



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCLC NO E308 OF 2025

NATASHA WAITHERA WANYOIKE1ST
PLAINTIFF/APPLICANT

VERSUS

SAMUEL KAIRU NJONDE1ST
DEFNDANT/RESPONDENT

YANAN COMPANY LIMITED2ND
DEFENDANT/RESPONDENT

MWANGI WAWERU3RD
DEFENDANT/RESPONDENT

RULING

Introduction

1. This matter is in relation to Apartment A-8-2 Silver Oak Apartments Othaya road erected on property title no Nairobi Block 13/348 herein referred to as the suit property.
2. Vide Notice of Motion application dated 20th June 2025, the Applicant seeks the following orders:
 - a. Spent
 - b. That the Honourable Court be pleased to grant a temporary injunction restraining the defendants by themselves, their servants, agents or otherwise from interfering with the

applicant's quiet possession of Nairobi/Block 13/348/23 pending hearing and determination of this application.

c. That the Honourable Court be pleased to grant a temporary injunction restraining the defendants by themselves, their servants, agents or otherwise from interfering with the applicant's quiet possession on Nairobi/Block 13/348/23 pending hearing and determination of this suit.

d. That costs be in the cause

3. The application was premised on grounds as in her supporting affidavit where she deponed that she and the 1st respondent had jointly entered into an agreement for sale dated 3rd November 2022 with one Esther Gitobu who was the beneficial owner having purchased the same from the 2nd respondent who was still the registered owner over the suit property. She deponed that she then took vacant possession and entered into a lease agreement with a third party in November of 2024.

4. She further averred that her tenant received an eviction notice stating that the 1st respondent had taken over ownership of the suit property. She deponed on following up she came to know that the 2nd respondent had transferred the suit property to the 1st respondent despite being in the knowledge that the apartment was co owned by the applicant and 1st respondent. The applicant is apprehensive that the 1st respondents intends to dispossess her of her property hence this application

Respondent's case

5. The 1st respondent swore an affidavit on the 10th July 2025 where he deponed that the applicant and himself had entered into sale agreement to purchase the property from one Esther Karimi Gitobu at a consideration of Ksh 18,500,000/= to be paid in two installments of Ksh 14,324,500/- to Esther Karimi as the beneficial owner and Ksh 4,175,500 to the 2nd respondent as the registered owner as sums owed by Esther Karimi on her purchase. He deponed that the applicant failed to honour her part in contributing and he solely paid the sums and the applicant never contributed to the same hence caused title to be transferred in his name.
6. He furthered deponed that he had allowed the applicant access thinking she will honour her part of the agreement but she did not and instead leased out the apartment without any legal rights to enter into the lease and has been obtaining rents which is a case of unjust enrichment.
7. The 2nd respondent put in a replying affidavit sworn by its director Wu Chao on the 11th July 2025. He deponed that indeed the applicant and 1st respondent jointly entered into a sale agreement to purchase the suit property from Esther Gitobu who had purchased from them the suit property. He stated that however the purchase price was paid solely by the 1st respondent and there has been no evidence of the applicant's contribution to the purchase price. That the applicant's occupation on the suit property was allowed by the 1st respondent after he had taken

possession of the apartment. That on the 1st respondent's request who had acquired the rights he transferred the property in the 1st respondent's name. He deponed that the application did not raise any lawful cause of action against him.

Applicants submissions

8. Counsel submitted that the conditions for the issuance of injunctive orders had been met. That there was existence of sale agreement, consideration had been paid and that she was in possession hence proof of prima facie case. On the issue of irreparable harm, she indicated that the suit property had been leased out to a tenant and failure to issue the injunctions would see the tenant evicted. She submitted that the balance of convenience tilted in granting the injunction.

The defendants/respondents have not entered appearance nor put any response hence the application is undefended.

