

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMA -BAY

ENVIRONMENT AND LAND COURT CASE NO. E028 OF 2025

GEOFFREY OCHIENG OKELLO

.....PLAINTIFF/APPLICANT

VERSUS

BEATRICE OUMA ODHIAMBO.....1ST

DEFENDANT/RESPONDENT

EDWIN OUMA JUMA.....2ND

DEFENDANT/RESPONDENT

LAND REGISTRAR.....3RD DEFENDANT/

RESPONDENT

RULING

(On whether the applicant should be an order of temporary injunction)

The Application

1. The Applicant filed a Notice of Motion dated 30th September 2025. He brought it under Certificate of Urgency. The application is expressed to be brought under Sections 1A, 1B,

3A, and 63(e) of the Civil Procedure Act, Order 40 Rules 1, 2, 4 & 10, and Order 51 of the Civil Procedure Rules, and all enabling provisions of law

2. The applicant seeks ORDERS THAT:

1...Spent

2. ...Spent

3 Pending the hearing and determination of this suit, this Honourable Court be pleased to issue an injunction restraining the Defendants/Respondents, their servants, agents, employees, assigns, or any other person acting under their authority from evicting, alienating, transferring, charging, leasing, selling, or in any manner whatsoever interfering with the Plaintiff/Applicant's possession, occupation, and use of land parcel number GEM/KOYOLO/544.

4 This Honourable Court be pleased to order that the 1st Defendant/Respondent do deposit into Court the sum of Kenya Shillings One Million Fifty-One Thousand (Kshs. 1,051,000/=) being

the aggregate amount received and/or benefitted from the Plaintiff in respect of the suit transaction (comprising Kshs. 1,000,000/= paid towards the purchase price, Kshs. 41,000/= paid as land processing fees to the Surveyor, and Kshs. 10,000/= paid to the local Chief, pending the hearing and determination of the suit, so as to preserve the funds and secure the Plaintiff's interest.

5 In the alternative to prayer (2) above, this Honourable Court be pleased to order that the 2nd Defendant/Respondent do deposit the original title deed for GEM/KOYOLO/544 in Court or in joint custody of counsels on record pending the hearing and determination of the suit, so as to preserve the subject matter.

6 Costs of this application be borne by the Defendants/Respondents.

3. The application is supported by the grounds outlined on the face of the application as well as the additional depositions

contained in the affidavit sworn by Geoffrey Okello, the applicant herein.

4. The applicant's case is that he entered into a land sale agreement with the 1st respondent for the purchase of land parcel number GEM/KOYOLO/544 (henceforth, the suit property) at a consideration of Kenya Shillings One Million Six Hundred and Fifty Thousand (Kshs. 1,650,000/=). He stated that he paid a sum of Kenya Shillings One Million (Kshs. 1,000,000/=) towards the purchase which payment was received by the 1st respondent without any objection. Moreover, the applicant also maintained that he also paid Kshs. 10,000/= to the local Chief and Kshs. 41,000/= to the surveyor engaged for land processing fees, hence making the total amount of the transaction to be Kshs. 1,051,000/=. The balance of the purchase price amounting to Ksh. 650,000/= was to be paid at completion and upon transfer of the title of the land to the applicant.

5. On the basis of the above captured contractual agreement, the applicant averred that he took possession of the suit property and begun cultivating the same. However, the 1st defendant,

without his (applicant's) knowledge and consent sold and transferred the suit land to the 2nd defendant, and the latter is now the registered proprietor of the suit land as per the land records.

6. The applicant maintains that the 2nd defendant is now threatening to evict him out of the suit property. He added that the 2nd defendant is threatening to destroy his crops as well as the extensive developments he has put on the said suit property.

7. He averred that the actions of the Defendants are manifestly in bad faith and calculated to unjustly enrich the said defendants. He maintained that the defendant's conduct reeks of dishonesty and constitutes a breach of his legitimate expectation. He also averred that the defendant's conduct is deliberate scheme aimed at defrauding him of both his money and the developments he has made on the suit property, while selfishly advancing the unjust enrichment of the said defendants.

8. The applicant argued that unless the defendants are restrained by this court, they will alienate, transfer, or otherwise interfere

with his right hence rendering the suit nugatory thus causing him irreparable loss and damage which cannot be adequately compensated by way of damages.

9. Finally, the applicant stated that it is just, fair, and in the interests of justice that the orders he seeks be granted.

