

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELCLC CASE NO. E0142 OF 2025**

**BENSON WAGURA MATHENGE** .....  
**PLAINTIFF**

**VERSUS**

**STEPHEN KARANJA KUNGU** .....  
**DEFENDANT**

**RULING**

1. Before this Court is a Notice of Motion application dated 11<sup>th</sup> July 2025 seeking the following Orders:

*i. Spent.*

*ii. Spent.*

*iii. THAT pending the interpartes hearing and determination of the main suit, a temporary injunction be issued restraining the Respondent, his servants, agents, representatives or assignees from trespassing, disposing, alienating, transferring or any other way interfering with the Plaintiff's ownership of the property known as Title No. Kiambu/Municipality Block 6/138.*

*iv. An order of inhibition do issue and be registered on the Title No. Kiambu/Municipality Block 6/138 inhibiting further dealings on the same until further orders of the court.*

*v. That the costs of this application be in the cause.*

2. The application is premised on the grounds on the face of it and the Affidavits of Benson Wagura Mathenge (Plaintiff/Applicant) sworn on 11<sup>th</sup> July 2025 and 19<sup>th</sup> September 2025.
3. The Applicant contends that on or about 11<sup>th</sup> April 2024, he entered into a sale agreement with the Respondent for the purchase of land parcel **Kiambu/Municipality Block 6/138** at a price of Kshs. 26,700,000, and that the agreement, certificate of official search, certificate of title and lease documents form part of his evidence. He explains that the agreement provides that upon his payment of the full purchase price, the Respondent was to release all necessary transfer documents to facilitate the transfer of the suit property into his name.
4. The Applicant states that he has already paid the entire purchase price to the Respondent, yet despite doing so, the Respondent has refused or failed to hand over the transfer documents. He adds that he has made several demands for the release of the documents, but none of these efforts have been successful. He further states that he has recently discovered that the Respondent has begun taking construction materials to the suit property with the intention of commencing developments on it. He also reports that the Respondent is actively seeking another purchaser for the land and has, on several occasions, visited the property with third parties with the intention of disposing of it. The Applicant believes that such actions would expose him to irreparable loss.

5. He maintains that unless the Court grants the orders sought, the Respondent is likely to dispose of the property, which would prejudice his rights and render the suit nugatory. He further asserts that the Respondent will not suffer any prejudice if interim relief is granted, whereas he stands to suffer substantial and irreparable harm if the reliefs are denied.
6. In the Further Affidavit, the Applicant depones that he did not breach the agreement, noting that the Respondent had expressly asked not to be paid the full price in one lump sum. He explains that a later agreement, dated 11<sup>th</sup> April 2024, was executed to provide for instalment payments and to extend the completion period to one year and six months.
7. The Applicant asserts that he complied with the instalment plan and that the Respondent never issued a formal demand notice. He denies that the WhatsApp messages annexed by the Respondent relate to him. He states that he paid the balance within the agreed timelines, and that the Respondent initially accepted this payment but refunded it only after learning that court proceedings had commenced. He adds that the Respondent's claim that the agreement was terminated is false because the subsequent agreement modified and extended the original terms. He also states that the two parties remained in communication about the agreement and that he had the financial capacity to pay the full purchase price. The Applicant further states that he has established a prima facie case because he had already begun planning a

development on the property, including preparing architectural drawings and taking possession, and that he and his family have formed a sentimental attachment to the land.

8. He states that the Respondent has advertised the property for sale online at a higher price, and he believes that monetary compensation cannot adequately address the loss he would suffer. He concludes that the Respondent has not shown that he would be able to compensate him if the land were sold.
9. The Defendant/Respondent opposes the Application through a Replying Affidavit sworn by him on 7<sup>th</sup> August 2025 and a Further Affidavit sworn by him on 20<sup>th</sup> September 2025. He contends that the Application is frivolous, vexatious and founded on misrepresentation. He states that he is the registered owner of the suit property and has always been in possession, adding that the Applicant has never taken possession. He further states that the Applicant must satisfy legal conditions for the grant of injunctions, but in his view, the Applicant has not met the required threshold.
10. The Respondent maintains that there is no valid or enforceable sale agreement between the parties. He explains that although an agreement was signed on 11<sup>th</sup> April 2024 providing for payment within 120 days, the Applicant breached the terms by failing to pay the balance of the purchase price within the stipulated period. He says that by 4<sup>th</sup> December 2024, 210 days after signing, the Applicant had still not complied despite several demands.

