



Kenga v Theuri & 3 others; DIB Bank Limited (Interested Party) (Land Case E078 of 2025) [2026] KEELC 845 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 845 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
LAND CASE E078 OF 2025
YM ANGIMA, J
FEBRUARY 19, 2026**

BETWEEN

LUCAS CHIMERA KENGA PLAINTIFF

AND

SIMON MUNYI THEURI 1ST DEFENDANT

DENNIS GATU WAITHAKA 2ND DEFENDANT

THE LAND REGISTRAR, MOMBASA REGISTRY 3RD DEFENDANT

KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD 4TH DEFENDANT

AND

DIB BANK LIMITED INTERESTED PARTY

RULING

1. By a notice of motion dated 03.07.2025 filed pursuant to Sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* (Cap 21), Order 40 rules 2 & 3 of the Civil Procedure Rules, Article 159 (1) & (2) of *the Constitution* and all other enabling provisions of the law, the plaintiff sought an interim injunction restraining the defendants from, inter alia, entering, fencing, constructing, selling, alienating, transferring or in any manner from dealing with parcel No.22382/I/MN (parcel 22382) pending the hearing and determination of the suit.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the plaintiff on even date. The plaintiff contended that he was the beneficial owner of parcel No.1148/I/MN (parcel 1148) by virtue of a letter of allotment issued to him in November 2010. It was his case that the defendants had unlawfully and irregularly caused parcel No.1148 to be sub-divided without his knowledge and consent thereby resulting in the creation of



parcel 22382. It was further contended that the 1st – 3rd defendants had caused a charge to be registered in favour of the 4th defendant to secure the payment of Kshs.160 million.

3. By the time of preparation of the ruling, only the 4th defendant had filed a response to the application. The record shows that a replying affidavit sworn by Joseph Karanja on 11.12.2025 was filed on behalf of the 4th defendant. He deposed that the 4th defendant was the registered owner of parcel 1148 since 1974. It was pleaded that at some point the 1st and 2nd defendants had purported to sub-divide the said parcel into Nos.22381/I/MN and 22382/I/MN but the fraudulent sub-division was nullified by the court in Mombasa ELC No. 216 of 2021 and the property restored to it.
4. The 4th defendant stated that the issue of who was the legitimate owner of parcel 1148 was conclusively resolved in Mombasa ELC No. 216 of 2021 hence the plaintiff's instant suit was res judicata. It was the 4th defendant's case that the plaintiff had failed to demonstrate a prima facie case with a probability of success at the trial to warrant the granting of an interim injunction.
5. It was also the 4th defendant's contention that having held a leasehold interest over parcel 1148 since 1974 the said parcel was not available for allocation to the plaintiff in 2010 hence the purported allocation by the Commissioner of Lands was of no legal effect in the absence of revocation or annulment of its earlier certificate of title. As a result, the 4th defendant urged the court to dismiss the plaintiff's said application with costs.
6. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. However, the record shows that only the 4th defendant had filed submissions by the time of preparation of the ruling.
7. The court has perused the plaintiff's notice of motion dated 03.07.2025, the 4th defendant's replying affidavit in response thereto as well as the material on record. The court is of the view that the main question for determination herein is whether or not the plaintiff has satisfied the principles for the grant of an interim injunction pending the hearing and determination of the suit.
8. The court has considered the material and submissions on record. The principles for the grant of an interim injunction were summarized in the case of *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 as follows;
 - a. That an applicant must demonstrate a prima facie case with a probability of success at the trial.
 - b. That an injunction will not normally be issued unless the applicant might otherwise suffer some irreparable loss or injury which cannot be adequately compensated by an award of damages.
 - c. That in case the court is in doubt on (b) above, it shall decide the application on a balance of convenience.
9. There is no doubt from the material on record that there was a previous suit before the Environment and Land Court over the ownership of the parcel 1148. The material shows that it was concluded in favour of the 4th defendant. The court is of the view that even though the plaintiff was not a party in the previous suit the judgment which concluded the suit was a judgment in rem hence binding against the whole world. Among the reliefs granted in that suit was a declaration that the 4th defendant was the exclusive owner of parcel 1148.
10. The court has noted that the plaintiff's claim over parcel 1148 is based upon a letter of allotment dated 01.11.2010 issued by the office of the former Commissioner of Lands. There is credible evidence on



record to show that the 4th defendant was the registered proprietor of a leasehold interest in the suit property since at least 1974. It is doubtful if the said parcel could lawfully be allocated to the plaintiff in 2010 before either expiry or revocation of the lease in favour of the 4th defendant. As a result, the court is far from satisfied that the plaintiff has demonstrated a prima facie case with a probability of success at the trial.

11. Since the plaintiff has failed to satisfy the first principle for the grant of a temporary injunction, the court is of the view that it is not necessary to consider the second and the third principles. The second principle can only be considered once the applicant has satisfied the first principle. And the third should only be considered when the court is in doubt on the second principle.
12. The upshot of the foregoing is that the court finds and holds that the plaintiff has failed to satisfy the principles for the grant of an injunction. As a result, the court makes the following disposal orders;
 - a. The plaintiff's notice of motion dated 03.07.2025 is hereby dismissed with costs.
 - b. The suit shall be mentioned on 07.05.2026 for pre-trial directions.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 19TH DAY OF FEBRUARY, 2026.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Matheka for the plaintiff

No appearance for the 1st defendant

No appearance for the 2nd defendant

No appearance for the 3rd defendant

Mr. Kanriga for the 4th defendant

Ms. Simeon Kyalo for the interested party

