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REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC CASE NO E475 OF 2025

ALI **SAIF**
HASHID.....PLAINTIFF/APPLICANT

-VERSUS-

**NORMAN WAMBUA MUSAU & OTHERS.....DEFNDANT/
RESPONDENT**

THE COUNTY GOVERNMENT OF NAIROBI
.....INTERESTED PARTY

RULING

1. In the Notice of Motion application dated 20th November2023 the Applicant seeks the following orders:
 - a. Spent
 - b. THAT Conservatory Order of temporary injunction be, and is hereby issued barring the Defendant, his servants/proponents, or any other person from undertaking any further development and construction activities on parcel of land number LR.NO.209/11935 within Komarock Area, Nairobi County, stopping, halting and discontinuing the Defendant from blocking the access road, selling and allocating illegal structures pending the hearing and determination of this Application.

- c.** THAT this Honourable Court do issue an Order of eviction against the Defendant/Respondent, his agents or any other person acting in his name or any other person whatsoever from occupying, constructing structures or conducting any activity that is blocking in any way likely to block the Plaintiff/Applicant access to his property being LR.NO.209/11935 within Komarock Area, Nairobi County and the same structures be removed pending the Hearing of this suit.
- d.** THAT an order be issued directing the County Government of Nairobi Urban Planning Department to assess the situation on the purported illegal construction and file a report in court.
- e.** THAT an order be issued directing the Officer Commanding Station (OCS) Obama Police Station to enforce and ensure compliance with the orders issued herein.
- f.** An order of permanent injunction restraining the Defendant either by himself, servants, agents and/or employees from carrying on construction of illegal structures, kiosks or shops, occupying, constructing structures or conducting any activity that is blocking in any way likely to block the Plaintiff/Applicant access to his property being LR.NO.209/11935 within Komarock Area, Nairobi County.
- g.** That the costs of the application be provided for.

Applicant's Case

2. The Applicant avers in his supporting affidavit that he owns suit property LR NO 209/11935 which property is used for commercial purposes.
3. That the defendant without any matter of right has been occupying the road reserve next to the property by building of illegal structures which occupation has encroached on his property. He deponed that he approached the interested party as the institution mandated to give approvals on such construction to seek help , but no help has been forthcoming. He further deponed that the actions to build the market stalls next to his premises has occasioned him loss being that he cannot use his suit premises as in the manner intended to
4. He is apprehensive that unless the defendant is restricted by orders of this court, he will suffer great prejudice

Respondent's case

5. The respondent opposed the application by filing a replying affidavit sworn on the 28th October 2025. He deponed that that applicant was seeking for permanent injunctive orders and eviction orders which were not viable at the application stage as it would mean the case had been decided in finality.
6. He further deponed that he was a member of a youth group named Pamoja Youth group which group had sought approvals from the Interested party before commencing construction which construction was approved. That the works carried out did not in any way encroach on any parcel of land

The deponent indicated that the suit did not raise any cause of action as against him offending the provision of order 2 rule 4(10) of the civil procedure rules.

Lastly, he deponed that the conditions for issuance of the injunctive orders had not been met by the applicant.

Analysis and Determination.

7. Both parties have not filed submissions and the court will be guided by the application and the replying affidavit. The issue for determination is whether the applicant has met the threshold for issuance of temporary injunctive orders

The law on grant of 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 –

- (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.”

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.”

This court is thus required to determine whether the applicant has satisfied the three conditions for grant of injunction. In **Nguruman Limited Vs Jan Bonde Nielsen & 2** the Court of Appeal had this to say on prima facie case ; *“ 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*

Further in 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 applicant has to establish a prima facie case

The applicant has attached a title deed to the application to show that he owns the suit property hence ownership is not disputed and further attached and photos of the alleged construction next to private property which he points out to be his property.

The applicant has indicated that the construction activities are interfering with the running of his business and will cause irreparable harm to him which cannot be compensated by way of damages. He has also attached a letter dated 5th August 2025 to the intended interested party herein seeking clarity on any approvals given in regards to the construction which letter was not responded to.

The construction activity has not been disputed by the respondent, his case is that the construction was permitted by the intended interested party. This averment calls for interrogation of evidence by the intended interested party.

The applicant in my view has established a prima facie case which means that there is a right which had apparently been infringed by the Respondent to call for a rebuttal. It is imperative that the said property be preserved and conserved in the state in which it was before the Respondents commenced the construction

of the market stalls. If, however, more construction happens to completion and the Court finds in favour of the Applicant the suit property will no longer be available to him in its original state. That will no doubt put the Applicant to substantial loss.

In **ERNEST MURIUKI MUNGAI .V. GICHUGU CONSTITUENCY**

DEVELOPMENT FUND & ANOTHER 2017 eKLR, this Court adopted the following definition of irreparable injury from BLACK'S LAW DICTIONARY 9TH EDITION:-

"The term irreparable injury, however, is not to be taken in it's strict sense. The rule does not require that the threatened injury should be one not physically capable of being repaired. If the threatened injury would be substantial and serious -one not easily to be estimated or repaired by money - and if the loss or inconvenience to the plaintiff if the injunction should be refused (his title proving good) would be much greater than any which can be suffered by the defendant through the granting of the injunction, although his title ultimately prevails, the case is one of such probable great or irreparable damages as will justify a preliminary injunction."

On the third limb, the balance of convenience tilts in favour of granting the injunctions than not granting as already highlighted the applicant has an identifiable interest the suit property worth of being protected.

Final disposition

I find that the applicant has met the threshold for the orders of temporary injunction to be issued and find the application dated 15th September 2025 is with merit and allowed as to prayers 2, 3 and 5

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

1. **THAT** Conservatory Order of temporary injunction is hereby issued barring the Defendant, his servants/proponents, or any other person from undertaking any further development and construction activities on parcel of land number LR.NO.209/11935 within Komarock Area, Nairobi County, stopping, halting and discontinuing the Defendant from blocking the access road, selling and allocating illegal structures pending the hearing and determination of this Application.
2. **THAT** Conservatory Order of temporary injunction is hereby issued barring the Defendant, his servants/proponents, or any other person from undertaking any further development and construction activities on parcel of land number LR.NO.209/11935 within Komarock Area, Nairobi County, stopping, halting and discontinuing the Defendant from blocking the access road, selling and allocating illegal structures pending the hearing and determination of this suit
3. **THAT** the County Government of Nairobi Urban Planning Department to assess the situation on the purported illegal construction and file a report in court.
4. **THAT** the Officer Commanding Station (OCS) Obama Police Station to ensure compliance with the orders issued herein.
5. Cost of the application to be borne by the respondent.

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. Chani Mbaya..... for the Plaintiff/Applicant

N/A..... for the Respondent

Philomena W..... Court Assistant