



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC SUIT NO. ELCEP CIVIL SUIT NO. E003 OF 2025

BUSTANI COFFEE HOUSE LIMITED.
.....**PLAINTIFF**

VERSUS

VIRGINIA NJERI MURAYA.....1ST
DEFENDANT

JIANG BO.....2ND
DEFENDANT

NATIONAL ENVIRONMENTAL
MANAGEMENT AUTHORITY.....3RD
DEFENDANT

WATER RESOURCES
MANAGEMENT AUTHORITY.....4TH
DEFENDANT

KENYA URBAN ROADS AUTHORITY.....5TH
DEFENDANT

THE ATTORNEY GENERAL.....6TH
DEFENDANT

RULING

1. This ruling considers the notice of motion dated 3/09/2025, filed by the plaintiff, and presented pursuant to the provisions of **Section 3A** of the **Civil Procedure Act** and **Order 40 Rule 1** of the **Civil Procedure Rules 2010**, and all other applicable legal provisions. The plaintiff seeks the following orders from this court.

a. Spent.

b. Spent.

c. THAT an order of temporary injunction do issue against the 1st and 2nd, 5th and 7th defendants, their assignees, agents, servants and/or any person(s) claiming and acting under their instructions and anyone else from interfering and/or dealing in any manner whatsoever with the natural waterway traversing Mavoko Town Block 3/1520 and Mavoko Town Block 3/1519 pending the hearing and determination of this suit.

d. THAT an order of temporary injunction do issue against the 1st and 2nd defendants their assignees, agents, servants and/or any person(s) claiming and acting under their instructions from dumping material excavated from Mavoko Town Block 3/1519 along the Mbagathi river flowing at the edge of Mavoko Town Block 3/1519 and Mavoko Town Block 3/1520 pending the hearing and determination of this suit.

e. THAT an order of temporary injunction do issue against the 1st and 2nd defendants their assignees, agents, servants and/or any person (s) claiming and acting under their instructions from blocking and or interfering in any way with the natural riverbed and riparian reserve of Mbagathi river traversing Mavoko Town Block 3/1519 and Mavoko Town Block 3/1520 pending the hearing and determination of this suit.

f. THAT an order of temporary injunction do issue against the 1st and 2nd defendants, their assignees, agents, servants and/or any person(s) claiming and acting under their instructions, from continuing the development and all construction on Mavoko Town Block

3/1519 pending the hearing and determination of this suit.

g. THAT the Officer in Charge of Athi River Police Station do enforce these orders.

2. The motion is supported by the grounds charted in the body thereof and the supporting affidavit of George Nyamumbo O'Nyangena, sworn on the same date. In summary, he avers that the plaintiff owns land known as **Mavoko Town Block 3/1520 (“plaintiff’s land”)**, while the 1st defendant owns the neighbouring **Block 3/1519 (“1st defendant’s land”)**. The 1st defendant contracted the 2nd defendant to develop her property, including the construction of a boundary wall between the two parcels.
3. This construction, carried out with the 7th defendant’s knowledge, blocked a natural waterway, resulting in flooding, loss of livestock, and soil erosion on the plaintiff’s land. Furthermore, construction waste was disposed of in the riparian reserve of the River Mbagathi, thereby increasing the risk of flooding. The plaintiff contends that, without the court’s intervention, its suit may become nugatory.
4. A response in opposition is filed by the 1st and 2nd defendants, through the replying affidavit of the 1st defendant, deponed on 7/10/2025. The 1st defendant contends that she finds some of the allegations surprising and unfounded, particularly regarding

objections to her property's use and the proposed boundary wall. She clarifies that the riverbed adjoining both properties has not been disturbed, and that all concerns raised by the plaintiff were addressed through meetings and the suspension of construction to prevent misunderstandings.

