



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI,

MALINDI LAW COURTS

ELC NO. E151 OF 2025

IBRAHIM SHEIKH ABDULLAHI

.....APPLICANT

-VERSUS-

SINDBAD HOLDINGS LIMITED.....1ST

RESPONDENT

MINISTRY OF LANDS & PHYSICAL PLANNING.....2ND

RESPONDENT

DIRECTOR OF SURVEYS.....3RD

RESPONDENT

NATIONAL LAND COMMISSION.....4TH

RESPONDENT

AND

**TIMA YUSUF ISSA.....INTERESTED
PARTY**

RULING

1. The applicants filed an application dated 13th November, 2025.

The application seeks the following Orders:

a) Spent

b) This Court be pleased to issue orders for a temporary injunction restraining the respondents, by themselves, their agents, servants, or anyone acting on their behalf, from alienating that parcel of land now known as Malindi/Municipality/Block 12 Nos 191-222, formerly Title Number Portion No. 19679 Malindi, in favor of the 1st respondent as Malindi Portion No. 20314, or interfering in any manner whatsoever with the ownership of those parcels of land pending the hearing and determination of this application.

c) This Court be pleased to issue orders of temporary injunction restraining the respondents by themselves, agents, servants or anybody acting on their behalf from alienating that parcel of land now known as Malindi/Municipality/Block 12 No. 191-222 and formerly as Title Number Portion No. 19679 Malindi in favour of

the 1st respondent as Malindi Portion No. 20314 or interfering in any manner whatsoever with the ownership of those parcels of land pending the hearing and determination of this suit.

d) This Court be pleased to make any such further order(s) and to issue any other relief it may deem just to grant in the interest of justice.

e) The costs of this application be in the cause.

2. The application is supported by the affidavit dated 13th November, 2025, sworn by Ibrahim Sheikh Abdullahi. The applicant confirms that the respondents were duly served with all pleadings filed in this matter, and affidavits of service are on record.

3. I received submissions from counsel for the applicant, Mr. Bosire, regarding the application.

4. Arising from the materials and submissions placed before me, the issues I frame for the determination of this court are whether the applicant has satisfied the conditions for an award of an interlocutory injunction.

5. The law governing the grant of interlocutory injunctions is found in Order 40, Rule 1 of the Civil Procedure Rules, which provides as follows:

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

(a) 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;

(b) 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 the 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 order.”

6. In the notorious case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, the Court explained that an applicant must demonstrate a *prima facie* case with a reasonable chance of success. The Court of Appeal, in **Nguruman Ltd v Jan Bonde**

Nielsen & 2 Others [2014] eKLR, referenced the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)**, stating that:

“A prima facie case is not one which must succeed at the hearing of the main 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.”

7. In this case, the applicant has presented uncontroverted evidence to the Court stating that he lawfully bought and registered the property known as Title Number Portion No. 19679 Malindi (now subdivided), which is about 5.303 hectares, in his name, as evidenced by the initial title and subsequent subdivisions. This establishes a claim based on demonstrable proprietary rights and the respondents' apparent infringement of those rights, as evidenced by the 4th respondent's issuance of a fresh allotment letter to the 1st respondent on otherwise private, rather than public, land.

- 8.** Without addressing the merits of the suit, in this matter the applicant has deposed to the apprehended infringement of his proprietary rights, evidenced by the fact that a letter of allotment has already been issued by the 4th respondent to the 1st respondent, the 1st respondent has accepted the allotment and processed payment for the requisite stand premium, and the respondents are actively processing a title over land that is already registered in the applicant's name. These actions place the suit property on the verge of alienation.
- 9.** If the respondents' acts are carried out to their conclusion, they entail the threatened deprivation of proprietary rights and the consequent disruption of the applicant's lawful use, occupation, and enjoyment of the suit property, contrary to Article 40 of the Constitution of Kenya, 2010.
- 10.** Thus, at this point, the applicant has established a right that requires protection pending a hearing. Having established a *prima facie* case with probability of success, the applicant is entitled to protection of the proprietary right over the suit property pending a hearing, as held in the Court of Appeal case

of **Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86:**

“The sequence of granting an interlocutory injunction is firstly that an applicant must show a prima facie case with a probability of success if this discretionary remedy will inure in his favour. Secondly, that such an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury; and thirdly where the court is in doubt it will decide the application on a balance of convenience. See Giella vs. Cassman Brown and Co. Ltd 1973 EA at page 360 Letter E. These conditions are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed.”

- 11.** The applicant claims irreparable harm due to the fact that the suit property is in the process of being unlawfully alienated, evidenced by the 4th respondent's allotment letter to the 1st respondent, who has accepted it and paid the stand premium. The respondents are actively processing a title on land already registered in the applicant's name, risking unlawful transfer.

The harm is not only financial but also involves loss of proprietary rights and disruption of lawful use, contrary to Article 40 of Kenya's Constitution. See **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR**.

12. On the balance of convenience, the applicant has demonstrated that, in the present case, absent a temporary injunction order preventing the processing of a title over Malindi Portion No. 20314, which remains Malindi/Municipality/Block 12 Nos. 191-222, The respondents will alienate and register the property to the 1st respondent, to the applicant's detriment, even though the land is already lawfully registered in his name - thus, the balance of convenience tilts in favor of the applicant, and a temporary injunction needs to be issued to prevent the alienation of the suit property pending a hearing as to which party is entitled to the ownership and rights to the suit property.

13. Having sequentially surmounted the three hurdles outlined in the **Giella Case** (supra), I am inclined to allow the Notice of Motion application dated 13th November, 2025, to succeed as follows:

a) Temporary orders of injunction do issue restraining the respondents by themselves, agents, servants or anybody acting on their behalf from alienating that parcel of land now known as Malindi/Municipality/Block 12 No. 191-222 and formerly as Title Number Portion No. 19679 Malindi in favour of the 1st respondent as Malindi Portion No. 20314 or interfering in any manner whatsoever with the ownership of those parcels of land pending the hearing and determination of this suit.

b) The costs of this application are in the cause.

Dated, signed, and delivered virtually in Nyeri on this 17th day of February 2026.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Nyabochoa H/B for Bosire for the Applicant

Kendi: Court Assistant