



Mbithuka v Kirimania & another (Enviromental and Land Originating Summons E016 of 2025) [2025] KEELC 8595 (KLR) (10 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8595 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E016 OF 2025
CA OCHIENG, J
DECEMBER 10, 2025**

BETWEEN

MICHAEL NZOMO MBITHUKA PLAINTIFF

AND

JOHN GATOBU KIRIMANIA 1ST DEFENDANT

ROSALIND NAITORE GATOBU 2ND DEFENDANT

RULING

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 4th July 2025 where he seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That a temporary injunction be issued restraining the Respondents, their agents/ servants, employees and or assigns from collecting rent from the tenants in occupation of the property known as Nairobi/Block 82/1926 pending the hearing and determination of the main suit.
 - e. Spent.
 - f. That the Respondents, their agents/ servants, employees and or assigns be restrained from interfering in any manner whatsoever from accessing, trespassing or interfering in any manner whatsoever with the property known as Nairobi/Block 82/1926 and it's management, quiet and lawful use until the hearing and determination of the main suit.
 - g. That the Respondents do render accounts for the rent collected since 1st April 2024 to date.



- h. That the O.C.S. Buru Buru Police Station do ensure compliance of this Order.
 - i. That costs be provided for.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that by a letter dated 27th June 2023, KCB Bank Kenya Ltd agreed to finance him to purchase a commercial property known as Nairobi/Block 82/1926 to the tune of kshs.21,700,000.00 and on 24th July 2023, he entered into a sale agreement with the Respondents for the purchase of the said property and after paying the full purchase price, the Respondents signed the transfer of interest to the property to him and he was subsequently issued with a Lease. He explains that as per the certificate of search dated 5th April 2024, he is the registered owner of the suit property and the same has been charged to KCB Bank Kenya Limited.
 3. He asserts that there are sixteen (16) units of two (2) bedrooms erected on the suit property with a monthly rental income ranging from Kshs. 13,000/= to Kshs.18,000/= per unit, thus the total monthly rent collected is kshs.240,000.00. He contends that he is entitled to rent collected from 1st April 2024 but the Respondents have denied him access to the suit property to collect rent.
 4. He points out that on 10th April 2024, he wrote a letter to the tenants on the suit property informing them of change of ownership and instructing them to start remitting rent to him but two (2) days later, on 12th April 2024, the Respondents wrote a letter to them instructing them to maintain status quo. He claims that he has continued to suffer prejudice to date because he pays a mortgage to KCB Bank Kenya Ltd to the tune of Kshs.350,000.00 per month, yet he is not collecting any rent from the premises and he completed paying the purchase price on 22nd March 2024.

Response

5. The application is opposed by the Defendants who filed Grounds of Opposition and a replying affidavit sworn by the 1st Defendant. He concedes entering into the demised sale agreement with the Plaintiff and also admits that the Plaintiff's financiers settled the purchase price of Kshs.23 million. He claims that parties entered into an addendum agreement where it was further agreed that the Plaintiff would make an additional payment of kshs. 800,000/= for default in settling the purchase price as per the contract of 24th July 2023 and a further Kshs. 800,000/= which would cater for capital gains tax but the Plaintiff refused to give the vendors' a copy of the executed addendum. Further, that in order to finalize the said further agreement of payment of kshs.1.6 million, the Plaintiff issued him with two (2) postdated cheques of kshs.800,000 each dated 30th May 2024 and 25th June 2024 respectively, which bounced.
6. He contends that from the addendum, it was agreed that he would hand over the suit property to the Plaintiff upon full settlement of the ksh.1.6 million which has not been paid to date yet the Plaintiff has interfered with peaceful enjoyment of the suit property by threatening tenants with eviction. Further, that the units have only four (4) remaining tenants who pay kshs.13,000/= per month.
7. The application was canvassed by way of written submissions.

