



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC CASE NO E316 OF 2025

FRANCIS NJOROGE MWANGI.....
PLAINTIFF/APPLICANT

-VERSUS-

ROBERT M. MACHARIA NJUGUNA1ST DEFNDANT/RESPONDENT

ANNE MARIE WANGUI MACHARIA2ND DEEFENDANT/RESPONDENT

RULING

Introduction

1. The matter is in relation to land parcel no 1160/1116/1 herein referred to as the suit property. In the Notice of Motion application dated 30th June 2025 the Applicant seeks the following orders:

a. Spent

b. THAT pending the hearing and determination of the main application, a temporary injunction do issue against the Defendants, their agents, servants, and all persons acting under them, from: trespassing on, obstructing, or interfering with access way, cutting, felling, destroying or removing any

trees, fixtures, or utility infrastructure and altering or extending boundary beacons to entrance driveway LR NO 1160/1116/1.

- c. THAT** pending the hearing and determination of this present, a temporary injunction do issue against the Defendants, their agents, servants, and all persons acting under them, from trespassing on, obstructing, or interfering with access way, cutting, felling, destroying or removing any trees, fixtures, or utility infrastructure and altering or extending boundary beacons to entrance driveway LR NO 1160/1116/1.
- d.** The costs of this application be borne by the Defendants
- 2.** The Applicant avers in his supporting affidavit that he owned the suit property herein but sold the same to the defendants. That the defendants have however encroached on his property and extended the boundaries on the suit property to his parcel and have further and have destroyed the trees, demolished entrance driveway and severed water pipes occasioning severe loss to him to a sum of Ksh 618, 230/=.
- 3.** That the actions of the defendants have withheld access to the use of his property hence this application

Respondent's case

4. The respondents opposed the application by filing a replying affidavit sworn by the 1st respondent on the 25th July 2025. He deponed that they had purchased the suit property from the applicant. That they had not encroached on any part of the applicant's property rather had fenced off their part of the property. That the land that was adjacent to the suit property was an access road which was still accessible and had not been encroached on. He deponed that the applicant had failed to show which part of his property had been encroached on.

Applicant's submissions

The applicant submitted on whether he had met the conditions for issuance of injunctive orders being Proof of a prima facie case. Whether there was irreparable harm and whether the balance of convenience tilted in favour of the applicant. He submitted that being the registered owner of LR NO 1160/1159. He had proved proof of a prima facie case having established his interest in the same and further he had produced evidence of the fencing into the access road and destruction of the tress and water infrastructure. He submitted that monetary value could not compensate for loss of access and environmental degradation hence irreparable harm

relying on the case of **Mara Sian Conservancy Co Ltd Vs Ani Investment Ltd (2022)**.

Lastly counsel submitted that the balance of convenience tilted on his side being that he was seeking for restoration of boundary lines and the granting of the orders will not prejudice the respondents.

He further discredited the argument that he lacked locus standii indicating that the same should have been raised in a notice of preliminary objection and not replying affidavit.

Respondent's submissions

Counsel reiterated the contents of their replying affidavit and further indicated that the application lacked legal basis for grant of injunctive orders. That the applicant having sold the suit property to the defendants should not come back and claim encroachment 10 years after relinquishing title and thus has no locus standii to institute the suit

Analysis and Determination.

5. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of this suit. The principles for the grant of a temporary injunction are well set out in the case of **Giella vs. Cassman Brown & Co. Ltd (1973) EA 358**.

It is trite law and procedure that a claimant seeking orders of injunction orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not be adequately compensated by an award of damages, if the order is not granted and if the court is in doubt it will decide the application on a balance of convenience.

It is the Applicants' case that the defendants have encroached on the access way on LR 1160/1116/1 which serves various parcels of lands including his which encroachment will occasion irreversible harm to him. The respondent on the other hand indicate that the applicant has no proprietary rights on the suit property having sold it to them hence has no rights worth of being protected.

It is not in dispute that the applicant has no rights over the suit property and therefore has no legal interest on the same. The orders he seeks relate to the suit property owned by the respondents and failure to proof any interest in the same points to lack of a prima facie case. The road access is definitely not part of the suit property and the court cannot issue orders in relation to a parcel of land that has not been identified herein as the one that has been encroached on.

The principles for grant of a temporary injunction are well settled. In the case of **Nguruman Limited vs. Jan Bonde Nielsen & 2**

Others [2014] eKLR, the Court of Appeal pronounced itself as follows: *“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. 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.”*

It is incumbent upon the Applicant to prove that he will suffer irreparable harm that is not capable of being compensated by an award of damages if an order of injunction is not issued. The irreparable injury of harm in this case has not been proved. It should be real, actual and substantial, which the Applicant must demonstrate.

The purpose of a temporary injunction is to preserve the substratum of the suit. The Applicant must establish a prima facie case with a probability of success and not present a frivolous case. In the case of **Paul Gitonga Wanjau -vs- Gathuthis Tea Factory Company Ltd & 2 Others (2016) eKLR**, the court dealing with the issue of balance of convenience expressed itself thus: *“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”*

The applicant has failed to meet the conditions of issuance of injunctions, the court will be called to exercise its discretion and

determine on the balance of probabilities. The balance shifts in not granting the injunctions than granting as the suit property herein is registered in the respondent's name and orders of injunctions will limit their enjoyment of the suit property. I find that in the interest of justice not to issue the injunctions as opposed to issuance of the same

Final disposition

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

1. THAT the application dated 30th June 2025 lacks merit and is hereby dismissed
2. Costs of the application to be borne by the applicant.

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. Kaballah..... for the Plaintiff/Applicant

Ooko..... for the Defendants/Respondents

Philomena W...... Court Assistant

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