



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION) AT
NAIROBI
MILIMANI LAW COURTS

CASE NUMBER: ELCL CASE NO. E227 OF 2025

**CECIL MUNGAI (Suing as the Chairman of
New Kamae Self-Help Group).....**
.....PLAINTIFF/APPLICANT

VERSUS

**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT.....1st**
DEFENDANT/RESPONDENT

**STATE DEPARTMENT FOR HOUSING
AND URBAN DEVELOPMENT.....2nd**
DEFENDANT/RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3rd
DEFENDANT/RESPONDENT

CHIEF LANDS REGISTRAR.....4th
DEFENDANT/RESPONDENT

**OFFICE OF THE COMMISSIONER
GENERAL OF PRISONS.....5th**
DEFENDANT/RESPONDENT

**OFFICER IN CHARGE,
KAMITI MAXIMUM PRISON.....6th**
DEFENDANT/RESPONDENT

**DIRECTOR, SLUM
UPGRADING DEPARTMENT.....7th**
DEFENDANT/RESPONDENT

TEJ ARCHITECTS.....8th
DEFENDANT/RESPONDENT

RULING

1. The Plaintiff's Notice of Motion dated 9th May 2025 is brought under **Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act; Order 40 Rules 1, 3(3) and 4; Order 51 of the Civil Procedure Rules, 2010; Section 68(1) of the Land Registration Act** and all other enabling provisions of the law.
2. The Plaintiff seeks, *inter alia*, certification of urgency, temporary injunctive orders restraining the Defendants from entering, trespassing, constructing, subdividing or in any manner dealing with L.R. No. 24704 (I.R. No. 69733), an injunction against the 5th and 6th Defendants from denying the Plaintiff access to the unoccupied portions of the land, an order for maintenance of the status quo by the Chief Lands Registrar, and costs of the Application.
3. The Application is premised on the grounds that the Plaintiff is the duly registered proprietor of L.R. No. 24704 (I.R. 69733) measuring approximately 26.54 hectares, having been allocated the land in the 1990s and eventually issued with a certificate of title following gazettement of the Part Development Plan and issuance of the Deed Plan.
4. It is contended that the Defendants have unlawfully invaded approximately five (5) acres of the property, cordoned it off, and commenced construction of a project described as the Proposed Construction of Social Housing and Associated Infrastructure, despite not having purchased the land nor followed any lawful acquisition process, amounting to clear trespass. Further, the 5th and 6th

Defendants are said to have used threats, arrests, and intimidation to deny the Plaintiff access to portions of the land, making the protective orders sought necessary.

5. The Supporting Affidavit of Cecil Mungai reiterates that the Plaintiff's title is first in time, is supported by historical allotment records, gazettelement, Deed Plans and a valuation report by a Government Valuer confirming ownership. The Plaintiff avers that Kamiti Prison has illegally annexed approximately 20 acres of the land and allocated it for the Affordable Housing project.
6. It is further alleged that either the Defendants have fraudulently obtained a parallel title or orchestrated the issuance of a duplicate certificate of lease, thereby necessitating preservation of the property and protection of the Plaintiff's quiet possession. The Plaintiff asserts that unless injunctive orders are granted, the continued construction and intimidation will defeat the purpose of the suit, render the land irreparably damaged, and occasion injustice.

Response

7. The 3rd, 5th and 6th Respondents oppose the application through a Replying Affidavit sworn on 19th June 2025 by Ogutu Leonard Odhiambo, who avers that the suit property forms part of public land reserved for Kamiti Maximum Prison pursuant to historical surveys and reservation instruments, and that the land has at all material times remained under the mandate, use and control of the prison authorities.
8. He deposes that the Applicant has never been in possession or occupation of the land and that the activities complained of relate to a government-sanctioned social housing project undertaken on land believed to be public. He further states that the acreage, allotment

records and documentation presented by the Applicant are internally inconsistent, raising doubts about the validity and regularity of the certificate of title relied upon.

9. The 8th Respondent relies on the Replying Affidavit of Julius Kipketer, who states that the 8th Respondent is a design consultancy firm retained by the 1st Respondent under Contract No. MLPWHUD/SDHUD/SUD/387/2023-2024 for the proposed Social Housing Project in Kamiti Constituency.
10. He avers that the 8th Respondent claims no proprietary interest, has not undertaken any construction or excavation, and accessed the land strictly for design consultancy purposes pursuant to instructions issued by the Ministry. He maintains that the 8th Respondent's presence on the land was solely in its capacity as an agent acting under government authority, and therefore it cannot be deemed to have trespassed or interfered with the Applicant's proprietary rights.

