



REPUBLIC OF KENYA



**Mulinge v Maisaiba & 3 others; Kahawa Sukari Limited & another (Interested Parties)
(Environment and Land Case E198 of 2025) [2026] KEELC 317 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E198 OF 2025
MN KULLOW, J
JANUARY 27, 2026**

BETWEEN

DORCAS NDUNGWA MULINGE PLAINTIFF

AND

ALLOYS ACHUKA MAISAIBA 1ST DEFENDANT

MELLEN KEMUNTO MAISIBA 2ND DEFENDANT

REOBERT GIBSON GICHUKI 3RD DEFENDANT

VINCENT ACHUKA MASIABA 4TH DEFENDANT

AND

KAHAWA SUKARI LIMITED INTERESTED PARTY

INDIGO UNIVERSE SUPPLY LIMITED INTERESTED PARTY

RULING

1. This matter is in relation to property known as Plot Number 1648 Kahawa Sukari herein referred to as the suit property.
2. Vide Notice of Motion application dated 17th April 2025, the Applicant seeks the following orders:
 - a. Spent
 - b. That this honourable court be pleased to grant temporary injunction restraining the defendants /respondents, their agents from selling, disposing/alienating, transferring and or otherwise interfering in any manner whatsoever with all parcel of land known as Plot NO 1648 Kahawa Sukari pending hearing and determination of this application



- c. That this honourable court be pleased to grant temporary injunction restraining the defendants /respondents, their agents from selling, disposing/alienating, transferring and or otherwise interfering in any manner whatsoever with all parcel of land known as Plot NO 1648 Kahawa Sukari pending hearing and determination of this application
 - d. That the subject allotment document over Plot 1648 Kahawa Sukari be deposited in court by the 4th defendant in its original form pending hearing and determination of this application and suit
 - e. That the 1st interested party be directed to register an inhibition against the register of Plot NO 1648-Kahawa Sukari pending hearing and determination of this application and suit
 - f. Costs of the application
3. The application was premised on grounds as in the supporting affidavit sworn by the applicant Dorcas Ndungwe Mulinge where she deponed that she co-owns the suit property with the 3rd defendant having acquired it in the cause of their union under customary laws as husband and wife through the 2nd interested party.
 4. She depones that most of the financial contribution towards the purchase of the property was remitted by her in her capacity as the shareholder of the 2nd interested party and that she has solely developed on the suit property.
 5. The applicant deponed that she came to realize later that 3rd respondent in a bid to deprive her of her proprietary rights caused for the sale agreement to reflect the 1st and 2nd respondents as the purchasers taking advantage of her ill health at the time of execution in the year 2020.
 6. She further deponed that the 1st and 2nd respondents have not made any payments in regards to purchase of the suit property and in absence of proof of payment, they hold no legitimate claim the sale agreement notwithstanding.
 7. She asserted that she is apprehensive she will lose her investment in the suit property and unless orders are issued by the court, she tends to suffer irreparable harm hence this application.

Reply

1st 2nd and 3rd respondents

8. The 1st, 2nd and 3rd respondents filed their replying affidavit sworn by the 3rd respondent dated 10th September 2025. He deponed that the suit had been purchased by the 1st and 2nd respondents and the applicant has no claim to it having not produced evidence of a sale agreement or how she contributed to the purchase of the same relying on the financial statements of the 2nd interested party which he indicated was a separate legal entity from the applicant
9. He further deponed that the applicant failing to proof her proprietary rights, then had failed to prove a prima facie case and how she would suffer irreparable harm hence not met the conditions for issuance of the injunctive orders.

4th respondent

10. The 4th respondent filed a replying affidavit responding to the application sworn on the 23rd September 2025.



11. He deponed that the applicant together with the 3rd respondent had approached him with the intention of purchasing the suit property and that the 2nd interested party would be the purchaser and based on this drafted up a sale agreement.
12. He deponed that he has never received any monies from the 1st and 2nd respondents rather from the 2nd interested party and he that he did not participate in any way to deprive the applicant of her interests in the property further deponed that never sold the property to the 1st and 2nd respondents rather to the 2nd interested party and that he had believed the 1st and 2nd interested parties to be acting on behalf of the applicant.

Applicant's Further affidavit

13. The applicant put in a further affidavit reiterating contents in the application. She deponed that Moses Michira Nyachio, together with the 3rd Respondent, referenced in paragraphs 11 and 12 of the 4th Respondent's Replying Affidavit, were at all material times signatories and agents of 2nd interested party and therefore all payments and transactions undertaken by them in relation to the suit property were carried out for and on behalf the 2nd interested party which was partly her company

Applicant's Submissions

14. Counsel submitted that the applicant had met the condition necessary for issuance of temporary injunctions. That she had demonstrated existence of a prima facie case having established contribution to the purchase of the suit property through the 2nd interested party. That further the evidence by the 4th respondent corroborated her assertions of being the purchaser of the suit property which was proof of a prima facie case relying on *Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others* (2003] KLR 125
15. She further submitted that irreparable harm would be occasioned to her since the 1st 2nd and 3rd respondents may dispose off the suit property and having invested not only financially but emotionally, being that the suit property has been where her and her son have known as home, it would occasion loss that cannot be compensated by an award of damages. She urged the court to be persuaded by the mere fact that the condition for proof of a prima facie case had been met should be the guiding factor relying on what was said in *Joseph Mbugu Gichanga Vs Cooperative of Kenya Ltd* (2005) eKLR

