title is underway and subject to the responsible government office, and denies any intention to unlawfully dispose of or interfere with the property outside the contractual framework.
7. The Applicant thereafter filed a Further Affidavit sworn on 3rd October 2025 in response to the 1st Defendant's Replying Affidavit. In that Affidavit, the Applicant reiterates that he has fully discharged his obligations under the Deed of Assignment by paying the entire purchase price and maintains that the Respondent has not demonstrated readiness or ability to complete, particularly due to the absence of the requisite completion documents, including the sectional title.
8. The Applicant disputes the allegations of default, accrued interest and rent, terming them unfounded, and asserts that any delay was either non-existent or waived by the Respondent through acceptance of payment. He maintains that he is in lawful possession, has come to Court with clean hands, and that he satisfies the threshold for injunctive relief.

Submissions

a) Applicant submissions

9. The Applicant says the sole issue is whether he has met the threshold for a temporary injunction i.e. whether he has shown a prima facie case with a probability of success, will suffer irreparable harm not adequately compensated by damages, and that the balance of convenience favours him.
10. He asserts he has paid the full purchase price (USD 1,150,000), is ready, able and willing to complete, occupies the property lawfully, and that the Respondents' failure to deliver the sectional title / completion documents amounts to ongoing violation of his constitutional right to property (Art. 40) and justifies injunctive relief. He also contends the contractual clause that conditions delivery of completion documents on issuance of sectional title is unconscionable and that the Respondents waived or accepted late performance, negating alleged default.
11. To support this he principally relies on **Giella V Cassman Brown & Co Ltd [1973] EA 358** for the tripartite injunction test, and on authorities elaborating a prima facie standard (e.g. **Mrao Ltd v First American Bank of Kenya and Moses C. Muhia Njoroge**). He cites contractual/possession authorities including **Anne Wanjiku Gathumbi v Joseph Mwangi Mwai, Walter Omwenga Makworo V KCB, and Kilifi Resorts Ltd v Northern Lights Ltd** to show (i) a purchaser who has paid the price can enforce completion and (ii) completion notices are invalid if the issuer is not ready and able.
12. For irreparable harm he relies on **Nguruman Ltd V Jan Bonde Nielson** and on **Said Almed V Mannasseh Benga** (approved in *Banis Africa v*

NLC) to argue that where the defendant's conduct is potentially unlawful the adequacy of damages need not be exhaustively proved; for balance of convenience, he cites **Pius Kipchirchir Kogo V Frank Kimeli Tenai.**

Defendants Submissions

13. The Defendants frame the central issue as whether the Applicant has met the injunction threshold, and submit he has not. They emphasise that the Applicant breached material terms (failure to pay on time), that the 1st Respondent validly served completion notices and later extended time, and that the Applicant is in arrears of accrued interest (USD 99,320) and owes occupation fees (USD 5,000/month totaling c. USD 40,000).
14. On that basis they argue the Applicant has come to equity with unclean hands, is a defaulter, and that his grievance is essentially monetary (compensable by damages) so no interlocutory injunction should issue. They also stress that the progress of the sectional title is controlled by government processes outside the Respondent's control and so there was no culpable delay by the Respondent.
15. Their primary authorities mirror the injunction test (**Giella v Cassman Brown & Co Ltd**) and the prima facie definition (Mrao Ltd) but are deployed to opposite effect: the Defendants rely on **National Bank of Kenya V Pipeplastic Samkolit (2001)** to stress that courts do not rewrite contracts and must give effect to agreed terms (including interest/penalty clauses), and on equitable-clean-hands authorities such

as **Royal Gardens Hospital V Ebrahim Omenyi Ambwere [2018]** and **Samuel Kipkori Ngeno V Local Authorities Pension Trust [2013]** to show a defaulting party is undeserving of an injunction.

16. For the adequacy-of-damages limb they rely on **Jenipher Onoka Were V Pamela Anyango [2022]** and **Joseph Muturi Wainaina V Clement Kungu Waibara [2021]** to support the proposition that where loss is essentially monetary an injunction is inappropriate.