Submissions

Applicants Submission

11. The Applicant submits that the central issues for determination are threefold: (a) whether the Plaintiff has established a prima facie case of ownership and right to possession in respect of L.R. No. 24704 (I.R. No. 69733) such that interim protection ought to follow; (b) whether the Plaintiff faces a real risk of irreparable harm if the injunction is not granted (in particular loss of the subject land by continued excavation, construction, subdivision or registration of competing interests which cannot be adequately compensated by damages); and (c) whether the balance of convenience favours preservation of the status quo by granting the interlocutory relief sought, including an order restraining

the 5th and 6th Defendants from denying access and an order directing the Chief Lands Registrar to maintain the title pending final determination.

12. The Applicant further invokes the constitutional protections of property (Article 40) and fair administrative action (Article 47) and relies on the indefeasibility principle under **section 26(1) of the Land Registration Act** to contend that the registered certificate of title is prima facie evidence of ownership unless vitiated by fraud.
13. In support of these propositions the Applicant relies on the well-known *Giella v Cassman Brown* test for interim injunctions and on authorities and principles affirming protection of registered title and the inadequacy of damages where land is altered or developed. Key cases cited include ***Giella v Cassman Brown [1973] EA 358***, ***American Cyanamid Co v Ethicon Ltd [1975] AC 396*** (balance of convenience), ***Mrao Ltd v First American Bank of Kenya [2003] eKLR***, and other authorities cited by the Applicant to demonstrate that once title stands unchallenged by proof of fraud, and where ongoing state action threatens irreparable loss, injunctive relief and maintenance of the status quo are appropriate.

Respondents Submissions

14. The 3rd, 5th and 6th Respondents, through their written submissions, argue that the Applicant has not satisfied the ***Giella v Cassman Brown [1973] EA 358*** threshold for the grant of a temporary injunction. They contend that no prima facie case has been established because the Applicant's alleged title is undermined by inconsistencies in acreage and historical allocation, and because the land is asserted to be public land lawfully reserved for Kamiti Prison.

15. They further submit that the Applicant has never been in possession of the property and therefore cannot demonstrate irreparable harm, relying on **Nguruman Ltd v Jan Bonde Nielsen [2014] eKLR**, **Pius Kipchirchir Kogo v Frank Kimeli Tenai (2018) eKLR**, and **Kenya Commercial Finance Co Ltd v Afraha Education Society [2001] EA 86** for the proposition that damages suffice where the alleged injury is quantifiable.
16. On the balance of convenience, they cite **Symon Gatutu Kimamo & 587 Others v East African Portland Cement Co Ltd [2011] eKLR** and **Kenya Hotel Properties Ltd v Willesden Investments Ltd [2013] eKLR**, contending that restraining the ongoing Affordable Housing Project would prejudice the public interest and expose the Government to significant contractual and financial risk.
17. The 8th Respondent submits that the Applicant has not demonstrated any cause of action against it, as it neither claims ownership nor undertakes construction, and its presence on the land was solely in execution of its contractual mandate under Contract No. MLPWHUD/SDHUD/SUD/387/2023-2024. Relying on **Giella v Cassman Brown and Mrao Ltd v First American Bank of Kenya Ltd [2003] KLR 125**, it argues that no **prima facie case** lies against it because the Applicant has not shown any right that has been infringed by the 8th Respondent.
18. On irreparable harm, it adopts the reasoning in Pius Kipchirchir Kogo (*supra*) that no injunction should issue where damages are an adequate remedy, noting that the Applicant was not in possession and that any alleged loss is compensable. On the balance of convenience, the 8th Respondent relies on **Kenya Hotel Properties v Willesden Investments** and public-interest jurisprudence to argue that halting

the national housing project would occasion greater prejudice to the public and the Government than any inconvenience alleged by the Applicant.

Issues for Determination

19. From the pleadings, affidavits and submissions of all parties, the Court is of the view that the application turns on one central issue for determination:

- a) Whether the Applicant has satisfied the legal threshold for the grant of a temporary injunction under the *Giella v Cassman Brown* test in light of the competing claims of ownership and the Respondents' asserted legal authority to enter and utilise the suit property.

Analysis and determination

20. In determining whether the Applicant has satisfied the legal threshold for the grant of a temporary injunction, the Court is guided by the established principles in ***Giella v Cassman Brown [1973] EA 358***, as clarified in ***Nguruman Ltd v Jan Bonde Nielsen [2014] eKLR***, which require sequential consideration of whether the Applicant has demonstrated a *prima facie* case with a probability of success, whether irreparable harm not compensable by damages is likely to occur, and, where necessary, where the balance of convenience lies.

