



REPUBLIC OF KENYA



KENYA LAW
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Maguti t/a Lemook Gardens & another v Muigei & another (Environment and Land Case E080 of 2025) [2025] KEELC 8518 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E080 OF 2025**

CK YANO, J

DECEMBER 4, 2025

BETWEEN

BARNABAS MAGUTI T/A LEMOOK GARDENS 1ST PLAINTIFF

WILFRED KIPKEMBOI RONO 2ND PLAINTIFF

AND

PHILIP MUIGEI 1ST DEFENDANT

WILSON MK TAIY 2ND DEFENDANT

RULING

1. This ruling is in regard to the Plaintiffs/Applicants Notice of Motion Application dated 18th August, 2025 seeking the following orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this Suit, a temporary injunction does issue restraining the Respondents, their servants and/or agents or any other person whatsoever acting on instructions and authority of the Respondents whether express or implied from erecting barriers in the form of gates, spikes, walls, ditches, speed bumps or in any other form whatsoever on the Public road accessing the 2nd Applicants' property in Kapseret, Uasin Gishu County or any other access road to the 2nd Applicants' property.
 4. Spent
 5. That pending the hearing and determination of this suit, a temporary injunction does issue restraining the Respondents, their servants and/or agents or any other person whatsoever acting on instructions and authority of the Respondents whether express or implied from denying



the Applicants and their Patrons access to their premises within Kapseret, Uasin Gishu County in whatever form or manner.

6. That the Officer Commanding Station, Langas Police station be directed to aid in enforcing the orders herein.
7. That the costs of this application be awarded to the Plaintiff/Applicant.
2. The grounds of the application are set out in the 1st Plaintiff's Supporting Affidavit sworn on 18th August, 2025. The 1st Plaintiff deponed that for the last 5 years, he has lawfully operated a Resort by the name of Lemook Gardens in Kapseret, Uasin Gishu County situated on Title Number Kapsaret/Lemook & Chepkatet Block 1 (Inder)/702 (the suit property). He deponed that he obtained the requisite permits from Uasin Gishu County Government. That the 2nd Defendant, who is the owner of the suit property, acquired a change of user from Agricultural to Commercial use after following due process. He claims however, that the 1st Defendant who is the Speaker of Uasin Gishu County Assembly and his neighbour, unlawfully and without any colour of right, erected a gate on 17th August, 2025 barring entry into and out of the suit premises.
3. The 1st Plaintiff claims that the Defendants hired armed goons who threatened his Patrons, and on 3rd August, 2025 beat up and robbed patrons at the suit premises. That the matter was reported at Langas Police station vide OB No. 38/04/08/25. Further, that on 26th January, 2025, the 2nd Defendant maliciously destroyed roadside signage meant to direct patrons to the suit premises, and which he reported at Langas Police station under OB No. 05/26/01/2025. He accused the Defendants of malice against his establishment, which led them and their agents/servants to present a Petition to the Uasin Gishu County Assembly in which the 1st Defendant presides. That he alleges that his business emits noise and it ought to be closed, but the Petition was countered by the 1st Plaintiff's neighbours.
4. The 1st Plaintiff also avers that the Defendants caused the arrest of his employee by the name Maxtila Ponda on 8th August, 2025 on allegations that he did not have a liquor license but the charges were rejected by the Office of the Director of Public Prosecutions. The Plaintiff avers that he was to host an event dubbed Drip and Brunch and expected to earn approx. Kshs. 5,000,000/- in revenue in the course of the sponsorship by Rana Motors, but the sponsor cancelled the event to avoid a fracas. That as a result of the Defendants' actions, he has lost the good working relationship he had with his creditors and suppliers and continues to lose business despite having all the necessary permits and clearances required to operate his business. He deponed that he will suffer great prejudice and loss if the orders herein are not made.
5. In response, the 1st Defendant filed a Replying Affidavit dated 1st October, 2025. He deponed that there was a proposal made at a community meeting and upon extensive public participation by members of Lemook community to put up a gate to be manned by security persons so as to deal with insecurity concerns. He denied putting up the gate on 17th August, 2025 or hiring armed goons as alleged or at all, and explained that the gate was erected by persons contracted by the community. He further averred that the alleged beatings and robbery are of a criminal nature and this court is not the appropriate forum to address them. He denied that a Petition had been presented, and added that he had no control over Petitions presented to the County Assembly, which once filed, due process is followed.
6. The 1st Defendant also denied getting Maxtila Ponda arrested or that he had any power to cause the arrest of any individual. He claimed that Lemook Gardens is next to a secondary school whose Board of Management has complained against it. In addition, that Lemook Gardens hosted a big event with no evidence that it had a permit. That after the said event, members of the community complained to the Sub-County Alcoholic Drinks Regulation Committee that the event caused great discomfort



