

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E0176 OF 2025

ANDREW MWANGI KARUGA

**T/A SHAURI MOYO DEVELOPERS
PLAINTIFF**

VERSUS

**PAUL KINYANJUI KIMANI 1ST
DEFENDANT**

PETER KIRIBA KARIUKI 2ND DEFENDANT

THIKA GREENS LIMITED 3RD DEFENDANT

THE LAND REGISTRAR, NAIROBI 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. Before this Court is a Notice of Motion application dated 1st September 2025 seeking the following Orders:

i. Spent.

ii. Spent.

iii. Spent.

iv. Spent.

v. THAT the Honorable Court be pleased to grant an interim injunction restraining Defendants either by themselves, servants and/or employees, their agents and/or representatives from offering for sale disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with Land Parcel Plot 910 out of all that parcel of land known as Land Reference Number 10744/2 under Grant

Number 132402/1 situated in the North of Thika Municipality in Thika District pending hearing and determination of this suit.

vi. THAT the Honorable Court be pleased to grant an interim injunction restraining Defendants either by themselves, servants and/or employees, their agents and/or representatives from offering for sale disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with Land Parcel Plot 910 out of all that parcel of land known as Land Reference Number 10744/2 under Grant Number 132402/1 situated in North of Thika Municipality in Thika District pending hearing and determination of this suit.

vii. THAT the cost of this application be in the cause.

2. The Application is premised on the grounds on the face of it and the Affidavit of Andrew Mwangi Karuga (Plaintiff/Applicant), sworn on 1st September 2025.
3. The Applicant contends that before 11th August 2025, the 1st Defendant was the lessee and holder of the relevant share certificate in respect of the reversionary interest over Plot No. 910 on Land Reference Number 10744/2 (hereinafter referred to as “the suit property”). He states that the 1st Defendant/Respondent first offered to sell to him the suit property in March 2024, and that the parties executed a sale agreement dated 7th March 2024. According to him, that initial agreement was not fully performed, and by mutual consent the parties entered into a second agreement dated 28th May 2025 for the sale of the suit property at a purchase price of Kshs. 16,000,000.

4. The Plaintiff/Applicant further contends that, as confirmed in clause 4.3 of the said agreement, he had already paid Kshs. 7,600,000 towards the purchase price, which the 1st Defendant/Respondent had acknowledged. He adds that the total purchase price was to be completed within 180 days from 28th May 2025, upon the 1st Defendant/Respondent discharging the property, and he referred to bank slips and M-Pesa records evidencing those payments.
5. He avers that when he commenced the purchase, the structure on the property was 30% complete, but it had since reached 52% completion. He states that he had spent Kshs. 6,300,000 on improvements intended to make the property his family's home, and he relied on a valuation report to confirm this. He adds that his wife and three children had significantly contributed time, resources, and effort towards selecting fittings and overseeing the developments, cumulatively spending over 3,000 hours on site and sourcing materials.
6. The Plaintiff/Applicant maintains that the agreement of 28th May 2025 was still in force because the 180-day completion period had not lapsed, and therefore the 1st Defendant/Respondent remained bound by its terms and could not offer the property for sale to third parties. He further states that he was finalizing a financing arrangement with Co-operative Bank to enable him clear the balance of the purchase price, but he believed there was a real risk of the suit property being alienated to unsuspecting third parties by the 1st and 2nd Defendants/Respondents.

7. He claims that the 2nd Defendant/Respondent was not a purchaser for value. He states that a valuation placed the property's value at Kshs. 28,700,000, yet the transfer documents indicated that the 2nd Defendant allegedly purchased it for Kshs. 13,000,000. He also narrated that on 25th July 2025, while on site with his workers, the 2nd Defendant/Respondent visited the property and informed him that he had been sent by the 1st Defendant/Respondent and was interested in purchasing the property. He said that upon informing the 2nd Defendant/Respondent that he had already bought the property and showing him soft copies of the agreements, they agreed that the Plaintiff/Applicant would report the matter to the police.
8. The Plaintiff/Applicant states that he made a report at Kirwara Police Station on 26th August 2025, registered as OB 6/26/08/25. He said that the DCI subsequently summoned the 1st Defendant/Respondent on 4th August 2025, who attended with his advocate and recorded a statement confirming the contents of the affidavit. He adds that although the 2nd Defendant/Respondent later appeared when summoned on 6th August 2025, he did not record a statement. He further states that the DCIO applied for a restriction over the suit property, which application was received by the 4th Defendant/Respondent on 8th August 2025.
9. The Plaintiff/Applicant states that despite the aforementioned efforts, the suit property was nevertheless transferred to the 2nd Defendant/ Respondent on 11th August 2025, as reflected in the certificate of official search. He maintains that the property remains

registered in the name of the 2nd Defendant/Respondent and asserts that the court's intervention is necessary to prevent further transfer, alienation, or use of the property as security for financial facilities.

