

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ELCLC NO. E088 OF 2025

SHREEJI ENTERPRISE (KENYA) LIMITED.....PLAINTIFF

VERSUS

NARESH RESPONDENT	JAYANTILAL	RANPURA.....1ST
MICHAEL RESPONDENT	RUKUNGA	MOWESLY.....2ND
LAND RESPONDENT	REGISTRAR	MOMBASA.....3RD
ATTORNEY RESPONDENT		GENERAL.....4TH

RULING

A. PLAINTIFF'S APPLICATION

1. By a notice of motion dated 05.08.2025 brought under *Sections 3A and 63 (e) of the Civil Procedure Act and Order 40 Rules 1, 2, 3 & 4 of the Civil Procedure Rules and other enabling provisions of the law*, the plaintiff sought a temporary injunction against the defendants restraining them from interfering with its possession and occupation of Plot No. MN/VI/2442 (CR. 14500) and Plot No. MN/III/9192 (CR. 61811) (*the suit properties*) 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 Dhaval Vinodbhai Soni on 05.08.2025 who claimed to be one of the plaintiff's directors. It was contended that the plaintiff entered into a sale agreement with one Jimmy Ibrahim Askar on 23.10.2009 for the purchase of Plot No. MN/III/9192 (CR. 61811). It was further contended that sometime in 2010, the plaintiff entered into a sale agreement with Michael Rukunga Mowesly for the purchase of Plot No. MN/VI/2442 (CR. 14500). It was the plaintiff's case that the 1st defendant was nominated to oversee the two land transactions and register the same into the plaintiff's name. It was alleged that instead, the 1st defendant fraudulently transferred the suit properties to himself, and is currently in the process of disposing of them to a potential buyer.
3. The plaintiff argued that should the orders sought not be granted, it stands to suffer irreparable loss as the 1st defendant may transfer the suit properties to a third party. Additionally, the plaintiff maintained that its claim had a high chance of success since it was clear that the 1st defendant had fraudulently transferred the suit properties into his name whereas it was the

plaintiff who had paid for them. The court was urged to allow the application as prayed.

B. 1ST DEFENDANT'S RESPONSE

4. The defendant filed a replying affidavit sworn by Naresh Jayantilal Ranpura on 26.09.2025 in opposition to the application. It was the 1st defendant's case that Sheeji Enterprises (Kenya) Limited was a quasi-partnership between three families: Haresh v Soni (founder and chairman), Shobhnaben Nareshbhai Ranpura (represented by the 1st defendant) and Rekha Vinodbhai Soni (represented by Dhaval, the 1st plaintiff's director). It was the 1st defendant's case that he purchased Plot No. MN/VI/2442 (CR. 14500) on his own behalf on 08.04.2010 and was consequently registered as the proprietor on 21.04.2010. As far as Plot No. In MN/III/9192 was concerned, the 1st defendant claimed that it was sold and transferred to him by Salim Mohamed Abdalla in November 2013. It was the 1st defendant's case that the plaintiff paid the purchase price on account of drawings from his shares of the profits. It was contended that all the directors of the plaintiff were aware that the two suit properties were his and urged the court to hold that no prima facie case was disclosed to warrant the grant of any injunctive orders.

C. PLAINTIFF'S REJOINDER

5. Dhaval Vinodbhai Soni, the director of the plaintiff, responded to the 1st defendant's replying affidavit through a supplementary affidavit dated 13.10.2025. It was contended that the 1st defendant could not claim a third of the plaintiff's company since he held no single share as seen from the company's CR12 form. Further, it was contended that the 1st defendant purportedly delayed completion of the transaction for the two parcels of land since he had already fraudulently transferred them into his name. It was reiterated that the application was merited and that the plaintiff's case had a high chance of success.

D. 1ST DEFENDANT'S REJOINDER

6. Naresh Jayantilal Ranpura, the 1st defendant re-joined the plaintiff's supplementary affidavit with a further affidavit dated 26.11.2025 alongside a further supplementary affidavit dated 27.11.2025. The 1st defendant maintained that there is an ongoing dispute over the shareholding of the plaintiff's company in Mombasa HCCC NO. E609 of 2025, whereby Dhaval Vinodbhai Soni has been restrained from dealing with the plaintiff's shares. It was restated that the application is not merited and ought to be dismissed with costs.

E. DIRECTIONS ON SUBMISSIONS

7. When the application was listed for *inter-partes* hearing, it was directed that the same shall be canvassed through written

submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows the plaintiff filed its submissions dated 14.10.2025 while the 1st defendant filed his submissions on 11.11.2025 and supplementary submissions on 26.11.2025.

