



REPUBLIC OF KENYA



KENYA LAW
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**Malalo & 25 others v Mzee (Environment and Land Case
E071 of 2025) [2026] KEELC 611 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E071 OF 2025**

YM ANGIMA, J

FEBRUARY 5, 2026

BETWEEN

BENARD MASEGHE MALALO & 25 OTHERS & 25 OTHERS PLAINTIFF

AND

ATHMAN JUMA MZEE DEFENDANT

RULING

1. By a notice of motion dated 16.06.2025 the plaintiffs sought a temporary injunction against the defendant or his agents to restrain them from auctioning the houses of the plaintiffs on Plot No. 572/V/MN and Plot No. 573/V/MN until the suit is heard and determined.
2. The application was based on the grounds set out on the face of the application and the contents of the supporting affidavit sworn by Benard Maseghe Malalo on 16.06.2025 on behalf of all the plaintiffs. It was contended that the plaintiffs have been living on the suit property and paying ground rent to the defendant for a long time. It was further contended that the plaintiffs were advised by the National Land Commission to stop paying rent pending the investigation into the ownership of the suit property. The deponent stated that the defendant had demanded Kshs 50,100/= as ground rent failure to which his house would be auctioned. It was the plaintiffs' case that the defendant had obtained the suit property illegally, and they urged the court to allow them to continue occupying Plot No. 573/V/MN and Plot No. 572/V/MN.
3. The record shows that the defendant did not file any response to the application even though he filed a notice of appointment of an advocate.
4. The court has perused the application and the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the plaintiffs have made out a case for the grant of the interim injunction sought.



- b. Who shall bear the costs of the application.
5. The court has considered the material and submissions on record on this issue. The principles for the grant of an injunction were set out in the case of *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 as follows:
 - a. First, the applicant must demonstrate a prima facie case with a probability of success at the trial.
 - b. Second, an injunction will not be normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.
 - c. Third, if the court is in doubt on the second principle it shall determine the matter on a balance of convenience.
6. The plaintiffs have admitted to having been paying ground rent to the defendant for a long period of time. They claimed that the National Land Commission had advised them to stop paying the ground rent until the issue of ownership of the suit land was determined. The plaintiffs have not presented to the court any evidence to show that they were advised by the Commission to stop paying rent to the defendant. The plaintiffs have essentially admitted to having defaulted on paying ground rent to the defendant before being threatened with an auction.
7. For the court to issue an interlocutory injunction against the defendant the plaintiffs must demonstrate a prima facie case with a probability of success against the defendant. In *Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 the Court of Appeal considered a ‘prima facie’ case as follows:

“In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
8. In considering whether the plaintiffs have a prima facie case, the court takes caution not to be seen to make a final finding based on the material before it, in view of the fact that the main suit is still pending before it. The plaintiffs have admitted to having been paying ground rent to the defendant but stopped allegedly on the advice of the National Land Commission. Despite the said allegations, there was no evidence attached to the application that supports this claim. It is the finding of this court that the plaintiffs have failed to demonstrate a prima facie case with a probability of success.
9. This court finds that the plaintiffs have failed to prove that they have a right to be protected by an order of temporary injunction pending the hearing and determination of the suit. As held by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), the plaintiffs 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.” Without establishing a prima facie case, the court will not consider whether irreparable injury and balance of convenience have been demonstrated, and the application must fail.
10. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good



reason, directs otherwise. In the case of *Giella vs Cassman Brown & Co Ltd* (supra), it was held that the appropriate order to make in an application for injunction is for costs to be in the cause where the order is granted. However, where the application is dismissed, costs should be awarded against the applicant. In the instance case, since the defendant did not oppose the application he is not entitled to costs.

11. The upshot of the foregoing is that the court finds no merit in the plaintiff's application for interim orders. As a consequence, the court makes the following orders for disposal thereof:

a. The chamber summons dated 16.06.2025 is hereby dismissed with no order as to costs.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5TH DAY OF FEBRUARY 2026.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Ms. Maveke for the plaintiff

Mr. Angelo Owino for the defendant