10. The applicant's supporting affidavit bears similar content as the application save to add that the applicant deponed that he entered into a land sale agreement with 1st respondent on 31st December 2023.

Response

11. The 1st Respondent filed her Replying Affidavit sworn on 18th October 2025. She deponed that she entered into a land sale transaction with the applicant over the suit property wherein the applicant paid a portion of the purchase price and promised to pay the balance of the purchase price upon arriving at the United States of America. She also deponed that she was to effect transfer of the suit property upon the applicant clearing the balance of the purchase price. She also added that the agreement had not yet been formalized before an advocate

- 12.** The 1st respondent further deponed that applicant later sent some money as opposed to the entire balance of the purchase price and then started demanding the title to the suit property, notwithstanding that he had not paid the said balance. She said that it was not possible to refund the money the applicant since the account that he had used to send her the money since his account number was not shown on the transaction.
- 13.** Further, the 1st applicant stated that she communicated to the applicant of her intention to get another purchaser when the applicant begun paying the balance of the purchase price in installments. She deponed that she entered into a land sale agreement with the 2nd respondent and deposited the Ksh. 1,000,000/= with the 2nd respondent's advocates for purposes of refunding the applicant the amount he had paid as deposit.
- 14.** The 1st respondent maintains that efforts to have the applicant collect his deposit have proved futile. She vehemently denied claims of unjust enrichment and maintained that the contract between herself and the applicant became frustrated by the actions of the applicant.

15. The 2nd respondent filed a replying affidavit dated 14th October 2025 and deponed that he purchased the suit property from the 1st respondent after conducting due diligence from and confirming that the suit property was registered in the name of the 1st respondent's deceased husband. He deponed that he proceeded to have a written agreement with the 1st respondent.

16. The 2nd respondent also deponed that the plaintiff's counsel refused to give out the applicant's account details for purposes of refunding the deposit paid. He also stated that the applicant's allegations of being harassed and intimidated the 2nd respondent are unfounded as the applicant lives in the united states of America while the 2nd respondent lives in Nairobi. he equally denied the allegations that the applicant took possession of the land and made investments thereon. He stated that the said land had been leased to one of the villagers who has been tilling it.

17. The 2nd respondent also raised an issue on jurisdiction by arguing that the suit land had been valued by a valuer and maintained that its value does not exceed Ksh. 3,000,000/=

hence the contention of this court's pecuniary jurisdiction. Despite indicating that he had annexed a valuation report to his affidavit as annexure marked EOJ- 9, the said report was not annexed to the affidavit.

Applicant's Further Affidavit

- 18.** The applicant filed a further affidavit dated 9th November 2025. He reiterated that he entered into an agreement with the 1st respondent over the purchase of the suit property and paid Ksh. 1,000,000/= . He added that he took possession of the land and begun cultivating until sometimes in 2025 when his advocate informed him that the applicant had sold the land to another party.
- 19.** The applicant denied ever being summoned by the area chief over the suit property and averred that this court should treat the chief's testimony with caution since he is the brother of the broker connected him to the applicant but later messed the transaction.
- 20.** Lastly, the applicant invited the court to visit the suit property to establish the party who has been tilling the said land.

Issues, Analysis and Determination

21. The main issue for determination herein is whether the applicant's application has met the threshold for grant of orders of injunction as prayed. The court will also determine the question of who should bear the costs of the applications.

22. Order 40 Rule 1 of the Civil Procedure Rules, 2010 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 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 the 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.

23. The test to be met by an applicant seeking injunctive orders was set out in **Giella v Cassman Brown [1973] EA 358**, where the court established that party seeking an injunction should fulfil these three conditions:

- a) The applicant must establish his case at the *prima facie* level;
- b) The applicant should demonstrate that he stands to suffer irreparable harm/injury, which cannot be remedied by way of damages; and
- c) If the court is in doubt concerning the above two stated conditions, the balance of convenience should tilt in favor of the applicant.

24. A *prima facie* case was defined in **Mrao Limited v the First American Bank of Kenya & 2 others [2003] KLR 125**, in the following terms:

“In civil cases it 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 as to call for an explanation or rebuttal from the latter”.

25. Irreparable harm on the other hand is harm that cannot be remedied by way of damages as was established in **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR)**.

26. Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR the court defined “balance of convenience in favor of the plaintiff” in the following terms:

The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if

an injunction is granted but the suit is ultimately dismissed...

