



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO. 253 OF 2025

MICHAEL ONYANGO.....1ST

PLAINTIFF/APPLICANT

FATUMA MOHAMMED.....2ND

PLAINTIFF/APPLICANT

MARY NAFULA.....3RD

PLAINTIFF/APPLICANT

JOYCE WANJIKU GATHONI.....4TH

PLAINTIFF/APPLICANT

MAGDALENE NJERI.....5TH

PLAINTIFF/APPLICANT

GEOFREY MAINA.....6TH

PLAINTIFF/APPLICANT

BEATRICE ADEKA.....7TH

PLAINTIFF/APPLICANT

GLORIA KULUNDU.....8TH

PLAINTIFF/APPLICANT

GODFREY OLANGO OGADA.....9TH

PLAINTIFF/APPLICANT

LUCIA MUKAMI GITURU.....10TH

PLAINTIFF/APPLICANT

FRANK OTIENO.....11TH PLAINTIFF/APPLICANT

MBURU MURIMA.....12TH

PLAINTIFF/APPLICANT

ALI MOHAMMED.....13TH

PLAINTIFF/APPLICANT

JAMES MUENDO KAMENDE.....14TH

PLAINTIFF/APPLICANT

WILSON **ESABWA.....15TH**

PLAINTIFF/APPLICANT

JOHN **MARTIN** **MWANGI.....16TH**

PLAINTIFF/APPLICANT

WILLIS **OCHUK** **OTIENO.....17TH**

PLAINTIFF/APPLICANT

VERSUS

DOMINIC **GATHECHA** **KINYUA.....1ST**

DEFENDANT

GACHUI **KINYANJUI** **GATHECHA.....2ND**

DEFENDANT

NJAMBI **ANGELA** **GATHECHA.....3RD**

DEFENDANT

DEAN **KINYANJUI** **& 2 OTHERS.....4TH**

DEFENDANT

AND

**THE COUNTY GOVERNMENT OF NAIROBI.....INTERESTED
PARTY**

RULING

1. This application is brought in respect of **LR Ruaraka/ Nairobi 31/3** hereinafter referred to as the suit property. The 17 Plaintiffs in the application dated **19th May 2025** seek the following reliefs;

1) THAT Application be certified as extremely urgent and one deserving to be heard Ex-Parte in the first instance and that the Interim ORDERS be granted Ex-Parte.

2) THAT Conservatory Order of temporary injunction be, and is hereby given reopening the fenced access road, stopping, halting and discontinuing the Defendants, their servants/proponents, or any other person from undertaking any further development and construction activities on the access road on property known as LR. RUARAKA/NAIROBI 31/3 blocking entry to plots

No. 167, 168, 170, 171, 171A, 172, 174, 175, 176, 177, 178 ,179 ,180 ,181 ,182 ,183,184 Lucky Summer Nairobi pending the hearing and determination of the Application.

3) THAT a temporary injunction do issue restraining the Defendants/Respondents, their agents or any other person acting in their name or any other person whatsoever from occupying constructing structures or conducting any activity that is blocking in any way likely to block Plaintiffs/Applicants access road on LR. RUARAKA/ NAIROBI /31/3 blocking entry to plots No. 167, 168, 170, 171, 171A, 172, 174, 175, 176, 177, 178 ,179 ,180 ,181 ,182, 183,184 Lucky Summer Nairobi pending the hearing and determination of this suit.

4) THAT an order be issued directing the County Government of Nairobi Urban Planning

Department to assess the situation on the purported construction and file a report in court.

5) THAT an order be issued directing the Officer Commanding Station (OCS) Lucky Summer Police Station to enforce and ensure compliance with the orders issued herein.

6) THAT an Order be issued directing the 1st, 2nd, and 3rd Defendants to start processing title deeds for the plaintiffs as per the terms of the duly executed sale agreements.

7) An order of permanent injunction restraining the defendants either by themselves servants agents and/or employees from carrying on the proposed development on LR. RUARAKA/ NAIROBI 31 /3 blocking entry to plots No. 167, 168, 170, 171, 171A, 172, 174, 175, 176, 177, 178 ,179 ,180 ,181 ,182 , 183,184 Lucky Summer Nairobi on Deed Plan number 228119, volume N69, Folio 270/4 File 1130, GLA 21983 or any other related folio.

8) THAT this Honourable court do give any further orders and/or directions deemed just and fair.

9) THAT the costs of the application be provided for.

2. The application is supported by the affidavit of Michael Onyango and Gloria Kulundu on behalf of the other applicants in which they depose that they executed sale agreements with one Mr Dominic Gathecha Kinyanjui who died at Guru Nanak hospital on 19th October 2015 before transferring the suit properties into the names of the purchasers. They averred that on 17th May 2025 a group of individuals descended on the property and forcefully started construction on the access road to the suit property.

3. That a construction then begun without any visible signboard indicating the name of the contractor, whether there were any approvals or the names of the client. That the Defendants have refused to discuss the matter with the Plaintiffs. The Plaintiffs annexed photographs to illustrate the construction.

4. The application is opposed by the Defendants who state that they have nothing to do with the construction. That the Plaintiffs have not demonstrated that they have any cause of action against them as there is no proof of connection between them and the contractor.
5. The sole issue for determination is whether the court should grant the injunctive reliefs sought. The law on grant of 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 –

- (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 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.”

6. 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.”

7. This court is thus required to determine whether the applicant has satisfied the three conditions for grant of injunction. In **Nguruman Limited Vs Jan Bonde Nielsen & 2** the Court of Appeal had this to say on prima facie case ; “ ***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***”

8. A prima facie case as a case which shows an apparent right requiring protection. It is not disputed that there were sale agreements between the Applicants and the deceased vendor. The agreements confer equitable interests which should be protected. It has also been demonstrated that there is construction work that if left to continue will block access to the suit property.

9. As the administrators of the estate of the deceased, the Defendants are proper parties. Their denial of connection with the contractor is a triable issue but does not negate from the right of the Plaintiffs to enjoy peaceful occupation of the suit property. In any event joinder of other parties can be done later.
10. The construction will permanently alter the state of the land which cannot be compensated by way of damages. As such the lower risk lies in favour of preserving the substratum of the suit.
11. Consequently the application is allowed in the following terms;
- a. A temporary injunction is hereby issued restraining the Defendants, their agents or any other person acting in their name or any other person whatsoever from constructing structures, or conducting any activity that is blocking or in any way likely to block the Plaintiffs access road on LR Ruaraka /Nairobi/ 31/3 blocking entry to**

**Plot nu 167, 168,170,171, 171A,
172,174,175,176,177,178,179,180,181,182,183,1
84, Lucky Summer North pending the hearing and
determination of the suit.**

**b. . Parties are at liberty to apply for joinder of any
necessary party.**

c. Costs shall abide outcome of suit

**Dated, Signed and Delivered virtually at Kajiado
this 5th day of February, 2026.**

JUDY OMANGE

JUDGE.

IN THE PRESENCE OF:

Koech for Mbitio for Plaintiff.

N/A for Defendants.

Peter - Court Assistant.

ORIGINAL FILE COPY