1st, 2nd and 3rd respondent's submissions

16. The respondents reiterated the contents as their replying affidavit indicating that the applicant had not substantiated claims of being involved in the purchase of the suit property. That as per the sale agreement entered into on the 7th December 2020, the 1st and 2nd respondents were the legally registered owners of the suit properties. It was submitted there was no proprietary interest established and hence fail to proof prima facie case Counsel submitted that the court held in *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR that all of the requirements are separate and distinct hurdles that an Applicant has to overcome, and if the Applicant fails to overcome the first, then his Application fails automatically, and the court shall not even consider the next.
17. In this regard they asked the court not to consider the other requirements as prima facie case had not been met



Issues for determination

18. 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
19. 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.”

20. 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.”

21. 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 in such a situation is enjoined to grant a temporary injunction to restrain such acts.
22. In the instant case, the applicant contends to have participated in the contribution to purchase of the suit property, a fact that has been corroborated by the 4th respondent who is the vendor. It is not in dispute that there exists a sale agreement dated 7th December 2020 as between the 1st and 2nd respondents as the purchasers and the 4th respondent as the vendor. So, basis for ownership by the 1st applicant is the proof of payment attached to its supporting affidavit in the name of the 2nd interested party where she is a director and the evidence of the vendor that he received monies from the 2nd interested party on behalf of the applicant.
23. Basis for ownership by the 1st and 2nd respondents is the sale agreement.
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.”

24. Going by the above definition the applicant has established a prima facie case having shown how she is connected to the 2nd interested party whom the 4th respondent avers to have been the party sending the payments via its agents. As already seen, the applicant is a director hence she would have been involved in the decision making of the 2nd interested party. The 1st and 2nd respondents have not proved any connection to the 2nd interested party and hence there is no evidence of the purchase price coming from their end. The 4th respondent in his replying affidavit indicates that the applicant and 2nd respondent were the parties that approached him to buy the suit property and that though the agreement captures the names of the 1st and 2nd respondents, he was led to believe that all this was done on and behalf of the applicant who was the person he knew to be the purchaser together with the 3rd respondent. It is clear from the record the offer to purchase was made to the applicant and the 3rd respondent and the two have made contributions to the purchase as indicated in paragraph 12 of the 4th respondent’s replying affidavit as highlighted below;

“That I have to date received Kshs. 7,400,000.00 from the 2nd Interested Party broken down as follows; -

- i. Kshs. 3,000,000/- received on 8th December 2020 from Moses Michira Nyachieo
- ii. Kshs. 2,500,000/- received on 14th December 2020 from Vincent Achuka Maisiba
- iii. Kshs. 800,000/- received on 4th October 2021 from Indigo Universe Supply Limited Ksh
- iv. Ksh 600,000/- received on 5th October 2022 from Dorcas Mulinge
- v. Kshs. 500,000/- received from Vincent Achuka Maisiba”

25. I am of the view that from the evidence tendered the applicant was involved in the purchase of the suit property as she clearly contributed in her personal capacity and in the name of her company that is the 2nd interested party. I am in agreement with the applicant that she has established an interest in the suit property worth of being protected by this honourable court hence proof of a prima facie case.

In the case of Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] eKLR, the Court of Appeal held as follows:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie



case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.”

26. The second test is as to whether the applicant stands to suffer irreparable harm that cannot be compensated in damages. The applicant has indicated that she has developed on the suit property a house that she and her son have known as home and the said property is in danger of being disposed of occasioning financial loss on the investment done and emotional constraints to her son and herself. I hold the view that if the suit property is disposed off the applicant will suffer irreparable harm considering the fact the total value of what would have been lost cannot be compensated to satisfaction by monetary means.
27. 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”
28. On the third limb, the balance of convenience tilts in favour of granting the injunctions than rather not as the applicant has demonstrated she will be prejudiced as opposed to the respondents who have not shown how loss would be occasioned to them.

Determination

29. I find that the applicant has met the threshold for the orders of temporary injunction to be issued in her favour. That it is apparent that if the orders sought are not granted, the suit property in dispute would be in danger of being wasted and or its legal status altered to their detriment. That in the circumstances of this case, I hold the view the cost of the application be in the cause.

The upshot of the foregoing is that the

1. An order for temporary injunction be and hereby issued restraining the defendants / respondents, their agents from selling, disposing/alienating, transferring and or otherwise interfering in any manner whatsoever with all parcel of land known as Plot NO 1648 Kahawa Sukari pending hearing and determination of this suit.
2. The subject allotment document over Plot 1648 Kahawa Sukari be deposited in court by the 4th defendant in its original form pending hearing and determination of this suit
3. That the 1st interested party to register an inhibition against the register of Plot NO 1648- Kahawa Sukari pending hearing and determination of this suit.
4. The costs will be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF JANUARY 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -



Mr. Bala holding brief for Kaloki for the Applicant

Mr. Mutuku for the 4th Respondent

No appearance for 1st, 2nd and 3rd Respondents.

Philomena W. Court Assistant

