

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCEP PETITION NO. E007 OF 2025

**FINSCO CONSULTING AFRICA LIMITED PETITIONER
VANTAGE VIEW LIMITED**

VERSUS

**THE COUNTY EXECUTIVE COMMITTEE MEMBER,
LANDS HOUSING, PHYSICAL PLANNING AND URBAN
DEVELOPMENT, KIAMBU COUNTY.....1ST RESPONDENT**

**THE COUNTY DIRECTOR OF PHYSICAL AND
LAND PLANNING, KIAMBU COUNTY.....2ND
RESPONDENT**

THE GOVERNOR, KIAMBU COUNTY.....3RD RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....4TH RESPONDENT

AND

KENYA NUT COMPANY LIMITED.....INTERESTED PARTY

RULING

1. Before me for determination is the Petitioner's application brought by way of Notice of Motion dated 22nd September, 2025 seeking a temporary injunction restraining the 4th Respondent from harassing, intimidating or otherwise threatening the Petitioners' quiet enjoyment of the property known as Vantage View Estate Juja Kiaora Farm comprising approximately 565 acres situated on Land Reference No. 10089 /1and 10090/1within Kiambu County (herein the suit properties).

2. The application is premised on the grounds set out on the face of the application and the supporting affidavit of John Mwaura, the director of the 2nd Petitioner, sworn on even date.
3. In the said affidavit he deposes that the Petitioners entered into an agreement with the Interested Party for the development of Vantage View Estate on the suit properties.
4. By a letter dated 29th April 2025, the Petitioners and the Interested party notified the Respondents of their intended project and submitted a Master Plan in support of the Petitioners' application for sub-division and change of user.
5. By a letter dated 10.6.25 the Respondents acknowledged receipt of the Petitioners' application and letter and informed the Petitioners that they would be invited for a meeting to discuss the Master Plan. However, this did not happen as the Petitioners did not receive approval of its application or any communication giving reasons why the approval had not been given.
6. It is the Petitioners' contention that the 4th Respondent's failure to communicate its decision within 60 days of receiving the application pursuant to section 58(6) of the Physical Planning and Land Use Planning Act is a violation of the Petitioners' right to fair administrative action enshrined in article 47 of the Constitution of Kenya 2010 and the Fair Administrative Action Act No. 4 of 2015.

7. That despite seeking a response to their application vide their letter dated 27th August 2024, the Respondents' officers raided the Petitioners' premises on the suit properties accompanied by goons and policemen and arrested the employees of the Petitioners under pretext that the Petitioners had not obtained approval for change of user or sub-division.
8. It is deponed that the Respondent's failure to issue the requisite change of user and approval for sub-division is a clear violation of the Petitioners' legitimate expectation to equal protection of the law and a violation of the national values principles of governance enshrined in article 10 of the Constitution.
9. It has further been contended that the refusal of the Respondents to issue its decision on the Petitioners' application makes it difficult for the Petitioners to appeal to the County Physical Planning and Land Use Liaison Committee thus leaving the Petitioners with no option but to move this honourable court for redress.
10. It is the Petitioners' contention that the Respondents' actions are arbitrary, oppressive and in violation of article 40 of the Constitution of Kenya.
11. In support of the application, Mr. Mbugua Ngugi, the Interested Party's Managing Director filed a Replying Affidavit sworn on 20th November 2025. In the said affidavit he deponed that on 3rd

December 2024, the Petitioners wrote to the 4th Respondent informing them of the intended site visit by potential investors on 7th December 2024 and invited the County Government officials to attend the meeting and assist in the requisite processes of obtaining the necessary approvals.

12. It was his deposition that instead of responding to the letter, the 4th Respondent issued the Petitioners with an Enforcement Notice dated 7th December 2024 directing the Petitioners to stop any further activities on the suit properties as it was alleged that they were carrying out sub-division without obtaining the requisite approvals. The 4th Respondent's officials then raided the suit properties on 7th December 2024 and scuttled the planned meeting with investors.
13. It is Mr. Ngugi's contention that the Enforcement Notice was issued prematurely as no sub-division had been undertaken contrary to section 72 of the Physical and Land Use Planning Act. He deposed that on 26th and 28th March 2025, the Petitioners and Interested Party submitted a provisional approval which was subsequently followed by a formal application for development permission which was acknowledged by the Respondents vide their letter dated 10th June 2025.
14. The Petitioners and interested Party attended a meeting with the Respondents on 23rd June 2025 to lay a basis for their application and explain the nature of the project. The Respondents then

proposed some amendments to the application submitted on 29th April 2025.

