



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELCLC CASE NO. E430 OF 2024**

**MARY**

**WAMBUI**

**GATONO.....APPLICANT**

**VERSUS**

**ALICE**

**NJOKI**

**KAMAU.....RESPONDENT**

**RULING**

1. In this application dated **15<sup>th</sup> October 2024** the Plaintiff/  
Applicant seeks injunctive orders restraining the Defendant/  
Respondent from interfering, remaining on, invading,  
damaging, developing, constructing, cultivating, alienating,  
charging, transferring or leasing KCC VILLAGE SQUATTER  
SETTLEMENT SCHEME Plot no 179 situated at Umoja 3

Estate, Embakasi West and asks that the order be enforced by the OCS Mowlen Police station.

2. The applicant avers that she was allocated Plot number 179 by the Nairobi City County. That she has held possessory rights to the suit property since the year 2000. That this notwithstanding the Defendant/ Respondent invaded and trespassed on her land and is in the process of erecting rental units on the said parcel of land.
3. That on 3<sup>rd</sup> of October 2024 the court found the Respondent guilty in a matter related to the suit property and convicted her of forcible detainer and uttering a false document.
4. The Respondent opposed the application through a Replying Affidavit wherein she deposes that she has been in occupation of the disputed property since 1995 and holds a valid allotment letter. She further avers that she has lodged an appeal against the said conviction and maintains that her occupation is lawful.
5. 4. In a further affidavit, the Applicant clarifies that her parcel of land is adjacent to that of the Respondent and that the Respondent unlawfully extended her fence into the

Applicant's land. She reiterates that unless restrained, the Respondent will continue interfering with her quiet possession. She urges the Court to grant the orders sought including police assistance for enforcement.

6. I have considered the application, the affidavits and the submissions on record. The sole issue for determination is whether the court should grant the injunctive reliefs sought.

7. The law governing 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***

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***(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 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.”***

8. The principles for grant of injunction are well settled by decision 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.”***

9. On whether a prima facie case has been established, the Applicant has exhibited material illustrating her claim to the suit property and has stated that the Respondent encroached onto her land and fenced it off. It is also not disputed that there has been a criminal conviction against the Respondent for forcible detainer and fraud relating to the property, notwithstanding the existence of an appeal. Without making definitive findings at this interlocutory stage, the Court is satisfied that the Applicant has demonstrated an arguable and protectable right that needs to be protected.

10. On irreparable harm, construction on the land when there is a dispute amounts to a continuing injury which may not be adequately remedied by an award of damages alone, particularly where possessory rights are in dispute. Land has a unique value and character. As such I find that the balance tilts in favour of issuing orders to safeguard the substratum of the suit.

11. However I note that the orders as framed by the applicant are wide and some may even be interpreted to amount an eviction order. For avoidance of doubt I clarify that the eviction order cannot be granted at this interlocutory stage. Hence the orders to be issued should strictly be limited to the order as framed by the court below.

12. The application is allowed in the following terms;

**a. A temporary injunction is hereby issued restraining the Respondent, her agents, servants or anyone acting under her authority from trespassing on the portion occupied by the Applicant pending the hearing and determination of the suit**

**b. A temporary injunction is further issued restraining the Respondent from constructing on , alienating or in any way interfering with the disputed portion pending the hearing and determination of the suit.**

**c. It is clarified that this is not an eviction order**

**d. The Officer Commanding Station (OCS) of the nearest police station shall provide security and assistance in the enforcement of these orders.**

**e. Costs shall abide the outcome of the main suit**

**Dated, Signed and Delivered virtually at Kajiado this 5<sup>th</sup> day of February 2026.**

**JUDY OMANGE**

**JUDGE.**

**IN THE PRESENCE OF:**

N/A for Applicant.

N/A for Respondent.

Peter - Court Assistant.