27. Being guided by those decisions, this Court, has analyzed the application as well as the affidavits filed by the parties. the applicant averred that he entered into a land purchase agreement with 1st applicant and paid a deposit of a sum of Ksh. 1,000,000/=. He stated that the balance of the purchase price was to be paid upon completion and transfer of the title of the said land to himself. However, before he could clear the payment, he discovered that the applicant had sold the land to another party, the 2nd respondent herein who has since been registered as the proprietor of the said land. The applicant respondent averred that he is in occupation of the land where he had been cultivating besides putting up developments thereon. He claimed that the 2nd defendant has been threatening to evict him and destroy his crops as well as the developments he has put up on the suit property.

28. On whether the applicant has proved a prima facie case, this court notes that the applicant did not annex a copy of the agreement between himself and the 1st defendant over the

sale/purchase of the suit property. Section 3(3) of the law of contract Act mandates that all contracts over sale/purchase of land must be in writing.

29. The provision stipulates that,

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

30. It is common ground that the subject herein is land. Thus, unless the parcel of land is said to have been purchased through an auction or that it was acquired by the applicant due

to a constructive trust, the contract ought to be evidenced by it being writing. There are no pleadings herein to the effect that the two exceptions are what the Plaintiff herein relies on to base his claim. It therefore means that this court ought to have been presented with evidence that there was a contract over the suit land, which was in writing so that the court would begin to form an opinion that there was breach or otherwise of such an agreement. There is none annexed to the documents relied on in the claim herein.

31. More importantly, the court cannot determine who is in occupation of the suit property by merely looking at the photographs annexed to the applicant's supporting affidavit. Both parties allege that they are in occupation. However, the plaintiff who from his pleadings indicates that he had not completed paying the purchase price states that he discovered somewhere along the way that the land had been sold to another party. In light of the two contending averments, only the contents of the alleged contract or agreement could have shown this court whether indeed he was put into possession upon making the payments alleged to have been made. Absent

of that, the court can only take judicial notice that in contracts over properties such as land, owners of properties part with possession to buyers upon fulfilment of conditions they agree on. Where the person who alleges to have been put in possession fails to demonstrate to the court that he was put in possession as per the agreement, the averments that he is in possession remain hearsay which can only be proven by other corroborative evidence. Thus, this court can only infer that the owner herein is in possession as they allege.

32. In any event, the applicant deponed that the put-up developments on the suit land but none can be seen on the land. Sections 107, 108 and 109 of the law of Evidence Act places the burden of proof on the person who alleges that some set of facts exist and expects the court to rely on these facts to his advantage.

33. Section 107 of the Evidence Act provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”

34. Further, Section 109 of Act refers to the burden of proof of a particular fact and states that:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.”

35. It is not in dispute that the Plaintiff claimed that they entered into an agreement but none at all has been filed as one of the documents the plaintiff shall rely on. The standard of proving a prima facie case is higher than the civil standard of proof on a balance of probabilities and below the criminal law threshold of proof beyond reasonable doubt. The court finds that the applicant has not proved a prima facie case,

36. Having found so, the court will not determine the remaining two conditions have been met. In **Nguruman Limited** (supra) the court held that concerning the three conditions that must be proved in an application for grant of injunctive relief as set out in **Giella v Cassman Brown**:

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or

*permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See **Kenya Commercial Finance Co. Ltd V. Afraha Education Society** [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to*

injunction directly without crossing the other hurdles in between.

37. The upshot of the foregoing is that, prayers 3-6 of the applicant's application are hereby declined.

38. On the issue of costs, it is trite that costs follow event. The respondents will have the costs of the application.

39. As a parting shot, I have considered the value of the suit property in relation to the pecuniary jurisdiction of this court. As much as this court has original jurisdiction to determine the dispute herein, the suit land has brought about a dispute that places its value in the sum of about KShs 1, 7,00, 000/=, which was broken down to a payment of KShs. 1,051,000/= and a balance of Ksh. 650,000/= to be paid at completion and upon transfer of the title of the land to the applicant. This a value which is much lower than the pecuniary jurisdiction of this court. This court therefore exercises its discretion to transfer the suit to the Homabay Chief Magistrate's Court for hearing and determination.

40. Orders accordingly.

Ruling dated, signed and delivered virtually via the Teams Platform this 11th day of February 2026.

Hon. Dr. (IUR) Nyagaka- Judge

In the presence of,

1. Ms. Amonde holding brief for Mr. Victor Anyango Advocate for the Applicants
2. Ms. Olendo Advocate for the 1st and 2nd Respondents
3. No Appearance for the 3rd Defendant