21. In the present case, the Applicant relies on a certificate of title issued in 2021 and asserts that the Defendants have entered the land, fenced portions of it, commenced construction, and denied access, thereby infringing its proprietary rights. A registered title ordinarily constitutes *prima facie* evidence of ownership under **section 26(1) of the Land Registration Act**, unless obtained through fraud or

misrepresentation.

22. However, the State Respondents have placed before the Court material suggesting that the land forms part of public land historically reserved for Kamiti Prison, supported by survey references, legal notices, and records of long-standing State use and possession.
23. They challenge the validity of the Applicant's title and assert that the Applicant has never been in actual possession of the land. The 8th Respondent an architectural consultant maintains that its presence on the land was solely under instructions of the Government pursuant to a formal contract and that it asserts no independent claim to the property.
24. At the interlocutory stage, the Court is not required, and indeed is not able, to conclusively determine the validity of the competing claims to title, nor whether the Applicant's title was regularly procured or whether the land is lawfully reserved public land.
25. The question is whether the Applicant has shown an arguable right that has apparently been infringed, as articulated in **Mrao Ltd v First American Bank [2003] KLR 125**. The existence of a registered title raises such a right, but the Court must also acknowledge that the State has presented a substantial and formally grounded challenge, supported by documentary history and uncontested long-term possession.
26. The record before the Court reveals material conflicts that can only be resolved through a full trial involving survey evidence, historical records, and oral testimony. Consequently, while the Applicant raises a serious question for trial, the strength of the challenge presented

tempers the weight that may be placed on the *prima facie* limb at this stage.

27. On the second limb irreparable harm the Applicant argues that continued construction may permanently alter the land, expose it to third-party interests, or create physical and legal conditions not restorable by damages. Reliance is placed on authorities such as **Nguruman (supra)** and **Paul Gitonga Wanjau [2016] eKLR**, which recognise that loss of control over land can, in certain circumstances, constitute irreparable harm.
28. The State Respondents argue that the Applicant has never occupied, utilised, or developed the land and that any loss is quantifiable and compensable. They rely on **Pius Kipchirchir Kogo (2018)** and **Kenya Commercial Finance Co Ltd v Afraha Education Society [2001] EA 86**, where courts declined injunctions where damages were available.
29. In view of the disputed ownership, the admitted lack of possession by the Applicant, and the ongoing nature of the Government project, the Court is not persuaded, at this stage, that the Applicant faces harm that is clearly incapable of compensation by an award of damages should it ultimately succeed. The second limb is therefore not met.
30. On the balance of convenience considered only if doubt exists the Court must weigh the competing risks. The Applicant urges preservation of the land in its current state, while the Respondents highlight the implications of halting a public housing project undertaken under the Government's development agenda. Authorities such as **Symon Gatutu Kimamo [2011] eKLR**, **Kenya Hotel Properties v Willesden Investments [2013] eKLR**, and **Article**

43(1)(b) of the Constitution recognise the role of public interest in assessing interim relief.

31. The Court must also heed the guidance in **Amir Suleiman v Amboseli Resort [2004] eKLR**, that the appropriate course is the one that carries the lower risk of injustice pending trial. Given the significant public commitments already underway, the contested nature of the Applicant's title, and the ability to compensate loss if the Applicant eventually succeeds, the balance of convenience favours allowing the matter to proceed to a priority hearing rather than restraining the Respondents at this interlocutory stage.

FINAL ORDERS

32. Having considered the Notice of Motion dated 9th May 2025, the affidavits, submissions by the parties, and the applicable law, and for the reasons set out in the foregoing ruling, the Court makes the following orders:
- a) The prayer for temporary injunctive orders restraining the Defendants, whether by themselves, their servants, officers, agents, or persons acting under their authority, from entering upon, trespassing, undertaking construction, excavation, subdivision, or in any manner dealing with L.R. No. 24704 (I.R. No. 69733) is hereby declined.
 - b) In order to preserve the substratum of the suit pending final determination, an order is hereby issued directing the 4th Defendant, the Chief Lands Registrar, to maintain the status quo on the register in respect of L.R. No. 24704 (I.R. No. 69733).

c) Given the contested claims to ownership and the competing public-interest considerations implicated by the ongoing Government project, the suit shall be heard and determined on a priority basis. Within 60 days from 2nd February, 2026 and parties are directed to comply with Order 11 within 45 days of Ruling.

d) The costs of the application shall be in the cause

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on **11th day** of **December, 2025.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Madowo.....for the Applicant

Ms. Mwalizi..... for the Respondents

Philomena W...... Court Assistant