



Marete & another v Monyaka Investments Ltd (Environment and Land Appeal E110 of 2025) [2026] KEELC 542 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEELC 542 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E110 OF 2025**

JG KEMEI, J

FEBRUARY 5, 2026

BETWEEN

WESONGA JAKOYAH MÜTEMBEI MARETE 1ST APPLICANT

**KIGEN CHERUIYOT T/A WESONGA, MÜTEMBEI & KIGEN
ADVOCATES 2ND APPLICANT**

AND

MONYAKA INVESTMENTS LTD RESPONDENT

RULING

(In respect of the Applicant's application dated 23/6/25)

1. Before me is the applicant's application dated 23/6/25, seeking a temporary injunction restraining the respondents from interfering with the quiet and lawful enjoyment of the suit premises on Plot No 209/4914 Hamilton House, 1st Floor, Suite 1, Kaunda Street, Nairobi, pending the hearing and determination of the instant appeal an order requiring the applicants to vacate the suit premises within 30 days be stayed; in the alternative, and considering the business the applicant is engaged in, an order directing the respondent to issue the applicant with a notice period of 12 months within which to vacate the premises.
2. It was averred by the applicants that the trial court, by a ruling delivered on 13/6/25, directed the applicants to comply with the notice to vacate the premises within 30 days on account of the lease having lapsed and proceeded to dismiss the applicants' application for an injunction. That, in dismissing the application, the court considered only one aspect, namely the prima facie case, and ignored the other two parameters, which, if considered, could have led to a decision allowing the application.
3. Furthermore, the applicants are unable to relocate from the suit premises within 30 days as directed by the Magistrate, due to the nature of the business they operate and the period they have been in the



premises, which has been 10 years. In any event, negotiations to renew the leases were ongoing, and the applicants harbored a legitimate expectation that they would be renewed. No prejudice shall be occasioned to the respondent, as the applicants continue to pay rent.

4. In opposing the application, it is submitted that despite being aware that their lease would end on 1/4/2025, the applicants continued in unlawful occupation of the premises without any colour of right. On 28/1/25, the applicants were issued with a notice to vacate the premises as the lease was coming to an end, and they cannot therefore feign ignorance of the same. The notice period was adequate. That said, the respondents stated that the applicants are in rental arrears for rent and rent deposits, the latter having been due since 2019 when they took over the premises.
5. Parties have filed written submissions which I have read and considered.
6. Having considered the application, the affidavit evidence and the rival submissions, the key issue for determination is whether the application has merit.
7. The purpose of a temporary injunction, as stated in Order 40, Rule 1 of the Civil Procedure Rules, 2010, is to stay and prevent the wasting, damaging, alienation, sale, removal or disposition of the suit property. The Order provides that;

“ 1. Where in any suit it is proved by affidavit or otherwise-

- a) 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 b) That the Respondents 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 the execution of any decree that may be passed against the Respondents 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”.

8. The principles that guide the Court in determining an application of such nature are found in the celebrated case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows: -
 - a. First the Applicant must show a prima facie case with a probability of success.
 - b. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - c. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.
9. Has the Applicant established a prima facie case with a probability of success? A prima facie case was defined by the Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* (2003) eKLR as follows: -

“ 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.”

10. It is undisputed that the applicants and the respondent have maintained a longstanding tenant-landlord relationship over the past ten years. The applicants' primary concern is that they received insufficient notice to vacate the premises. Conversely, the respondent asserts that the notice was sufficient, as the applicants were informed before the lease expired and remained aware of this throughout the tenancy.
11. Having said that, the Court is aware that, in an application for an interlocutory injunction such as this one before the Court, it is not required to make final findings on contested facts, as it should weigh only the relative strength of the parties' cases. See the case of *Mbuthia v Jimba Credit Corporation Ltd* (1988) eKLR.
12. The orders presently deemed appropriate are those that maintain the status quo pending the hearing and determination of the main appeal, which I note pertains to the issue of whether the applicant was entitled to injunctive relief.
13. I am guided by the provisions of Order 40, Rule 1 of the CPR, read together with Section 3A of the CPA, which provide that justice will be served if the suit land is preserved pending the hearing and determination of the suit, so that each party may adduce evidence and prove their claims in Court. Evidently, the balance of convenience favours the preservation of the suit land pending the hearing and determination of the suit.
14. In the end the application is allowed in the following terms;
 - a. Status quo be maintained pending the hearing and determination of the appeal
 - b. Subject to the payment of all outstanding rent and other related payments if any within the next 15 days, together with the month-to-month rent as and when it falls due
 - c. In default of b above, the orders granted shall lapse automatically.
 - d. The costs are in favour of the respondent
15. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF FEBRUARY 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

1. Mr Kigen for the Applicant
 2. Ms Kalsi for the Respondent
- CA- Ms Yvette Njoroge