Respondent's submissions

Counsel submitted that the conditions for issuance of injunctions had not been met being that she had not prima facie case relying on the case of **Mrao -vs.- First American Bank of Kenya Limited & 2 Others (2003) KLR 125,**

That the applicant had failed to show what right existed that had been infringed, having failed to provide evidence that she was indeed a purchaser to the suit property. He submitted that the sale agreement was not proof of her rights to the property relying

on the case of Kimani v Njeri & 3 others (Environment & Land Case 10 of 2022) [2023] KEELC 17771 (KLR) (8 June 2023).

Further he submitted that he had a certificate of title in his name which gave him absolute rights.

He submitted that she had also not shown what harm will be occasioned to her since the suit property was an apartment whose value could be measurable.

Analysis and Determination

Having looked at the application, the respective responses by the respondents, the further affidavit of the applicant and the submissions of all parties the sole issue for determination is; Whether the Applicant has satisfied the threshold required for issuance of temporary injunctive orders

The law on granting 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 –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

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.”

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.”*

The important consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules is the proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose the property, the court in such a situation is enjoined to grant a temporary injunction to restrain such acts.

In the instant case, the applicant contends to have purchased the suit property jointly with the 1st respondent via the agreement dated 3rd November 2023 and gained possession over

the same. The 1st and 2nd respondents indicate that the applicant never contributed to the purchase of the property and hence has no legal rights worth of being protected by this court hence the orders of injunction should not issue. The 1st respondent further stated that the production of the sale agreement alone could not be conclusive evidence that the applicant had acquired the suit property.

However, a perusal through Sale Agreement produced by the applicant has the requisite tenements of a good contract in the sense that it contains the names of the contracting parties; it clearly sets out the terms and conditions and the same is dully executed. As well, it contains the agreed consideration for the purchase. The respondents stated that the applicant did not contribute to the purchase of the suit property from the beneficial owner, whether this is true or not is not clear to this Court, but as far as evidence is concerned, she has attached a copy of the sale agreementt. At this stage it is safe to say that the applicant has established prima facie case owing to her proprietary interests over the suit property worth of this court's protection. In **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003]** eKLR a prima facie case was stated as "*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.”

Going by the above definition the applicant has established a prima facie case having shown she is connected to the suit property.

In the case of “**Mbuthia - Versus - Jimba credit Corporation Ltd 988 KLR 1**”, the court held that; “*In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.*”

In **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 Others [2003]** eKLR a prima facie case was stated as “*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.*”

Going by the above definition the applicant has to established a prima facie case having shown how it is connected to the suit property.

The second test is as to whether the applicant stands to suffer irreparable harm that cannot be compensated in damages. The applicant has indicated that she has leased the apartment to a tenant who might be evicted in case the injunction is not granted

and not only will she lose her rental income but her proprietary rights as well. I hold that she has demonstrated irreparable harm

In this regard I adopt the sentiments in **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others 2014) eKLR**“ *An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy*”

On the third limb, the balance of convenience tilts in favour of granting the injunctions than rather not as the applicant is not the one in possession of the suit property rather the applicant's tenant. The respondents will not be prejudiced in any way as the 1st respondent if anything has the certificate of title in his name so he has the upper hand on this issue.

Final disposition

I find that the applicant has met the threshold for the orders of temporary injunction to be issued

The upshot of the foregoing is that that I grant the following orders;

1. That an order of temporary injunction is hereby issued restraining the defendants/respondents by themselves, their servants, agents or otherwise from interfering with the applicant's quiet possession of Nairobi/Block 13/348/23 pending hearing and determination of this application.

2. That an order of temporary injunction is hereby issued restraining the defendants/respondents by themselves, their servants, agents or otherwise from interfering with the applicant's quiet possession on Nairobi/Block 13/348/23 pending hearing and determination of this suit.
3. That the rent proceeds from the suit property to be deposited in a joint interest accruing account in the name of the applicant and respondent's advocates until the hearing and determination of the suit.
4. Costs will be in the main cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **16TH** day of **FEBRUARY 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

N/A..... for the Plaintiff/Applicant

Mr. Kibet.....for the 1st and 2nd Defendants/Respondents

N/A.....for the 3rd Defendant/Respondent

Philomena W..... Court Assistant