

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KAPSABET

ELCL CASE NO. E034 OF 2025

ALICE JERONO NGETICH.....1ST

PLAINTIFF/APPLICANT

DANIEL KIPKORIR.....2ND

PLAINTIFF/APPLICANT

-VERSUS-

NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT

FUND BOARD.....1ST

DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND

DEFENDANT/RESPONDENT

MODERN PRECAST (K) LIMITED.....3RD

DEFENDANT/RESPONDENT

RULING

1. The applicants through the firm of Ham & Hamsley Advocates originated an application by way of a Notice of Motion dated 25th November 2025 for the orders infra;

a) That there be an order of temporary injunction to restrain the Defendants jointly and severally, or their servants or agents and or any other person acting on its behalf and under its instructions from trespassing into, building, developing and or in any way dealing with the land parcel known as **LR. NO. 7830/228 Nandi Hills Town** (The suit land) pending the hearing and determination of the main suit.

b) That the OCS Nandi Hills Police Station do secure compliance of this order

c) That costs of this application be provided for.

2. The foundational basis of the application is the affidavit of six paragraphs sworn on even date by the 1st applicant on behalf of his co-applicant as well as himself and the documents including copies of certificate of official search **(DK-2)** and bundle of photographs **(DK-4a to 4c)**

annexed thereto. Also, it is anchored upon six grounds, inter alia;

- a. The Plaintiff/Applicants have legal title and possession to all the suit land.
- b. The Defendants/Respondents have illegally and unlawfully trespassed and invaded onto the suit land seeking to take possession, with the assistance of police officers under the jurisdiction of the Deputy County Commissioner of Nandi Hills, and to extra-judiciously evict the Plaintiff/Applicants.
- c. The Plaintiff/Applicants have had legal title to and possession of all the suit land since the same was lawfully transmitted to them and they shall be severely prejudiced if the Defendants/Applicants succeed in evicting them from the suit land and alienating the same for public use as a **“Digital Excellence Centre”**.

3. By a replying affidavit of nineteen paragraphs sworn on 5th December 2025, by Ngalia Ndaya, the Deputy County Commissioner Nandi East Sub County, the 1st and 2nd respondents opposed the application, termed it unproved and implored the court to dismiss the same. The deponent

stated in part that as indicated in Development Plan No. ELD/108/79/1 of 1970, the suit land is zoned and set aside for educational purposes hence, not available for reallocation for commercial use as alleged by the applicants. That the relevant Ministry was requested to allow the establishment of an ICT Hub for use by the public which supersedes private rights in the circumstances.

4. Also, the 1st and 2nd Respondents opposed the application by another replying affidavit of fourteen paragraphs sworn on 8th December 2025 by Veronicah Musee, a Deputy Director working with the State Department for Lands and Physical Planning in charge of North Rift Region. She averred, inter alia, that the Development Plan reveals that the suit land is zoned for public use. That the applicants acquired title to the suit land illegally and un-procedurally. That therefore, the application is unproven and should be dismissed with costs to the Respondents.
5. The 3rd Respondent was duly served with the application as disclosed in paragraph 4 of the affidavit of service sworn on 1st December 2025 by Jonah Kimeli Kemey, a licenced process server but failed to respond to the same.

6. Pursuant to **Order 50 Rule 16 of the Civil Procedure Rules 2010** and the courts directions of 8th December 2025 upon hearing counsel for the respective parties, the application was heard by way of oral submissions on 10th December 2025.
7. Mr. K. Ruto, learned counsel for the Applicants submitted that the applicants hold legal title and are in possession the suit land. That the applicants are lessors of the suit land for 99 years from 1994 as per DK2 being the search certificate showing that a grant No. 13794 was issued thereof. That sometimes between 23rd November 2025 and the time of filing the application, the Nandi East Sub County Commissioner together with police officers under his jurisdiction accompanying the applicants, trespassed into the suit land and started to break ground by use of excavators as shown in the photographs **(DK4a to 4c)** annexed to the affidavit in support of the application. That the respondents' alleged compulsory acquisition of the suit land is illegal and unprocedural.
8. Further, counsel submitted that the applicants are entitled to the suit land by virtue of registration of lease under **section 24 of the Land Registration Act 2016 (2012)**

and Article 40 of the Constitution of Kenya 2010.