Issues for Determination

17. I have considered the Notice of Motion, the affidavit in support together with the annexures thereto. I have also considered the written submissions of counsel and the authorities cited, and the following are the issues for determination: —

- a) Whether the Plaintiff/Applicant's application meets the threshold for the grant of a temporary injunction pending the outcome of the suit.
- b) Who should bear the costs of the application.

Analysis and Determination

18. It is now established in Kenya that the principles for consideration in determining whether a temporary injunction may be granted are well settled in **Giella v Cassman Brown & Co. Ltd (1973) EA 358**, where the Court held that: *"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an*

application on the balance of convenience.” Guided by the foregoing principles, I now proceed to examine, whether the Plaintiff has demonstrated a prima facie case with a probability of success.

19. In considering whether a prima facie case has been established, the Court is guided by the definition in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, where a prima facie case was described as one in which, on the material presented, a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed so as to call for an explanation or rebuttal from the opposite party.
20. From the material placed before me, it is not disputed that the parties entered into a Deed of Assignment dated 12th August 2024, under which the Applicant undertook to pay a purchase price of USD 1,150,000, and the 1st Respondent undertook to procure and deliver the relevant completion documents, including the sectional title. It is also not contested that the Applicant is in possession of the suit property.
21. The Applicant’s case is that he has fully paid the purchase price, is ready and willing to complete, and that the Respondents have failed to obtain and deliver the completion documents, thereby exposing him to the risk of dispossession and infringing his proprietary interest. The Respondents, on the other hand, maintain that the Applicant paid the balance late, remains indebted in accrued interest (USD 99,320) and occupation charges, and therefore approaches the Court without the clean hands required for equitable remedies. They further contend that the processing of the sectional title is dependent on third-party government processes beyond their control.

22. At this interlocutory stage, the Court is not required to make definitive findings on contested facts or to resolve the merits of the parties' competing contractual interpretations. The question is whether the Applicant has demonstrated an arguable right that has been, or is threatened with being, infringed.
23. On the material before me, the Applicant has shown, at least prima facie, that he has performed substantial obligations under the Agreement by paying the full purchase price and that he is presently unable to enjoy the full benefit of that performance owing to the non-release of completion documents. Whether the alleged delay in payment or the claimed outstanding interest constitutes a material breach disentitling him to relief is a matter best reserved for the full hearing. Accordingly, I am satisfied that the Applicant has shown a prima facie case with a probability of success.
24. On the second limb irreparable harm the guiding authority remains **Nguruman Ltd v Jan Bonde Nielsen & Others [2014] eKLR**, which emphasizes that the injury apprehended must be actual, substantial, and incapable of adequate compensation by damages. The Applicant contends that unless protected, he risks losing a unique residential property, and that the Respondents may dispose of or interfere with the property, thereby undermining his proprietary rights.
25. The Respondents' position is that the entire dispute is contractual and therefore compensable in damages. Given that the property is immovable, residential in nature, and already in the Applicant's possession and noting that the completion documents have not been issued I am persuaded that the Applicant has demonstrated a likelihood

of irreparable harm if the injunction is not granted.

26. On the final limb the balance of convenience and consistent with *Giella*, this becomes relevant only where doubt exists. Having found that the Applicant has established both a prima facie case and potential irreparable harm, the matter would be resolved on those limbs. Nevertheless, I note that the Applicant is in possession of the property and has paid the entire purchase price, whereas the Respondents' prejudice, if any, relates to recoverable monetary claims such as interest or occupation fees. In those circumstances, the balance of convenience tilts in favour of preserving the status quo pending the hearing and determination of the suit.

Final Orders

27. Having considered the Application, the affidavits, submissions and the applicable law, the Court makes the following orders:

- a) A temporary injunction is hereby issued restraining the Defendants, their agents or servants from offering for sale, selling, transferring, charging, alienating, or in any way interfering with the Applicant's quiet possession and proprietorship rights over Villa No. A3 on Nairobi/Block 2/121, pending the hearing and determination of the suit.
- b) The status quo relating to possession and occupation of the suit property shall be maintained pending the determination of the suit.
- c) Costs of the application shall be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **4th** day of **December, 2025.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Anyona..... for the Plaintiff/Applicant

Mr. Gisemba..... for the Defendants/Respondents

Philomena W...... Court Assistant