F. ISSUES FOR DETERMINATION

8. The court perused the application, the response thereto and the material on record as well as the submissions made by counsel. 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.*

G. ANALYSIS AND DETERMINATION

- a. Whether the plaintiffs have made out a case for the grant of the interim injunction sought*

9. The conditions for granting an interlocutory injunction were stated by the Court of Appeal for East Africa in the well-known case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358, where Spry, VP said at page 360-E:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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. EA Industries v Trufoods [1972] EA 420.”

10. The evidence before this court shows that the 1st defendant became the registered proprietor of Plot No. MN/III/9192 (CR. 61811) and Plot No. MN/VI/2442 (CR. 14500) on 24.01.2014 and 21.04.2010, respectively. However, the plaintiff's case is that the 1st defendant, as one of the plaintiff's directors, was tasked with purchasing Plot No. MN/III/9192 (CR. 61811) and Plot No. MN/VI/2442 (CR. 14500) on behalf of the plaintiff but fraudulently registered them in his name. The plaintiff has claimed to be in physical possession of the two parcels of land and had allegedly constructed a perimeter wall securing Plot No. MN/III/9192 (CR. 61811).

11. In **Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others [2003] KLR 125** it was held,

“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.”

12. In considering whether or not the plaintiff has a prima facie case, the court should be cautious not to make a final finding based on the contested material before it, in view of the fact that the main suit is still pending before it. In this suit, the plaintiff has made allegations of fraud on the part of the 1st defendant but the court cannot at this stage decide whether or not the evidence in support thereof is credible. The veracity of the allegations in the various affidavits by the parties herein cannot be determined at this stage, as they seek to present their case conclusively. The facts and averments made therein can only be conclusively determined when the case has been set down for hearing. The

court in *Salford Investment Limited v Nairobi City Water and Sewerage Co. Ltd* [2021] KEELC 815 (KLR) held,

“While reiterating the said principles, Ringera, J (as he then was) in Airland Tours & Travel Limited vs. National Industrial Credit Bank Nairobi (Milimani) HCCC No. 1234 of 2002 stated that in an interlocutory application the Court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law and that in an application for injunction although the Court cannot find conclusively who is to be believed or not, the Court is not excluded from expressing a prima facie view of the matter and the Court is entitled to consider what else the deponent to the supporting affidavit has stated on oath which is not true.”

13. The plaintiff has produced receipts and a contract for civil works to demonstrate that it constructed a perimeter wall around Plot No. MN/III/9192 (CR. 61811). The 1st defendant has not denied that the plaintiff is in physical occupation of the suit properties, but has contended in his replying affidavit dated 26.09.2025 that he has been locked out of the plaintiff’s premises. It would appear that the plaintiff has some rights and interests over the properties given its past and current dealings with the properties. The court

is thus of the view that the plaintiff has demonstrated a prima facie case with a probability of success.

14. On the issue of irreparable loss, the plaintiff has submitted that the 1st defendant is in the process of sourcing potential buyers for the parcels of land. The 1st defendant has countered this position by submitting that the parcels of land are capable of being quantified and that the plaintiff shall not suffer irreparable injury that cannot be adequately remedied by damages. However, the court is of the view that while the value of the parcels of land can be qualified through valuation, the loss that would be caused if the 1st defendant deals with the suit land may be detrimental to the interest of the plaintiff. There is no indication on record to show what means, if any, the 1st defendant would have to satisfy a possible order for compensation should the plaintiff ultimately succeed at the trial.

15. The underlying principle in the issuance of an interlocutory injunction is to preserve the status quo and preserve the property which is in dispute. In this case, the court is of the view that the suit properties should be preserved and the defendants should be prevented from dealing with the properties in any way that would make a possible judgment against him nugatory.

b. Who shall bear the costs of the application

16. 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. The court finds no good reason to depart from the general rule. As a result, costs shall be in the cause.

H. CONCLUSION AND DISPOSAL ORDER

17. The upshot of the foregoing is that the court finds merit in the plaintiff's application for interim orders. As a consequence, the court makes the following orders for disposal thereof:

a. That a temporary injunction is hereby granted restraining the defendants, their agents, servants, employees and/or representatives from alienating, developing and/or undertaking construction, selling, disposing off, transferring to third parties and/or in other way whatsoever generally from interfering with the plaintiff's

quiet and peaceful occupation of Land Parcel Plot No. MN/III/9192 (CR. 61811) and Plot No. MN/VI/2442 (CR. 14500) respectively pending the hearing and determination of this suit.

b. Costs shall be in the cause.

c. The suit shall be mentioned on 20.04.2026 for pretrial directions.

Ruling dated and signed at Mombasa and delivered virtually via Microsoft Teams on this 12th day of February 2026.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Sumba for the plaintiff

Mr. Khagram for the 1st defendant

N/A for the 2nd defendant

Ms. Saru for the 3rd and 4th defendants