resulting in commotion, violence as well as theft and injuries. He averred that he had been engaging the Area Chief as a concerned citizen living around Lemook Gardens and not as the Speaker, Uasin Gishu County. He asked that the Application be dismissed with costs.

7. The Plaintiff replied to the 1st Defendant's Affidavit, through a Further Affidavit dated 30th October, 2025. He deponed that he is a part of the community and has never been called for nor was he aware of any meeting that took place concerning security issues in the neighbourhood. That there has been no security incident attributed to Lemook Gardens and he asked the court to disregard the alleged security incidents as they had not been substantiated. That he has never been consulted about nor his consent ever sought to erect a gate, and no meeting can culminate to an unlawful decision to erect a gate on a public road.
8. The 1st Plaintiff claimed that the photos annexed to the Supporting Affidavit show the 1st Defendant dishing out money to goons he had hired to erect the gate. He averred that no single complaint had been brought to him by the Secondary school about noise emanating from his resort, and that he had even hosted some of the school's team building events. He also claimed that he had a permit for the event of 3rd August, 2025, but it was cancelled due to the Defendants' conduct on that day.
9. He claimed that the Petitions to the Liquor Licensing Board and the County Assembly were hurriedly prepared on 6th August, 2025 after his Patrons were injured and hospitalized by the Defendants' agents. He averred that the O.B of 19th August, 2025 was after he filed this suit, and he denied hosting any event on the said date. He claimed that he was unaware of any reports of stolen phones and injuries. He averred that the Community has been very supportive to him and they opposed the Defendants' attempts to frustrate the operations of the resort. He urged the Court to allow the Application as prayed.
10. On the 2nd Defendant's part, he filed a Replying Affidavit dated 16th September, 2025 opposing the Application. He accused the Plaintiffs of falsehoods in claiming that he has operated the resort for 5 years, yet the change of use was approved in 2023. He also accused the 1st Plaintiff of operating without a license and flouting the rules since there was no public participation by the neighbours to consent on operation of the facility. He also denied hiring goons to beat up or rob the 1st Plaintiff's patrons. That the 1st Plaintiff ought to have pursued criminal charges on the said allegations. He further denied destroying the Plaintiff's roadside signage as alleged. He denied erecting an illegal gate or causing the Plaintiffs losses in the amounts and manner claimed in the Supporting Affidavit.
11. The 2nd Defendant claimed that the Plaintiffs ought to pursue statutory bodies that deal with roads, instead of him since he had failed to associate him with the allegations in the application. He averred that he did not own the land the gate was constructed on and neither had the Plaintiffs been denied entry through the said gate. The 2nd Defendant alleged that the gate was erected after public participation due to rising insecurity caused by Lemook Gardens customers who pose as revellers. He claimed that the orders sought have been overtaken by events since the gate has already been erected. That the orders sought are equitable therefore cannot issue since the resort is located 200 metres from AIC Lemook Secondary School and has been playing loud music, thus impacting the learners negatively.
12. The 1st Plaintiff once again filed a Further Affidavit dated 1st October, 2025 in response to the 2nd Defendant's Replying Affidavit. He deponed that his business name was registered in 2021 and it began operating the Resort, but the change of user was approved in 2023 through a separate process. He claimed that the 2nd Defendant had admitted that the gate was erected illegally without following due process. He also clarified that the National Police Service had informed them that investigations into the incident are ongoing.