15. The application was strenuously resisted by the Respondent through the Replying affidavit of Charles Mugambi, the Juja Sub-County Planner in which he depones that the Petitioners have on various occasions attempted to engage in illegal sub-division of the suit properties without obtaining the requisite approvals contrary to section 57 of PLUPA and the Physical and Land Use Planning (Development Permission & Control) General Regulations 2021 prompting the 4th Respondent to issue Enforcement Notices. He denies that the Petitioners have applied for approval for change of user or sub-division of the suit property in accordance with section 57 of PLUPA as they have not annexed a copy of the receipt indicating that they have paid for the same. It is his contention that if indeed the application was submitted and the same did not elicit any response, the Petitioners ought to have complained to the Physical and Land Use Planning Liaison Committee.
16. He denies that the Respondents have been threatening or harassing the Petitioners as the Petitioners have not annexed any OB reports.

17. The application was canvassed by way of written submissions but by the time of writing this ruling, only the Petitioners had filed their submissions which I have considered.

ANALYSIS AND DETERMINATION

18. I have considered the application, supporting affidavit and annexures, Replying Affidavit as well as the Applicants' submissions. The only issue for determination is whether the Petitioners have made out a case for the grant of a temporary injunction.
19. 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

20. 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.

21. It is not in dispute that the interested parties are the registered owners of the suit properties. The Interested party intends to subdivide and sell to the Petitioners a portion of the suit properties measuring 565 acres for purposes of developing a project known as Vantage View Estate. In order to carry out the said project the Petitioners are expected to obtain approvals from the 4th Respondent in accordance with Section 57 of PLUPA and the Physical and Land Use Planning (Development Permission & Control) General Regulations 2021.
22. Although the Petitioners allege that they have applied for the said approvals, the 4th Respondent denies that the said application has been made in accordance with the laid down procedure. A perusal of the forms annexed to the Petitioners' supporting affidavit reveals that the said forms do not bear any stamp by the 4th Respondent indicating that they were received. Furthermore, there is no evidence of payment following the submission of the said forms. This is what prompted the 4th Respondent to issue an enforcement notice. In the absence of proof that the Petitioners have complied with the statutory and procedural requirements pertaining to development approval, the Petitioners have failed to demonstrate that they have a prima facie case with a probability of success.

Whether the Petitioners/Applicants will suffer irreparable loss if the temporary injunction is not granted

23. Irreparable harm refers to injury that cannot be adequately remedied by an award of damages. The Petitioners'/Applicants' complaint is that they have invested both time and resources in the transaction between themselves and the Interested Party yet they are unable to continue with their project owing to the harassment by the Respondents. The resources alluded to by the Applicants 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. The fears that the Interested Party may rescind the contract are merely speculative and unsupported by any proof. What the petitioners ought to do is ensure that their application is in conformity with the Physical and Land Use Planning (Development Permission & Control) General Regulations 2021.

Whether the balance of convenience tilts in favour of the Petitioners/Applicants

24. The court will normally decide an application for injunction based on the balance of convenience if it is in doubt. In the case of **Pius Kipchirchir Kogo v Frank kimedli Tenai (2018) KEELC 2424 (KLR)** the court held as follows:

“The court should issue an injunction where the balance of convenience is in favour of the plaintiff and not where the balance is in favour of the opposite party. The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted in favour of the plaintiff and the suit is ultimately decided in favour of the plaintiff, the inconvenience cause to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it called balance of convenience, it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs must show that the comparative mischief form the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it.”

25. In the instant case, the court has already made a finding that the petitioners have not demonstrated that they have a prima facie case with a probability of success or that they will suffer irreparable loss and there would be no need to determine that application based on the principle of balance of convenience. In

the circumstances, the application lacks merit and it hereby dismissed. The costs of the application shall be in the cause.

Dated, signed and delivered virtually at Thika this 21st day of January 2026.

J.M ONYANGO

JUDGE

In the presence of :

1. Mr. Thongori for the 1st and 2nd Petitioners/Applicants
2. Ms. Athman for Mr. Munyu for the Interested Party
3. No appearance for the Respondents

Court Assistant : Hinga