



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. ELCLC/E328 OF 2025

CYO INVESTMENT LIMITED
...PLAINTIFF/APPLICANT

-VERSUS-

SUNTREK INVESTMENTS LIMITED
...DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant, CYO Investment Limited, moved this Court by a Notice of Motion dated 30th June 2025, brought under Sections 1A, 1B and 3A of the Civil Procedure Act, Sections 13 and 18 of the Environment and Land Act, Order 40 Rule 1 and Order 51 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The Applicant seeks the following orders:

- a) Spent.
- b) *THAT pending the hearing and determination of this Application inter partes, this Honourable Court be pleased to issue a temporary injunction restraining the Defendant/Respondent, its servants, agents, or any person acting under its authority from entering, remaining upon, erecting structures on, transferring, alienating, or in any manner interfering with the Plaintiff's quiet possession of the parcel of*

land known as NAIROBI/BLOCK 5/59, or any portion thereof.

c) *“THAT pending the hearing and determination of the main suit, a temporary injunction do issue restraining the Defendant/Respondent from continuing with any construction, possession, or interference on the portion of the Suit Property in dispute.”*

d) *“THAT costs of this Application be provided for.”*

2. The Application is premised on the grounds set out on its face and is supported by the Affidavit of Nipool Sobhagchand Shah sworn on 30th June 2025, together with annexures. It was contended that the Plaintiff/Applicant is the registered absolute proprietor of NAIROBI/BLOCK 5/59, and that the Defendant/Respondent has, without lawful justification, encroached upon and occupied a portion of the Suit Property through a misaligned boundary wall. The Applicant avers that despite formally objecting to the encroachment and issuing a demand for removal of the offending structures, the Defendant has failed to vacate the disputed portion or restore the boundary.
3. It is the Applicant's position that the continued occupation by the Defendant constitutes trespass, infringes upon registered property rights, and poses a real risk of further interference with ongoing development plans on the Suit Property.
4. The Applicant further contends that the encroachment has obstructed planned development activities, caused delay and economic loss, and threatens to occasion irreparable harm if not restrained. It is urged that the Court has jurisdiction under Article 40 of the Constitution, the Civil Procedure Act, and the Environment and Land Court Act to protect the sanctity of title and to grant the injunctive reliefs sought.

Response

5. The Defendant/Respondent opposes the Application via a Replying Affidavit sworn on the 16th July 2025 and maintains that the matter presented by the Plaintiff is, in essence, a boundary dispute which, under Sections 12 and 13 of the Land Registration Act, falls within the jurisdiction of the Land Registrar.
6. It is contended that any process of establishing, fixing, or rectifying boundaries requires the Registrar to hear all affected landowners, prepare an approved plan, and make appropriate entries in the register. The Respondent asserts that the alleged misalignment implicates additional neighbouring parcels, particularly LR No. 1870/11/193, and therefore cannot be conclusively resolved between only the two parties currently before the Court.
7. The Respondent also avers that it is not undertaking any construction, development, transfer, or alienation on its parcel or on the area claimed to be in dispute, and therefore no imminent harm has been demonstrated to warrant injunctive relief. It is emphasized that the boundary wall complained of was erected by the Plaintiff's predecessors in title and has stood for over two decades without challenge. According to the Respondent, the Plaintiff's parcel remains intact in acreage, and any alleged misalignment is minimal and within allowable cadastral tolerances.
8. Further, the Respondent asserts that the Plaintiff has not established a prima facie case, has not approached the Court with clean hands, and seeks relief that is both unwarranted and premature in light of the statutory mechanisms available for boundary ascertainment. The Application is described as misconceived and lacking merit, and the Respondent therefore prays for its dismissal with costs.

9. Following the initial affidavits, both parties filed additional evidence to clarify their respective positions: the Plaintiff/Applicant filed Further Affidavits sworn on 24th July 2025, including one by its director and another by its licensed surveyor, addressing the survey methodology and confirming the alleged 0.30-metre encroachment. The Defendant/Respondent, in turn, filed a Supplementary Affidavit sworn on 20th August 2025, reiterating its position that any misalignment of the boundary wall arises from historical circumstances, emphasizing that the Plaintiff's acreage remains intact, and maintaining that the dispute properly falls within the mandate of the Land Registrar and involves neighbouring proprietors, particularly the owner of LR No. 1870/11/193.

Submissions

10. The application proceeded by way of written submissions.

a) Applicant's submissions

11. The Applicant submits that the central issues are whether the Defendant's acts amount to trespass upon the Plaintiff's registered land, whether the matter is a mere boundary dispute or an actionable unlawful occupation, and whether the Defendant can successfully invoke adverse possession or equitable defences.

12. The Applicant relies on constitutional and statutory protections of property notably Article 40 of the Constitution and Sections 24 and 25 of the Land Registration Act and advances the proposition that registration confers indefeasible title which the Court must protect. It is further submitted that the Registrar procedure under the Land Registration Act does not oust the Court's jurisdiction to grant injunctive and declaratory relief where there is

continuing trespass and risk of irreparable harm.