11. He states that he issued a 21-day Notice of Completion pursuant to the agreement, but the Applicant neither responded nor complied. He adds that once the notice expired, the agreement automatically terminated due to the Applicant's breach. He further says that the Applicant remained silent until 2<sup>nd</sup> July 2025 when he attempted to pay the balance, which the Respondent refunded because the agreement no longer existed.
12. The Respondent asserts that the Applicant has concealed the agreement dates and completion timelines in order to mislead the court. He contends that the Applicant has not demonstrated a prima facie case, nor has he shown that he stands to suffer irreparable harm. He notes that if the Applicant feared suffering loss, he should have moved to court earlier rather than after one and a half years.
13. He states that there is no evidence showing that he intends to sell, transfer or alienate the property, and he believes the allegations are speculative. He adds that even if damages were to arise, he is financially capable of compensating the Applicant.
14. In his Further Affidavit, the Respondent reiterates the contents of his earlier Replying Affidavit. He responds that no other sale agreement was ever executed between him and the Applicant apart from the one already exhibited, which had a completion period of 120 days. He asserts that the agreement relied on by the Applicant in the further affidavit is a forgery.

15. He states that upon receiving the Applicant's Further Affidavit, he instructed his advocates to write to the advocate who witnessed the original sale agreement, Mr. Kenneth Waithaka, seeking clarification on the alleged second agreement. He adds that the advocate responded confirming that the purported agreement with a one and-a-half-year completion period was not genuine.
16. The Respondent states that the Applicant has approached the court with unclean hands and should not benefit from conduct he considers fraudulent. He maintains that the original sale agreement dated 11<sup>th</sup> April 2024 was properly terminated due to the Applicant's breach and that he remains in possession of the property.
17. The Court directed that the Application be canvassed through written submissions. Both parties complied.

### **Analysis and Determination**

18. Having examined the application together with the annexures, the replying affidavit 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.
19. A party seeking an injunction must satisfy a threefold test, as laid down in the case of **Giella vs Cassman Brown & Co. Ltd [1973] EA. 358**. The Applicant must, firstly, establish a *prima facie case* with a probability of success. Secondly, it must be shown that if the injunction is not granted, the Applicant stands to suffer irreparable harm; harm that cannot be adequately remedied by an

award of damages. Thirdly, where the Court is left in doubt, it must determine the matter on a consideration of the balance of convenience, weighing which party stands to suffer greater prejudice from the grant or refusal of the orders sought.

20. In evaluating the first condition, the Court notes that the Applicant claims to have paid the full purchase price under a purportedly valid sale agreement, while the Respondent disputes the existence of any enforceable agreement beyond the original agreement with a 120-day completion period. The dispute over the validity, existence, and terms of the alleged agreements raises a bona fide issue to be tried. The Court finds that the requirement of a serious issue to be tried is satisfied.
21. Regarding the second condition, the Applicant asserts that the Respondent has begun taking construction materials to the suit property, is advertising it for sale, and may alienate or transfer it to third parties. The Applicant claims that damages alone would be inadequate to compensate him if the property were sold or developed by the Respondent. On the other hand, the Respondent maintains that he is the registered owner, has always been in possession, and can adequately compensate the Applicant if any loss occurs.
22. The Court observes that where there is a real risk of interference with the property in dispute, such as sale or development, this can constitute irreparable injury. Given the evidence presented, including the Applicant's claim of actions by the Respondent to sell

or develop the land, the Court finds that the Applicant has made a *prima facie* case that he may suffer irreparable harm if the injunction is denied.

23. With respect to the balance of convenience, the Court must weigh the potential prejudice to both parties. Granting the injunction would maintain the *status quo* and prevent possible unlawful interference with the property. Conversely, the Respondent contends that the Applicant is not entitled to any relief due to alleged breach and forgery claims, and that an injunction would restrict his rights as the registered owner. The Court finds that, at this stage, preserving the *status quo* favors the Applicant because it prevents possible irreversible acts that could render the suit nugatory.
24. The Court also notes the Respondent's arguments of unclean hands and alleged fraud. While these are serious allegations, they pertain to the merits of the substantive claim and cannot be fully adjudicated at the interim stage. The role of this Court at this stage is not to resolve the disputes fully but to assess whether temporary relief is justified to preserve rights pending the determination of the main suit.
25. Having considered the evidence and the submissions of the parties, the Court finds that the Applicant has established sufficient grounds for the grant of interim relief. Accordingly, the Court makes the following orders:

***i. A temporary injunction is hereby issued restraining the Respondent, his servants, agents,***

***representatives, or assignees from trespassing, disposing, alienating, transferring, or in any other way interfering with the Plaintiff's ownership of the property known as Title No. Kiambu/Municipality Block 6/138 pending the hearing and determination of the main suit.***

***ii. An order of inhibition is hereby issued and shall be registered on Title No. Kiambu/Municipality Block 6/138, inhibiting further dealings on the same until further orders of the Court.***

***iii. The costs of this application shall be in the cause.***

**Dated, signed and delivered virtually this 10<sup>th</sup> day of December 2025.**

.....

**J.M ONYANGO  
JUDGE**

**In the presence of:**

1. Mr Gatoto for the Respondent
2. No appearance for the Applicant

Court Assistant: Hinga