



Embakasi Ranching Co Limited v Nairobi City County & another (Land Case E235 of 2025) [2026] KEELC 355 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 355 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E235 OF 2025
MN KULLOW, J
JANUARY 29, 2026**

BETWEEN

EMBAKASI RANCHING CO LIMITED PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

JAMES KARANJA ALIAS KARIS 2ND DEFENDANT

RULING

Background:

1. Vide Notice of Motion application dated 8th May 2025, the Applicant seeks the following orders:
 - a. Spent
 - b. That pending the hearing and determination of this suit the 1st Defendant/ Respondent be barred from letting out the temporary market stalls erected on the suit properties to any traders/ hawkers.
 - c. That pending the hearing and the determination of this Application, an injunction do issue restraining the Defendants/ Respondents whether by themselves, employees, servants and/agents from transferring, charging, trespassing on the suit properties known as Nairobi Block 105/14905, 105/14906, 105/14907, 105/14908, 105/14909, 105/14910, 105/14911, 105/14912, 105/14913, 105/14914, 105/14915, 105/14916, 105/14917, 105/14918, 105/14919, 105/14920, 105/14921, 105/14922, 105/14923, 105/14924, 105/14925, 105/14926, 105/14927, 105/14928, 105/14929, 105/14930 & 105/14931. or interfering with the peaceful possession of the suit properties in any way.
 - d. That pending the hearing and the determination of this suit, an injunction do issue restraining the Defendants/ Respondents whether by themselves, employees, servants and/



or agents from transferring, charging, trespassing on all that parcel of land known as Nairobi Block 105/14905, 105/14906, 105/14907, 105/14908, 105/14909, 105/14910, 105/14911, 105/14912, 105/14913, 105/14914, 105/14915, 105/14916, 105/14917, 105/14918, 105/14919, 105/14920, 105/14921, 105/14922, 105/14923, 105/14924, 105/14925, 105/14926, 105/14927, 105/14928, 105/14929, 105/14930 & 105/14931 or interfering with the peaceful possession of the suit properties in any way.

- e. That the O.C.S Ruai Police Station do enforce the orders herein
 - f. Costs of the application
2. The application was premised on grounds as in the supporting affidavit sworn by the applicant DOrcas Ndungwe Mulinge where she deponed that the plaintiff had allocated the suit properties to its shareholders. That the 2nd respondent has unlawfully invaded the suit properties claiming he has authorization from the 1st respondent despite there been an order in ELC case ER156 of 2020 indicating that the suit property was not a public space hence deterring the 1st respondent herein who was a party in the said suit from interfering with the same

Respondent's case

3. The 1st respondent filed a replying affidavit sworn by Boniface Waweru. He deponed that the applicant had not demonstrated their interest in the suit properties hence failed to establish a prima facie case having failed to produce any ownership documents. That neither had they proved how irreparable harm will be occasioned to them failing to meet the requirements for grant of injunctions.

Applicant's Submissions

4. Counsel submitted that the applicant had met the condition necessary for issuance of temporary injunctions. That it held the suit properties on behalf of its shareholders who had proprietary rights over the same demonstrating existence of a prima facie case relying on the case of Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others.

Counsel submitted that the invasion of the suit properties by the 2nd respondent occasioned by the decision of the 1st respondent would occasion loss to its members since the construction of the intended stalls would dispossess the shareholders and creating 3rd party rights rendering the applicant's fiduciary duty nugatory. This he indicated could not be compensated by monetary way.

He submitted that the balance of convince tilted in granting the injunctions as it would preserve the suit properties

Respondent's submissions

5. Counsel for the respondent submitted that the applicant had not produced any ownership documents demonstrating ownership to the suit properties hence no interest in the same. He submitted that the 1st respondent on the other hand had legitimate public interest in the suit properties with the demonstration of temporary market stalls. That the failure of any identifiable interest then proof of prima facie case had failed which is a requirement alongside proof of irreparable harm that cannot be compensated by damages and balance of convenience as in the Giella Vs Cassman Brown & Co Limited (1973)EA 358. Counsel submitted that injunctions are not meant to protect speculative interests or future expectations as alleged by the applicants allegations of awaiting certificate of title over the suit properties from the ministry of lands.



Analysis and determination

6. Having looked at the application, the responses and submissions by all parties, the substantial issue for determination is

Whether the Applicant has satisfied the threshold required for issuance of temporary injunctive orders

7. The law on granting interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the Civil Procedure Rules as follows:

“Where in any suit it is proved by affidavit or otherwise –

That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

8. The principles for grant of injunction are well settled by the locus classicus of *Giella Vs Cassman Brown & Company Limited* [1973] E.A. 358., where the court stated thus:

“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.”

9. The important consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court is in such a situation is enjoined to grant a temporary injunction to restrain such acts.
10. In the instant case, the applicant contends to be the allocating body to its shareholders of the suit properties and that the respondents have invaded the properties depriving their shareholders of the use of the same. To note the applicant has not produced any ownership documents that point out to how the applicant has rights over the property to seek for the injunctive orders. The applicant relies on orders issued in ELC E156 OF 2020 where it is indicated involved part of the suit properties. The court is not privy to the said case and unless it interrogates the facts of it and see how the orders relate to this present suit, then cannot rely on the same
11. Basis for ownership by the applicant is a court order that calls for the presentation of facts and evidence not currently before this court.
12. In *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others* [2003] eKLR a prima facie case was stated as “A prima facie case in a civil application includes but is not confined to a “genuine and arguable



case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. Going by the above definition the applicant has not established a prima facie case.
14. The second test is as to whether the applicant stands to suffer irreparable harm that cannot be compensated in damages which in my view, has not been demonstrated. The structures on the suit properties are temporary in nature and can be demolished if the court rules in favour of the applicant. The condition of the suit properties can revert back. The applicant’s shareholders are also not in occupation of the suit premises so no loss will be occasioned to them should the orders not issue.
15. In this regard I adopt the sentiments in *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* 2014) eKLR

“ 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”
16. On the third limb, the balance of convenience tilts in favour of not granting the injunctions than rather granting as the 1st respondent has indicated that the temporary market stalls have been set up as a relocation for traders who had been displaced due to a public road construction hence serving public interest. Granting the injunction will mean loss of income to the readers who operate in the said stalls which will not serve any gain to both parties

Final disposition

17. For the foregoing reasons, the Court finds that the Plaintiff has not met the threshold for issuance of injunctive orders and consequently the notice of motion application dated 8th may 2025 is not merited. The court makes the following orders
 1. That an order of the status quo to be maintained at the suit properties whereby the 1st Defendant/Respondent is restrained from further letting out any more market stalls on the suit properties
 2. The costs will be in the cause

It is so ordered.

**DATED , SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 29TH DAY OF
JANUARY 2026.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

No appearance for the Applicant

Mr. Wame for Githongo for 1st Respondent.

Philomena W . Court Assistant