That the applicants have made out a prima facie case against the respondents as held in the case of **Giella-vs-Cassman Brown Company Ltd (1973) EA 358** and that any alleged illegal acquisition of the suit land be ventilated at the hearing of the suit bearing in mind the case of **Dina Management Ltd-vs-County Government of Mombasa & 5 others {2023} KESC 30 (KLR)**. That the balance of convenience tilts in favour of the applicants.

9. Ms. Cheruiyot learned counsel for the 1st and 2nd respondents submitted by reference to the application, the replying affidavits and the counter claim dated 8th December 2025 and stated that the applicants acquired the suit land fraudulently. She submitted, inter alia, that a development plan (**VN1**) annexed to the replying affidavit reveals that the suit land is set aside for public use.

10. Furthermore, counsel submitted that the applicants have no other document other than the title deed which is under challenge prima facie and cannot be protected under **Article 40 (supra) as held in Dina case (supra)**. That on a balance of convenience which is in favour of the respondents, the project on the suit land has started with

large sums of money in use for public interest. Counsel urged the court to let the project to proceed as even the applicants are not in use, occupation or utilization of the suit land. That the application is not in public interest hence, the same be dismissed with costs.

11. I have examined the application, the 1st and 2nd Respondents' replying affidavits, the rival oral submissions alongside the plaint, the defence and the counter claim in their entirety in the instant application. So, have the applicants made out their case to entitle them to the prayers in the application?

12. It is borne in mind that the application was generated under, inter alia, Order 40 of the Civil Procedure Rules, 2010 which governs temporary injunction and temporary orders. An injunction is an equitable and discretionary remedy as held in the case of **National Bank of Kenya Limited -vs- Shimmers Plaza Limited [2009] eKLR.**

13. The principles of injunctions were laid down in the **Giella case (supra)** and reaffirmed in the case of **Nguruman Limited vs Jan Bonde Nielsen and 2**

others (2014) eKLR where the Court of Appeal observed that;

“.....in an interlocutory injunction application, the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially” (Emphasis added)

14. Notably, in the case of **Hutchings Biemer Ltd v Barclays Bank of Kenya Ltd & 2 others [2006] eKLR,** the Court of Appeal reasoned:

“...In our view, injunctive orders are meant to preserve property and maintain the status quo...”

15. As already noted at paragraph 5 hereinabove, the 3rd respondent failed to respond to the application. So, the same is partially unchallenged.
16. This court has the mandate under section 13 (7) of the Environment and Land Court Act, 2015 (2011) to grant interim preservation orders over the suit land. The same include status quo orders to preserve the subject matter pending the determination or termination of the suit as held in the case of **Ogada-vs-Mollin (2009) KLR 620.**
17. On one hand, the applicants claim that the Respondents are trespassers on the suit land. On the other hand, the respondents dispute the applicants' allegations and counter claim that the applicant's acquisition of the suit land is unlawful.
18. Plainly, the issues raised in the application herein are highly contested. Therefore, they yearn for unlimited right to fair hearing under **Articles 50 (1) and 25 (c) of the Constitution of Kenya 2010** as read with **Article 159 (2) (b) of the same Constitution** which provides;
- Justice shall not be delayed**
19. It is my considered view that what is merited at this interim stage, is a status quo order rather than the

temporary injunctive relief sought in the application, to preserve the suit land until the suit is heard and determined on merit or terminated; see also **Musa Angira Angira-vs-ICDC (2015) KLR.**

20. It is therefore, imperative to preserve the suit land, in the interim, for fair trial of the suit as noted in, inter alia, **Articles 50 (1), 25 (c), section 13 (7) (a), Ogada, Angira cases (all supra)** pending the hearing and determination of the suit for the ends of justice.

21. Clearly, the application is partially unchallenged as the 3rd respondent did not respond to it.

22. A fortiori, the application dated 25th November 2025 is partially allowed for interim preservation order on the following terms;

a) That the prevailing status quo over the suit land be maintained by the applicants and the respondents pending the outcome of this suit. In particular, the parties shall not sell, charge, transfer, sub divide, dispose of or alienate any portion of the suit land in any manner or erect any permanent structures thereon pending the hearing and determination of this suit.

b) That the OCS Nandi Hills Police Station do secure compliance of this order.

c) Costs of the application be in the cause

23. It is so ordered.

DATED and **DELIVERED** at **KAPSABET** this **27th** day of **January 2026**.

HON G M A ONGONDO

JUDGE

In the presence of; -

1. Mr. Kibichy Ruto learned counsel for Applicants
2. Ms. Cheruiyot learned counsel for the 1st and 2nd Respondents
3. Walter, Court Assistant