10. The 1st Defendant/Respondent opposes the Application through a Replying Affidavit sworn by him on 1st October 2025. He contends that he was the former owner of **Plot No. 90** on LR 10744/2 and confirmed that the property had since been transferred to the 2nd Defendant/Respondent. He explains that he had charged the aforementioned property to Equity Bank after obtaining a loan of Kshs. 6,500,000 and later fell into financial difficulties, which resulted in the Bank issuing a statutory demand, a redemption notice, and a notification of sale.
11. He states that he had entered into a sale agreement with the Plaintiff/Applicant on 7th March 2024, but the Plaintiff/Applicant allegedly failed to honour the terms, leading to the cancellation of that agreement. He further asserted that although the Plaintiff/Applicant later proposed another agreement dated 28th May 2025, this was allegedly a ploy by the Plaintiff/Applicant to secure financing, and he denied ever receiving Kshs. 7,600,000 as claimed. He adds that any subsequent agreement was invalid because Equity Bank, as chargee, was not involved.
12. The 1st Defendant/Respondent asserts that due to his financial crisis, he engaged the 2nd Defendant/Respondent, who approached him in July 2025, expressing willingness to buy the property and to

offset the outstanding loan. He explains that the 2nd Defendant/Respondent independently confirmed the loan status with Equity Bank, and the Bank agreed to release all original documents upon full settlement of the loan. He states that the 2nd Defendant/Respondent paid Kshs. 7,058,000 to clear the loan and thereafter purchased Thika Greens House Number 910 on LR No. 10744/2 at Kshs. 13,000,000 through a sale agreement dated 18th July 2025. He adds that thereafter, Equity Bank released to them the Original Instrument of Charge, the Original Sub-Lease over House No. 910 on LR No. 10744/2, the executed Share Transfer and Transfer of Land Share in Thika Green Management Company and a Certificate of Search confirming charge over House No. 910 on LR No. 10744/2 dated 28th August 2024.

13. He denies the Plaintiff/Applicant's allegations that possession had been granted or that the Plaintiff/Applicant had carried out developments on the property, insisting that vacant possession was contractually dependent on full payment, which never occurred. He maintains that the Plaintiff/Applicant had never been placed in possession and that claims of developments worth Kshs. 6,300,000 were untrue.
14. The 1st Defendant/Respondent argued that the valuation relied on by the Plaintiff/Applicant was misleading, noting that the Bank's notification of sale reflected a reserve value of Kshs. 8,850,000. He asserts that the 2nd Defendant/Respondent was a *bona fide* purchaser for value, especially considering the impending auction by Equity Bank.

15. He also refers to a pending criminal case filed against him by the Plaintiff/Applicant in (Criminal Case E1080 of 2025), which he claimed stemmed from the Plaintiff/Applicant's failure to acknowledge the existence of the Bank's charge.
16. The 1st Defendant/Respondent states that the Plaintiff/Applicant had failed to establish a *prima facie* case, and in his view, any alleged loss could be compensated by damages. He argues that the Plaintiff/Applicant failed to do due diligence and has attempted to avoid dealing directly with Equity Bank, despite knowing the property was charged. He concludes by stating that the Plaintiff/Applicant was not entitled to the interim orders sought and urges the court to dismiss the application with costs.
17. The 2nd Defendant/Respondent opposes the Application through a Replying Affidavit sworn on 29th September 2025 and a Notice of Preliminary Objection of even date. He raises a P.O. on the ground that the court lacks jurisdiction to hear and determine the suit. Through the Replying Affidavit, he contends that he learned of the intended sale of House No. 910 on LR 10744/2 in Thika Greens and subsequently engaged the 1st Defendant/Respondent, who disclosed that the property had been charged to Equity Bank. According to him, the 1st Defendant/Respondent informed him that he had defaulted in servicing the loan facility and had already been issued with a statutory notice, redemption notice, and notification of sale by the Bank.

18. The 2nd Defendant/Respondent states that upon receiving this information, he personally approached Equity Bank on 16th June 2025 to verify the status of the charged property. He refers to email correspondence exchanged with the Bank confirming the outstanding loan. He adds that on 18th July 2025, Equity Bank confirmed that it would release the original title and discharge upon full settlement of the loan and requested a copy of the sale agreement between himself and the 1st Defendant/Respondent.
19. He avers that on the same date, 18th July 2025, he deposited Kshs. 7,500,000 into the loan account held at Equity Bank in the name of the 1st Defendant/Respondent for the purpose of clearing the outstanding loan. He further states that on 23rd July 2025, he prepared two cheques of Kshs. 252,000 and Kshs. 130,000 respectively in favour of the 3rd Defendant/Respondent.
20. The 2nd Defendant/Respondent further states that upon making the payments, he received the original instrument of charge, the original sublease, the executed transfer of shares in Thika Greens Management Company, and a certificate of official search confirming the charge and registration details relating to House No. 910 from Equity Bank. He asserts that all necessary documents enabling the transfer of the property to him were duly executed and provided, including the discharge of charge.
21. He explains that he conducted proper due diligence and consulted all relevant stakeholders, particularly because the Bank was exercising its statutory power of sale. He emphasised that the

agreement for sale between himself and the 1st Defendant/Respondent reflected a purchase price of Kshs. 13,000,000, which he considered fair to all parties.