13. The 1st Plaintiff pointed out that the 2nd Respondent is signatory no. 10 on the Petition to the County Assembly which he reiterated was hurriedly drafted on 6th August, 2025 to mitigate the beating up of his patrons on 3rd August, 2025. He averred that this Court is clothed with jurisdiction to handle the dispute herein and urged the Defendants to file the appropriate pleadings if they objected to its jurisdiction. He averred that the Defendants have no mandate to put up a gate on a public road or intimidate him and his patrons from accessing his premises. He claimed that there has been no single case of insecurity attributed to his business. Further, that the gate is a security hazard as it is not manned therefore robbers may take advantage of this fact and harm him or his Patrons.
14. The 1st Plaintiff asserted that all due process was followed in obtaining the business license and change of user. He denied the allegations that the Resort has been playing loud music and pointed out that this cannot be used as an excuse to erect the gate as there are proper procedures within the Environmental Management and Coordination Act on noise pollution. He refuted the allegations that the premises negatively impacted the lives of learners and explained that the alleged events herein took place over the August holidays when schools were closed. The Plaintiffs once more urged the Court to allow the Application as prayed.

Submissions:

15. The Application was canvassed by way of written submissions. The Plaintiff's submissions are dated 28th October, 2025 while the 2nd Defendant's submissions are dated 3rd November, 2025. However, despite being given sufficient time, the 1st Defendant did not file submissions.

Analysis and Determination:

16. The court has carefully considered the Motion alongside the Affidavits filed in support thereof, the Replying Affidavits filed in opposition, as well as written submissions. The only issue that arises for determination is whether this court should grant the injunctions sought.
17. Prayer no. 3 of the Application is for a temporary injunction to restrain the Defendants from erecting barriers in the form of gates, spikes, walls, ditches or speed bumps on the public access road. The 2nd Defendant claimed that the application has been overtaken by events since the gate has already been erected. Notably, however, the prayer was not only for the construction of a gate, but other barriers as well. For that reason, it cannot be said to have been overtaken by events. Secondly, the Plaintiffs seek a temporary injunction restraining the Defendants from denying them and their patrons access to the suit premises.
18. There can be no doubt that this Court has discretionary power to grant a temporary injunction. However, before exercising its discretion to grant a temporary injunction, the court must consider whether the Applicant has met the principles laid out by the Court of Appeal in *Giella v Cassman Brown & Co. Ltd* (1973) E.A. 358, where it was held that:-

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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.”



19. First and foremost, therefore, the Plaintiffs herein are under an obligation to demonstrate that they have a prima facie case with probability of success. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] KEELC 2424 (KLR), Justice Ombwayo defined a prima facie case as follows: -

“Prima Facie case has been explained to mean that a serious question is to be tried in the suit and in the event of success, if the injunction be not granted the plaintiff would suffer irreparable injury. The burden is on the plaintiff to satisfy the court by leading evidence or otherwise that he has a Prima Facie case in his favour. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed.”

20. The 1st Plaintiff claims that he lawfully operates a resort on the suit property which is owned by the 2nd Plaintiff. He claims that he has all the licenses required under the Law. The 1st Plaintiff annexed a single business permit issued by the County Government of Uasin Gishu on the 3rd day of April, 2025 to expire on 31st December, 2025. The bone of contention however is the gate erected on the public road which the 1st Plaintiff claims restricts patrons from accessing the business premises known as Lemook Gardens.
21. The Defendants have not denied that the gate was indeed erected, save to state that the same was done by the community after a resolution was passed at a meeting and public participation. They claim that the gate is meant to boost security in the area. However, no minutes of the alleged community meeting or resolution was annexed by either the 1st or 2nd Defendant showing the consensus by the community that a gate should be erected as a means of resolving security concerns.
22. The defendants have also not denied that the road in question is a public road. There are photographs annexed to the supporting affidavit showing that a gate was in fact erected on a road. Indeed, Section 49 of the *Kenya Roads Act* prescribes the process to be followed on installing structures on public roads. It provides that no person should erect any structure on a road or road reserve without the written permission of the responsible authority. Therefore, even if the members of the community did pass a resolution to erect a gate, the same could not be done without seeking any approvals from the relevant authorities.
23. In addition, there is nothing to show that the Petitions presented before the sub-county Alcohol Regulation Committee and the County Assembly were deliberated and a directive issued that a gate be put up on the public access road. Besides, no complaint was tabled before this court from the nearby AIC Lemook Secondary School detailing the nature of the complaint that the school had against the 1st Plaintiff's business. In any event, all the events held by the Plaintiff referred to in this application are said to have occurred in August when schools in Kenya were without a doubt closed.
24. Moreover, Lemook Gardens is said to have commenced its operations in 2021. But even if we were to go by the approval of change of user, the premises would still have been in business since 2023 with no indication that there was any complaints against it for two years. There are also provisions that deal with noise pollution under EMCA. The allegations of noise pollution from the 1st Plaintiff's establishment were therefore not substantiated. The Defendants have also not shown that the community sought and obtained approval from the relevant road authority to put up the gate on a public road as by law required. In the circumstances, and at this interlocutory stage, I am convinced that the Plaintiffs have established a prima facie case with a probability of success.



