



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC NO E531 OF 2025

HALIMA ALI AND SAMUEL OTIENO ODHIAMBO
for and on behalf of ALL NASRA GARDENS RESIDENTS
ASSOCIATION.....PLAINTIFFS/APPLI
CANTS

VERSUS

DEPUTY COUNTY COMMISSIONER,
EMBAKASI CENTRAL SUB-COUNTY.....1ST
DEFENDANT

PRINCIPAL SECRETARY, STATE DEPARTMENT
OF HOUSING AND URBAN DEVELOPMENT,
AFFORDABLE HOUSING PROGRAM.....2ND
DEFENDANT

CHIEF EXECUTIVE OFFICER, NATIONAL
ENVIRONMENT MANAGEMENT AUTHORITY.....3RD
DEFENDANT

NATIONAL LAND COMMISSION.....4TH
DEFENDANT

RULING

1. This matter is in relation to property known as Nairobi Block 157/3 (NASRA GARDENS, KAYOLE) herein referred to as the suit property.
2. Vide Notice of Motion application dated 8th October 2025, the Applicants seek the following orders:

- a. Spent
 - b. A temporary injunction be and is hereby issued restraining the Defendants either by themselves, their agents and/or servants from encroaching, harassing, intimidating, trespassing upon, constructing, demolishing and or in any manner whatsoever interfering with the Plaintiff's property known as Title No. Nairobi Block 157/3 (NASRA GARDENS, KAYOLE) in Nairobi County pending the hearing of this application inter-partes.
 - c. A temporary injunction be and is hereby issued restraining the Defendants either by themselves, their agents and/or servants from encroaching, harassing, intimidating, trespassing upon, constructing, demolishing and or in any manner whatsoever interfering with the Plaintiff's property known as Title No. Nairobi Block 157/3 (NASRA GARDENS, KAYOLE) in Nairobi County pending the hearing of the main suit.
 - d. Costs of the application
3. The application was premised on grounds as in the supporting affidavit sworn by Samuel Otieno Odhiambo on behalf of the plaintiffs/applicants where he deponed that the plaintiff is a community-based organization registered to manage the affairs of the members in the suit property. That the properties were subdivided where the suit property was allocated to the 1st defendant. He deponed that the 1st defendant without public

participation donated the suit property to the 2nd defendant for the affordable housing project. That the actions of the 2nd defendant to initiate construction is interfering with the plaintiff's operations on the suit property which actions will cause irreparable harm hence the filing of this application

Applicant's Submissions

Counsel reiterated and relied on the contents of the plaintiff's supporting affidavit

The 1st and 2nd defendants have not entered any appearance, whereas the 3rd and 4th defendants have entered appearance but have not filed any responses to the application and as such the application is unopposed.

Analysis and Determination

Having looked at the application on record and the substantive submissions the sole issue for determination

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

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.”

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.”

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.

In the instant case, the applicants indicate they have been operating on the suit property which was allocated to the 1st defendant after the said property was purchased from the previous owner. That the land was allocated solely to the 1st defendant for setting up administrative centers but the 1st defendant has transferred it to the 2nd defendant without involving the applicants through public participation.

The applicants are seeking for injunctive orders which orders require proof of a prima facie case as one of the grounds for grant of the said orders.

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.*”

Going by the above definition the applicants have to establish a prima facie case showing how they are connected to the suit property.

The applicants have not attached any documentary evidence to show how they have legitimate claims in the suit property worth

of being protected by this honourable court hence lack proof of a prima facie case.

This has been aptly discussed 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.”

The second test is as to whether the applicants stands to suffer irreparable harm that cannot be compensated by monetary means. The applicants have also not indicated what loss can be occasioned to them which loss damages cannot compensate.

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”

On the third limb, the balance of convenience tilts in favour of not granting the injunctions than granting as already highlighted the applicants have no interests in the suit property worth of being protected.

Final disposition

I find that the applicants have not met the threshold for the orders of temporary injunction to be issued.

The upshot of the foregoing is that that I grant the following orders;

1. **THAT** the application dated 8th October 2025 is without merit and dismissed

2. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **16TH**
day of **FEBRUARY 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Ms. Njue..... for the Plaintiffs/Applicants

N/A..... for the 1st, 2nd and 3rd Defendant/Respondents

Chelagat..... for the 4th Defendant/Respondent

Philomena W...... Court Assistant