



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)**  
**AT MILIMANI LAW COURT NAIROBI**  
**ELCLC NO E344 OF 2025**

**LAVINGTON APARTMENTS  
LIMITED.....PLAINTTIF/APPPLICANT**

**-VERSUS-**

**IVORY CONCEPTS LIMITED .....1<sup>ST</sup>  
DFENDANT/RESPONDENT**

**STRUCTURE LITE LIMITE.....2<sup>ND</sup>  
DEFNDANT/RESPONDENT**

**DANIEL GICHINGA KAHORO.....3<sup>RD</sup>  
DEFNDANT/RESPONEDENT**

**ANNE OKETCH ORACAH.....4<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**CHIEF LANDS REGISTRAR.....5<sup>TH</sup>  
DEFENDANT/RESPONDENT**

**RULING**

1. This matter is in relation to property known as L.R No. 2/272 (Conversion number NAIROBI/BLOCK17/132) herein referred to as the suit property.
2. Vide Notice of Motion application dated 17<sup>th</sup> July 2025, the Applicant seeks the following orders:
  - a. Spent
  - b. THAT a temporary injunction be and is hereby issued restraining the 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> defendants/Respondents

whether by themselves or through their servants, employees, agents or through anyone deriving title through them or otherwise howsoever from entering, trespassing, using, occupying, leasing, transferring, charging, selling or in any manner whatsoever in dealing adversely or in any manner with the Land known as L.R No. 2/272 (Conversion number NAIROBI/BLOCK17/132) pending hearing and determination of this suit.

c. Costs of the application

3. The application was premised on grounds as in the supporting affidavit sworn by Ogeto Stephen Jeremiah where he that he was the registered owner of the suit property. That the 5<sup>th</sup> defendant through fraudulent means had caused to registered the suit property in the name of the 1<sup>st</sup> and 2<sup>nd</sup> respondents whom he had never transferred ownership to ant any particular time.

He deponed that prove of ownership could be traced through documentary evidence on the manner he acquired the suit property whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondent's title was obtained through fraudulent means.

He deponed that he sought to have the title in the respondent's names canceled and the entries to reflect the applicant's name hence the filing of this application

Applicant's Submissions

4. Counsel reiterated and relied on the contents of his supporting affidavit

The defendants/respondents have not entered appearance nor put any response hence the application is undefended.

### **Analysis and Determination**

#### Whether the Applicant has satisfied the threshold required for issuance of temporary injunctive orders

The law on granting 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 –  
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  
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.”*

The important consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court in such a situation is enjoined to grant a temporary injunction to restrain such acts.

In the instant case, the applicant contends to be the legally registered owner of the suit property and has produced a sale agreement dated 3<sup>rd</sup> February 2015 and a copy of the transfer registered in its name. They have also attached a search conducted on the ardhi sasa platform that shows that the suit property LR N02/272 was converted to reflect the new title Nairobi/Block 17/132. There is therefore no doubt that the two titles speak to one and the same piece of property. There is a sale agreement on record which captures all proof of payment to substantiate the said alleged purchase. In my view the applicant has failed to show any legitimate interest on the suit property and hence failure to prove prima facie case.

The applicant avers that on conversion of the title, which they indicate was without the knowledge, it was then registered in the 1<sup>st</sup> and 2<sup>nd</sup> respondent's names which act is said to be fraudulent.

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 established a prima facie case having shown how it is connected to the suit property.

The applicant has produced documentary evidence in its supporting affidavit. The adduced a Copy of Sale Agreement dated 3<sup>rd</sup> February 2015. This agreement is between One Aziz Mohamed (Vendor) and the plaintiff/applicant. It is not in dispute that the Applicant is the purchaser in the agreement. The agreement identifies the suit property herein bearing its previous title no before conversion herein, has a consideration and is signed by both parties. Also adduced was a Copy of the transfer document in favour of the plaintiffs/Applicant. These documents in my view set out the history of how the plaintiff acquired rights to the suit property and has established an interest in the same worth of being protected by this honourable court hence proof of a prima facie case.

This has been aptly discussed in the case of **Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] eKLR**, the Court of Appeal held as follows:

*“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. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title. It is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant’s case is more likely than not to ultimately succeed.”*

The second test is as to whether the applicant stands to suffer irreparable harm that cannot be compensated in damages. The applicant has indicated that the title of the suit property might be registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> respondents if the injunctive orders are not

issued and it stands to lose its proprietary rights over the suit. I hold the view that this is irreparable harm that cannot be compensated by way of damages, once title passes it becomes impossible to compensate the applicant in monetary value.

In this regard I adopt the sentiments in **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others 2014) eKLR**

*“ An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy”*

On the third limb, the balance of convenience tilts in favour of granting the injunctions than rather not as the applicant has demonstrated it will be prejudiced as opposed to the respondents who have not shown how loss would be occasioned to them.

### **Final disposition**

I find that the applicant has met the threshold for the orders of temporary injunction to be issued

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

1. **THAT** a temporary injunction be and is hereby issued restraining the 1<sup>st</sup> , 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants/Respondents whether by themselves or through their servants, employees, agents or through anyone deriving title through them or otherwise howsoever from entering, trespassing, using, occupying, leasing, transferring, charging, selling or in any manner whatsoever in

dealing adversely or in any manner with the Land known as L.R No. 2/272 (Conversion number NAIROBI/BLOCK17/132) pending hearing and determination of this suit.

2. Costs of the application be borne by the respondents.

**It is so ordered.**

**DATED, SIGNED and DELIVERED** virtually at **NAIROBI** on this **5<sup>TH</sup>** day of **FEBRUARY 2026**.

**MOHAMMED N. KULLOW**  
**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Nyakundi**..... for the Applicant

**No appearance**..... for the Respondents

**Philomena W.**..... Court Assistant