25. Aside from a prima facie case, the Plaintiffs are also obliged to show they stand to suffer irreparable injury if the injunction is not granted. The term irreparable injury was explained by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (2014) KECA 606 (KLR) to mean: -

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

26. Irreparable injury therefore means injury that cannot be adequately compensated for in damages, and thus the injunction is to protect one from the consequences of the apprehended injury.

27. On this issue of irreparable injury, the Plaintiffs submitted that they have had ownership and possession of the suit property for over 10 years and have made developments thereon. The 1st Plaintiff claims that he has already lost approximately Kshs. 5,000,000/- from the cancelled event of 17th August, 2025 and sponsorship. Aside from the monetary loss, the 1st Plaintiff also claims that he has lost the good working relationships he had with his creditors and suppliers and continues to lose business even though he has a permit to run his business.

28. While the lost revenue has been reduced to a liquidated figure, it is clear that the lost sponsorship and good working relationship with suppliers may not be covered by an award of damages. In addition, the 1st Plaintiff will evidently continue to lose business and revenue if the patrons to his business are denied access to the premises before this matter is heard and finally determined. It is for these reasons that I find the second requirement of irreparable harm has been met.

29. Finally, where the court is in doubt, it ought to decide the matter on a balance of convenience. The 1st Plaintiff has explained that the land belongs to the 2nd Plaintiff and has presented a title deed to that effect. The 2nd Plaintiff appears to have no objection to the resort being on his land. The 1st Plaintiff has permits allowing him to run his business on the suit land. Although there are allegations of noise pollution from the 1st Plaintiff’s business, however, aside from the Petition to the County Assembly, no evidence was tabled that a complaint was tabled with the relevant authority, being the National Environmental and Management Authority (NEMA) in that regard. As at this stage, there is no proof that the Petition was deliberated by the Assembly or what resolution was made thereon.

30. I have no doubt in this case that the balance of convenience tilts in favour of granting the injunctions to allow the 1st Plaintiff run his business pending hearing and determination hereof. It follows therefore that the Plaintiffs have met all the requirements for grant of a temporary injunction as set out in the *Giella Case* (Supra).

Orders: -

31. Therefore, the Plaintiff’s Notice of Motion Application dated 18th August, 2025 succeeds as follows: -

- i. That pending the hearing and determination of this Suit, a temporary injunction be and is hereby issued restraining the Respondents, their servants and/or agents or any other person



whosoever acting on instructions and authority of the Defendants/Respondents whether express or implied from erecting barriers in the form of gates, spikes, walls, ditches, speed bumps or in any other form whatsoever on the Public road accessing the 2nd Applicants' property in Kapseret, Uasin Gishu County or any other access road to the 2nd Plaintiff/Applicants' property.

- ii. That pending the hearing and determination of this suit, a temporary injunction be and is hereby issued restraining the Defendants/Respondents, their servants and/or agents or any other person whosoever acting on instructions and authority of the Respondents whether express or implied from denying the Plaintiffs/Applicants and their patrons access to their premises within Kapseret, Uasin Gishu County in whatever form or manner.
- iii. That the Officer Commanding Station, Langas Police station be directed to aid in enforcing the orders herein.
- iv. This being a fresh matter that is yet to be heard, the costs of this application shall be in the cause.

32. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 4TH DAY OF DECEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Ms. Oriedo holding brief for Ms. Ochieng for the Plaintiffs.

Mr. Mohamed holding brief for Mr. Cheruiyot for 1st Defendant.

Mr. Wanyonyi for 2nd Defendant.

Court Assistant - Laban.

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