13. The Applicant relies on authorities establishing that unauthorized entry onto registered land is actionable without proof of special damage and that registered proprietors are entitled to protection of quiet possession. Key cases relied upon include **Philip Ayaya Aluchio v Crispinus Ngayo [2014] eKLR, Park Towers Ltd v John Mithamo Njika [2014] eKLR, and Willy Sugut Kitilit v Michael Kibet [2018] eKLR.**
14. The Applicant contends that the survey evidence (May 2025) confirming a 0.30-metre encroachment together with the demand letter and the failure to remove the wall satisfy the requirements for injunctive relief (a prima facie case, risk of irreparable harm, and balance of convenience in favour of preservation of title).

b) Defendant's submissions

15. The Defendant identifies the primary issues as whether the Plaintiff has established a prima facie case for injunctive relief and whether this dispute is properly a boundary matter to be determined by the Land Registrar under Sections 12–13 (and Section 18) of the Land Registration Act.
16. The Defendant stresses that the boundary in issue has existed for decades, that the boundary wall was erected by the Plaintiff's predecessors in title (circa 1996), and that the Defendant and its predecessors have been in continuous possession since acquisition (referred to as 1978/1987 in the pleadings). The Defendant further contends there is no ongoing construction, alienation or transfer and thus no imminent act justifying

interlocutory intervention.

17. In support of its case the Defendant relies on its historical title documents, transfer records, and a survey report dated 10 April 2013 (with historical survey plans F/R 252/135, F/R 69/26, F/R 114/196) which, it is submitted, confirm the existence of beacons and the alignment relied upon by the Defendant.
18. The Defendant invokes legal principles governing interlocutory injunctions (**including the test in *Giella v Cassman Brown & Co Ltd [1973] EA 358***), the **Limitation of Actions Act** and doctrines of adverse possession, proprietary estoppel and acquiescence, arguing that if the Court finds facts to that effect the Plaintiff may be time-barred or estopped from relief. The Defendant also submits that the Plaintiff's own survey indicates a protrusion of the Plaintiff's wall at Beacon C13 (0.066m) onto LR No. 1870/11/193, a fact relied upon to argue the matter affects other neighbouring proprietors who should be joined before substantive orders are made.

Issues for Determination

19. 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 costs of the application.

Analysis and Determination

20. It is now established in Kenya that the principles for consideration in determining whether a temporary injunction can be granted or not 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.”* In relying on the case above, I wish to interrogate whether the Plaintiff has made out a prima facie case with a probability of success.
21. The Plaintiff asserts that it is the registered proprietor of NAIROBI/BLOCK 5/59, a fact not disputed, and relies on a survey report dated 20th May 2025 indicating a 0.30-metre encroachment by the Defendant’s boundary wall onto its land. It contends that such intrusion constitutes trespass, an unlawful interference with a registered right protected **under Article 40 of the Constitution and Sections 24 and 25 of the Land Registration Act**, and that the Defendant has ignored a formal demand to rectify the situation. These assertions, supported by a licensed surveyor’s affidavit, disclose a legally recognisable claim that merits ventilation at trial.
22. The Defendant, however, disputes any encroachment and maintains that the boundary wall was erected by the Plaintiff’s predecessors in 1996, has remained in situ for decades, and that its own survey report dated 10th April 2013 confirms alignment of the historical beacons. It also argues that any disagreement over boundary positions constitutes a boundary dispute reserved for the Land Registrar under the Land Registration Act, and further raises issues of long occupation, proprietary estoppel, and adverse

possession.

23. These competing narratives reveal the existence of substantial factual and legal questions that cannot be resolved at this interlocutory stage. At this point, the Court need not determine which survey is accurate; the question is whether the Plaintiff has demonstrated an arguable right that has apparently been infringed. On the material before me, I am satisfied that the Plaintiff has established a prima facie case as contemplated in *Giella*. Satisfied on the first limb.
24. I must turn to whether the Plaintiff might suffer irreparable harm if the injunction is not granted. The Plaintiff states that the continued presence of the wall within its boundary frustrates its development plans and compromises the integrity of its registered parcel. If the disputed portion were to be further altered, developed, or alienated, the resulting harm would not easily be quantifiable or reversible.
25. The Defendant asserts that it is undertaking no construction, has no intention of transferring its land, and maintains that the Plaintiff's acreage remains intact. Nonetheless, the physical alteration or reinforcement of a boundary is inherently capable of producing lasting effects that may not be fully compensable by damages. Considering the nature of land, and the allegation of an ongoing continuing trespass, I find that the Applicant has demonstrated a sufficient risk of irreparable harm.
26. Where there is any residual doubt, the Court must consider the balance of convenience. The evidence suggests that preserving the property in its current state pending trial will least prejudice the parties. The Plaintiff fears further interference with its boundary, while the Defendant maintains that it is not undertaking any new works. In these circumstances, maintaining the status quo namely, restraining any alteration of the disputed boundary

portion until the issues are conclusively determined best serves the interests of justice.

Final Orders

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

- a) A temporary injunction is hereby issued restraining the Defendant, its servants or agents from altering, extending, demolishing, constructing upon, transferring, alienating, or in any manner interfering with the disputed portion of NAIROBI/BLOCK 5/59 pending the hearing and determination of the suit.
- b) The parties shall preserve the status quo on the ground, and no party shall alter, remove, or tamper with any boundary beacons 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. Ongandi..... for the Plaintiff/Applicant

Davina..... for the 1st Defendant/Respondent

Philomena W...... Court Assistant

Original File Copy