

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC (LC) E020 OF 2025

JUSTUS KIPKEMOI KIGEN.....
.....APPLICANT

VERSUS

SANGAU OLE NTOKOYUAN.....
RESPONDENT

RULING

1. This matter comes up for ruling in respect of the application dated 18th September 2025 seeking injunctive orders temporary in nature against the Respondent, his agent and or servant from the harassing and or evicting the applicant from the that properly known as Transmara/Kimintet D/1777 and Transmara/Kimintet D/1778 and/or interfering with the peace and quiet enjoyment of the agricultural activities by the applicant on the said properties.
2. The ground in support of the injunctive prayer set out above are *interalia*;
 - (i) By virtue of a joint venture dated 22.8.24the applicant and the Respondent entered into an joint venture agreement to jointly carry out agricultural activities on all that properly known as Transmara/Kimintet D/1777 and Transmara/Kimintet D/1778 owned by the Respondent where in the Respondent to provide the said property for farming and the Applicant was to provide finance and oversee the farming.
 - (ii) Joint venture was for 12 years.
 - (iii) Plaintiff took possession of the said property and began removing tree stumps which were very rampant.

- (iv) The Respondent has threatened to evict the Plaintiff despite the joint venture agreement and is threatening to lease out the property to other 3rd parties.
3. In further support of the application is the supporting affidavit of the Applicant who reiterates grounds in support of the application and has annexed copies of the Joint venture agreement, photographs of excavators removing stumps, on the suit parcels.
 4. The Respondent Sangau Ole Ntokoyuan filed grounds of opposition in response to the application, the grounds raised thereof are *inter alia*; -
 - (i) The application is a blatant forum shopping and abuse of the court process, as a similar claim by the Applicant before the subordinate court was struck out for want jurisdiction.
 - (ii) The application fails to meet the threshold for grant of an injunction as established in Giella vs Cassman Brown and company limited (1973) E.A. 358, no prima facie evidence has been established and no balance of convenience tilts in his favour of the Respondent.
 - (iii) The application offends the equitable principles that a litigant must come to with clean hands.
 - (iv) The application is frivolous incompetent, vexatious and devoid of merit.
 5. The application was canvassed by way of written submissions, whose respective submissions are summarized as follows: -

Applicant's submissions

6. The Applicant submits that the application and the entire suit are not an abuse of the court process since the other matter had been struck out for want of jurisdiction and reliance was placed on the decision in the case of Isabella Wakesho Mshimba Vs. Elvis David Ackel (2018) eKLR.

7. The Applicant further submitted on the jurisdiction of the ELC court under section 13 of the ELC Act, and urged the court to allow the application as the Lower court did not have pecuniary jurisdiction to hear and determine the suit.
8. The Applicant further submits that he has established a prima facie case and is deserving of the orders sought.

Respondent's submission.

9. The Respondent adopted the ground of opposition and submitted that no prima facie case as stated in Giella vs Cassman Brown and company Limited (1973) C.A 358 has been established.
10. The Respondent submits no prima facie case as defined in Mrao Limited vs First American Bank of Kenya and 2 others was established.
11. The Respondent submits that the filing of the case herein after the similar case was struck out at the lower court amounts to forum shopping which the court must discourage, and sites the case of Albert Chaurembo Wambua and 7 others vs Maurice Munyao and 148 others.

Issues for Determination

12. The court considers the following as issues presenting themselves for determination;
 - (a) Whether or not there is a competent suit before court.
 - (b) Whether or not the application is merited, and the court shall also consider whether the threshold for grant of injunction has been met?
 - (c) What reliefs ought to issue?

Analysis and Determination

13. The Respondent did not file a replying affidavit but filed grounds of opposition, hence the depositions by the Applicant were uncontroverted.
14. On the competence of the suit, it is common ground that there was a previous suit filed before the chief Magistrate's court at Kilgoris but the same was struck out since the CM'S court lacked pecuniary jurisdiction
15. Could the Applicant approach this court for relief? The Respondent submits not, while the Applicant submits that he could approach the court and has submitted that the court has jurisdiction under section 13 of the ELC Act.
16. Once a suit has been struck, it means that the same has not been heard and determined on its merits and a party is entitled to file a fresh suit in the proper forum. That definitely cannot be termed as forum shopping as the Respondents strongly submits.
17. In answer to issue number 1 the court finds that the suit is properly before court and the court has jurisdiction to here and determine the same.
18. On whether the Application is merited, for the principles for grant of a temporary injunction were stated in Giella vs Cassman Brown. The principles are: ***"Firstly, 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 imperable 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."*** Has the Applicant established a prima facie as defined in Mrao Limited vs First American Bank Limited, were the same was defined as follows:- ***"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 part so as to call for an explanation or rebuttal from the latter.”

19. The Applicant has exhibited before court a joint venture Agreement between himself and the Respondent for undertaking Agricultural activities in Transmara/Kimintet D/1777 and 1778 for a period of 12 years.
20. Order 40 Rule (2) under which the application is founded recognizes rights conferred by contracts as it provides as follows; -
“in any suit for restraining the defendant from committing a breach of contract, or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may at any time, after commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right...”
21. The Applicant has approached the court under this provision *inter alia*, which recognizes rights bestowed by contracts, and having exhibited the joint venture Agreement which is a contract he has thus proven a prima facie case.
22. On the other aspects of *Giella Vs. Cassman Brown*, a breach of contract and threats to lease the same will cause irreparable loss in respect of the investment that the Applicant has put in and the balance of convenience tilts in favour of the Applicant in view of the near commencement of the project, having tilled the property and ready to proceed with the farming activities as deponed.
23. The court finds that the Applicant has met the threshold for grant of a temporary injunction and hereby issues the same in terms of prayer 3 of the Application.
24. Costs shall be in the cause; orders accordingly.

Dated at Kilgoris this 5th day of February, 2026

Hon. M.N. Mwanyale

Judge

In the presence of

CA – Sylvia/Sandra/Clara

Mr. Mogambi for Plaintiff/Applicant

Mr. Kiprotich for Respondent