5. She asserts that the wall construction had proper approvals, contrary to the plaintiff's claims, and that the wall is a necessary security measure not requiring further environmental or water authority licenses. She states that her engagement with the 2nd defendant, a contractor, led to unfounded fears and that construction activities ceased when required. She is unaware of specific allegations about flooding and denies influencing any statutory bodies, emphasising her status as an investor and her right to utilise her property. She contends that granting the plaintiff's sought orders would infringe her rights and that the plaintiff has not met the legal threshold for an injunction.
6. The 7th defendant, by a replying affidavit of Benedict Ngumbau, sworn on 12/11/2025, addresses the motion. He states that the 1st defendant sought approval to change the use of her land from agricultural to industrial, but the application was denied. Despite this, she built a boundary wall without necessary approvals, leading to complaints from the plaintiff that flooding was occurring due to blocked waterways caused by debris and soil from the 1st defendant's property.

7. The site was inspected, and the 7th defendant ordered development to stop and issued improvement directives, but compliance has not been achieved. The 4th defendant was identified as the appropriate body to address waterway issues, as the 7th defendant lacks jurisdiction. The blockage issue is due to negligence by the 1st and 2nd defendants, not the 7th defendant, who fulfilled its legal role. Further, the plaintiff's claims are seen as presumptive, with unclear causation for the flooding, and other natural causes may be involved, as flooding is common in the area.
8. Regrettably, despite the court's directives regarding submission timelines, none of the parties has adhered to the prescribed schedule. As of the date of this ruling, none have been filed. Any submissions subsequently filed shall be considered late, and the court will automatically strike them out. Accordingly, having reviewed the motion, its grounds, affidavits, annexures, as well as the plaintiff's plaint dated 3/09/2025, the ensuing issue that emerges for determination is **whether the plaintiff has met the legal threshold to warrant the grant of injunctive relief.**
9. Concerning this issue, as set out on the face of the motion, the relevant law granting this court authority to entertain motions of this nature is found in our **Order 40, Rule 1** of the **Civil Procedure Rules (CPR)**. This statutory provision states:

“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; or (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 orders.”

10. The principles for this court’s consideration in exercising its unfettered discretion to grant a temporary injunction are now well established through authoritative pronouncements. The three requirements are that an applicant, in this case the plaintiff, must: (a) establish his case at a *prima facie* level; (b)

demonstrate irreparable injury if a temporary injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience is in his favour. **See Giella v. Cassman Brown & Co. Ltd [1973] EA 358** and reiterated in the Court of Appeal decision of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**. In the latter decision, the court stated: -

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate 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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

11. Consequently, the plaintiff must first establish a *prima facie* case. In this case, the plaintiff has lodged a plethora of allegations against the defendants, particularly the 1st and 2nd defendants, and has claimed loss and damage. Notwithstanding the apparent strength of these allegations, the court has encountered difficulty in discerning the cause of

action in the plaintiff's pleadings. Is it trespass? Negligence? Nuisance?

12. The 1st and 2nd defendants contend that the plaintiff ought to have commenced proceedings via judicial review, whereas the 7th defendant argues that the claim falls within the scope of negligence as exemplified in **Reylands v Fletcher**. Under the circumstances where the cause of action is uncertain, it is imperative to find that the plaintiff has not established a *prima facie* case. The plaintiff still has an opportunity to amend his pleadings appropriately. Consequently, given that the first threshold has not been satisfied and guided by **Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] Vol. 1 EA 86**, the court deems it unnecessary to consider the remaining tests.
13. Ultimately, this court finds the notice of motion dated 3/09/2025 is not merited, and since it was an interlocutory motion, costs shall be in the cause. A mention date shall be given for purposes of pretrial directions.

Orders accordingly.

Delivered and Dated at Machakos this 17th February, 2026.

**HON. A. Y. KOROSS
JUDGE
17.02.2026**

**Ruling delivered virtually through Microsoft Teams Video
Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

Mr. Kariuki for plaintiff.

Mr. Okumu holding brief for Mr. John Njenga for 2nd respondent.

Mr. Kuria for 5th and 6th defendants.

Miss Ndunda for 7th defendant.