22. The 2nd Defendant/Respondent claims that despite having become the lawful owner of the property, the Plaintiff/Applicant trespassed onto the premises and caused the arrest of his caretaker on 25th August 2025 while purporting to claim ownership.
23. He attributes the Plaintiff/Applicant's complaints to a failure to conduct due diligence and a failure to appreciate that the suit property was subject to a valid charge in favour of Equity Bank.
24. The Court directed that the Application and the P.O be canvassed through written submissions. The Plaintiff/ Applicant and 2nd Defendants/ Respondent complied.

Analysis and Determination

25. Having examined the Application together with the annexures, the Replying Affidavits and the P.O. in opposition and the relevant authorities, the sole issue for determination is whether the Applicant has established sufficient cause to merit the grant of a temporary injunction.
26. The principles governing the grant of interlocutory injunctions are well settled. The Applicant must establish a *prima facie* case with a probability of success, demonstrate that he stands to suffer irreparable harm which cannot be compensated by damages, and, where the court is in doubt, the Application is to be determined on

a balance of convenience. This position was crystallized in **Giella vs Cassman Brown (1973) EA 358** and reaffirmed in **Nguruman Ltd vs Jan Bonde Nielsen & Others [2014] eKLR**, where the Court of Appeal emphasized that the three limbs are sequential and not conjunctive.

Whether the Applicant has established a *prima facie* case

27. A *prima facie* case was defined in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** as a case in which, on the material presented, a tribunal properly directing itself might conclude that there exists a right which has apparently been infringed.
28. The Plaintiff/Applicant's claim is anchored on two sale agreements with the 1st Defendant/Respondent dated 7th March 2025 and 28th May 2025. He asserts that he paid Kshs. 7,600,000 towards the purchase price and made developments allegedly valued at Kshs. 6,300,000. According to him, the 1st Defendant/Respondent acknowledged the payments, placed him in possession, and the agreement remained valid within the 180-day completion window.
29. In **Mrao Limited vs First American Bank of Kenya Ltd & 2 others [2003] KLR 125**, the court stated as follows:

“so what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the court a tribunal properly directing itself would 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. A prima facie case is more than

an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

30. I am persuaded that the Plaintiff/Applicant has established the existence of a *prima facie* case. The Plaintiff/Applicant placed before the Court duly executed sale agreements between himself and the 1st Defendant/Respondent in respect of the suit property. He has further alleged that the 1st Defendant/Respondent breached the agreements by transferring the suit property to the 2nd Defendant/Respondent.
31. At this stage, the Court is not required to make definitive findings on whether the said agreements were indeed breached, or whether the subsequent dealings with the property were lawful. Those are matters reserved for full trial. It is sufficient that the Applicant has demonstrated the existence of a contractual relationship and raised a credible complaint of breach. These allegations disclose an arguable case which is not frivolous and which calls for a full hearing. Accordingly, I find that the Applicant has satisfied the requirement of demonstrating a *prima facie* case.

Whether the Applicant will suffer irreparable harm

32. Irreparable harm refers to injury that cannot be adequately remedied by an award of damages. The Plaintiff/Applicant's complaint is that he made monetary payments and improvements to the property. These are purely quantifiable monetary claims capable of compensation. The Court of Appeal in *Nguruman*

emphasized that where damages are adequate, an injunction ought not to issue.

33. It is not in dispute that the suit property is registered in the name of the 2nd Defendant/Respondent. The Plaintiff/Applicant's improvements and deposits, if ultimately proved, are compensable under the doctrine of unjust enrichment, and general contractual principles. The Court therefore finds that the Applicant has not demonstrated that he will irreparable harm that cannot be compensated by an award of damages.

Where does the balance of convenience lie?

34. The property is currently registered in the name of the 2nd Defendant, who cleared the charge, obtained all original documents, and is in possession. Registration under **Sections 24 and 26 of the Land Registration Act** vests in him absolute ownership unless impeached for fraud, misrepresentation, or illegality.
35. Granting an injunction would restrain a registered proprietor from the use of his property without proof of illegality. If the Plaintiff/Applicant ultimately succeeds, damages would be an adequate remedy. Therefore, the balance of convenience tilts in favour of preserving the 2nd Defendant/Respondent's registered title, not restraining it.

Preliminary Objection on Jurisdiction

36. The 2nd Defendant/Respondent raised a P.O. challenging this Court's jurisdiction. However, the dispute concerns ownership and

dealings in land, including the validity of a transfer and alleged interference with proprietary rights matters that fall squarely within the mandate of the Environment and Land Court under **Article 162(2)(b) of the Constitution** and **Section 13 of the Environment and Land Court Act**. The P.O., therefore, lacks merit and is dismissed.

37. Consequently, I find that the Notice of Motion dated 1st September 2025 lacks merit and it is hereby dismissed. Costs shall abide the outcome of the main suit.

Dated signed and delivered virtually at Thika this 10th day of December 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

1. Mr. Muiruri for the Plaintiff
2. Mr. Mutua for Mr. Nyange for the 1st Defendant
3. Mr. Barmao for Mr. Ondabu for the 2nd Defendant
4. Mr. Mwangi for Mr. Motari for the 4th and 5th Defendants.