Submissions

8. The Plaintiff submits that he has satisfied the test for grant of injunctions as stated in the case of *Giella v Cassman Brown* (1973) EA 358, citing documentary evidence of registration to the suit property in his name. He insists that the Defendants have no residual interest in the suit property as once the property was transferred and consideration paid, their proprietary interest was extinguished thus their



continued collection of rent constitutes an act of trespass and unlawful enrichment. He also submits that Defendant's acts, if left unchecked, will perpetuate a continuous violation of his constitutional and statutory property rights and no amount of damages can adequately compensate infringement. Further, that it would be more prejudicial to him if the injunction is denied.

9. The defendants did not file submissions.

Analysis and Determination

10. Upon consideration of the instant Notice of Motion application including the respective affidavits, Grounds of Opposition and submissions, at this juncture the only issue for determination is whether Plaintiff has met the threshold for issuance of temporary injunction restraining the Defendants from collecting rent or interfering with the Plaintiff's ownership of LR No. Nairobi/Block 82/1926.
11. In line with the principles on injunctions as set out in the case of *Giella vs Cassman Brown & Company Ltd* (1973) EA 358 including the definition of a prima facie case as espoused in the decision of *Mrao Ltd vs First American Bank Ltd* (2003) KLR 125, I will proceed to decipher whether the Plaintiff has established a prima facie case as against the Defendants to warrant the orders of temporary injunction as sought.
12. The Plaintiff's case is that he purchased Nairobi/Block 82/1926 together with all developments thereon from the Defendants and paid the full purchase price but the Defendants have continued to collect rent of kshs.240, 000/= from the said property since 1st April 2024 and forcefully denied him access. Further, that he continues to suffer loss as he is servicing a mortgage to KCB Bank Ltd at the rate of Ksh. 350,000.00/= per month.
13. On their part, the Defendants concede that the Plaintiff did pay the full purchase price but contends that parties entered into a further addendum in which it was agreed that the Defendants would give vacant possession of the suit premises upon the Plaintiff paying full settlement of ksh.1.6 million, which he has not been paid to date.
14. Looking at the documents annexed to the supporting affidavit it is very clear that the Plaintiff indeed purchased the suit property and has documents of title to that effect. I note the Defendants have not disputed the Plaintiff's title. On the Defendants' allegation of the addendum, I find that this did not interfere with the Plaintiff's ownership of the suit property which he is paying a mortgage for. I hence find that the Plaintiff has indeed established a prima facie case to warrant the orders of interlocutory injunction as sought.
15. I further find that the Plaintiff who is currently servicing a mortgage is indeed suffering irreparable harm which cannot be compensated by way of damages. Further, since the Defendants' have blocked him from accessing the suit property, the balance of convenience tilts in favour of granting an injunction to restrain them from interfering with the suit property.
16. On the prayer for the Respondents to render accounts for the rent collected since 1st April 2024 to date, I opine that this a prayer which is mandatory in nature. The Court of Appeal held as follows on mandatory injunctions at the interlocutory stage in *Nation Media Group & 2 others v John Harun Mwau* [2014] eKLR;

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have



stated a temporary mandatory injunction can only be granted in exceptional and in the clearest of cases.”

17. From the facts before me, I find that this is not a clear case for granting a mandatory injunction and will decline to do so. I further opine that the issue of accounts will be dealt with during the hearing of this suit.
18. In the circumstances, I find the instant Notice of Motion application partially successful and will allow it in the following terms:
 - a. That a temporary injunction be and hereby issued restraining the Respondents, their agents/ servants, employees and or assigns from collecting rent from the tenants in occupation of the property known as Nairobi/Block 82/1926 pending the hearing and determination of the main suit.
 - b. That the Respondents, their agents/ servants, employees and or assigns be and are hereby restrained from interfering in any manner whatsoever from accessing, trespassing or interfering in any manner whatsoever with the property known as Nairobi/Block 82/1926 and it’s management, quiet and lawful use until the hearing and determination of the main suit.
 - c. That the O.C.S. Buru Buru Police Station do ensure compliance of this Order.
 - d. Costs will be in the cause

DATED SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Uvyu for Plaintiff

Esami for Defendant

Court assistant: Vena

