

8. Parties filed submissions in support of their respective cases. On record are submissions filed by the plaintiff dated 16th September 2024 which the court has duly considered.

Analysis and Determination

9. The court has carefully considered the application and the response thereto as well as the submissions. The issue for determination is whether the applicant has met the threshold for grant of temporary injunction.
10. Principles governing grant of temporary injunction are well settled in the case of *Giella v Cassman Brown and Company Limited* (1973) E.A. 358, as follows;
- a. The applicant must demonstrate a *prima facie case* with a probability of success;
 - b. The applicant must show that they will suffer irreparable injury which cannot be compensated in damages if the injunction is denied;
 - c. If the court is in doubt, it ought to decide the application on a balance of convenience.
11. The 2nd defendant herein is the registered proprietor of the suit properties, which before registration in her name was registered in the 1st defendant's name. Therefore, the 1st defendant who does not deny transferring the same to the 2nd defendant, no longer has any proprietary interest therein capable of legal protection. The 2nd defendant's registration of the suit properties is contested on grounds of illegality and fraud. Those are matters which will be interrogated at the trial. However, most importantly, the plaintiff alleged to be in occupation of the same, while the 1st and 2nd defendants have counterclaimed for peaceful possession of the same.
12. Therefore, granting orders of injunction sought to stop the plaintiff from continuing to occupy the suit property would amount to determining the suit herein substantively before hearing it on its merits and without allowing parties the opportunity to test evidence on cross examination. While this court is not a family court but has implored parties to resolve their dispute amicably, in vain, it is clear that the plaintiff's occupation of the suit property has everything to do with the fact that she is the 1st defendant's spouse.
13. Consequently, in the circumstances of this case, the orders that commend themselves in the circumstances of this case, which I hereby grant, are orders that the *status quo* obtaining in respect of the suit property shall be maintained by both parties so that none in occupation thereof is evicted; no further dealings on the title thereof shall be registered and no further development thereon shall be done, pending hearing and determination of this suit.
14. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 4TH DAY OF FEBRUARY 2026

A. NYUKURI

JUDGE

In the presence of;

Mr. Osango for the plaintiff

Mr. Simiyu for the 3rd defendant



No appearance for the 1st and 2nd defendants

Court Assistant: Delphine

