

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC L CASE NO. E240 OF 2025**

**ENOS KIPROP CHIRCHIR .....**

**PLAINTIFF**

**VERSUS**

**FUEL LINK ENERGY ..... 1<sup>ST</sup>**

**DEFENDANT**

**ADIZONE LIMITED ..... 2<sup>ND</sup>**

**DEFENDANT**

**DIB KENYA LIMITED ..... 3<sup>RD</sup>**

**DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated 14<sup>th</sup> May 2025 where he seeks the following Orders:

**a) Spent.**

**b) Spent.**

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***Ruling***

- c) That this Honourable Court be pleased to issue orders restraining the Defendants/Respondents by themselves, their officers, servants, agents or anyone acting on their behalf from developing, constructing, excavating, transferring, alienating, advertising, selling, or in any other way interfering with the property known as Land Reference No. 109/12727(IR 24983) pending the hearing and determination of this suit.**
- d) That this Honourable court do award any other orders it may deem just, fit and expedient to award in the interest of justice.**
- e) That the costs of this application be provided for.**

2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He asserts that he is the registered owner Land Reference No. 109/12727 (IR 24983) hereinafter referred to as the 'suit land', as a lessee from the Government of Kenya. He claims that he has learnt that the

1<sup>st</sup> Defendant made a fictitious application for replacement of title to the suit land on allegations that it has lost its title deed and was subsequently issued with a provisional certificate of title, which it then charged with the 3<sup>rd</sup> Defendant to secure a sum of kshs.60 million. He contends that the charge is a ploy to move the suit land further away from him.

3. He explains that he became aware of the 1<sup>st</sup> Defendant's overtures when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants circulated a notice requesting for comments on the proposed construction of residential apartments on the suit land. Further, that their building plans have also been approved by the County Government and for this reason, he contends that there is imminent fear that unless the Court intervenes, the Defendants will unlawfully dispossess him, consequently occasioning him irreparable loss.

## **Responses**

4. The suit is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit of its director, one Mohammed Abdirashid Hassan. He claims that the 1<sup>st</sup> Defendant duly purchased the suit land from Nilam Dry Cleaners Limited on 18<sup>th</sup> November 2020 and that contrary to the Plaintiff's allegations, it has never obtained a provisional certificate of title. He confirms that its title to the suit land was charged to the 3<sup>rd</sup> Defendant and after being subjected to the rigorous process of due diligence, it was discharged. He annexed a current official search indicating the 2<sup>nd</sup> Defendant as the registered owner of the suit land and a copy of the land register indicating the history of the property.
5. He contends that the Plaintiff's conduct is a calculated scheme of fraud and extortion, aimed at discrediting lawful proprietors to enrich himself and alleges that he reported the said conduct to the police and he was issued with an OB, which he annexed.

6. The suit is also opposed by the 2<sup>nd</sup> Defendant vide the replying affidavit of its director, Ahmed Hersi. He claims that the 2<sup>nd</sup> Defendant is the registered proprietor of the suit land (now allegedly converted to **Nairobi /Block 24/1850**), vide a sale agreement dated 31<sup>st</sup> July 2023 and a subsequent transfer from the 1<sup>st</sup> Defendant. He insists that prior to purchase, it conducted due diligence.
7. He points out that the suit land was originally allocated to Nilam Dry Cleaners Limited in 1995, and that it misplaced its title twice in separate occasions and applied for replacement. Further, that in the two instances of loss of title, Nilam Dry Cleaners Limited was issued with provisional titles following publication of gazette notices inviting members of the public to lodge objections and since none was received, the Plaintiff is estopped from claiming the suit land.
8. He claims that in compliance with the law, the 2<sup>nd</sup> Defendant duly sought comments on its proposed development on the suit land and obtained building approvals of its plans from

the County Government of Nairobi in a process that was transparent.

9. On its part, the 3<sup>rd</sup> Defendant filed a replying affidavit sworn by its Senior Legal Officer, one Phoebe Ndiritu. It avers that the 3<sup>rd</sup> Defendant charged the suit land on or about 7<sup>th</sup> December 2021 to secure an Ijara Sale and Lease back (term facility) of kshs.60 million in favour of the 1<sup>st</sup> Defendant but the facility was never disbursed as the 1<sup>st</sup> Defendant obtained financing from alternative sources. Consequently, the 3<sup>rd</sup> Defendant released the 1<sup>st</sup> Defendant's title documents and facilitated the discharge of charge. In the foregoing, she contends that the 3<sup>rd</sup> Defendant should be struck off the suit having been improperly enjoined as it does not hold any interest on the title to the suit land.
10. In response to the replying affidavits, the Plaintiff filed a Supplementary affidavit. He avers that in accordance with the provisions of the Land Registration Act, for the replacement of a lost/destroyed title, notice must be

published in the Kenya Gazette as well as in at least two (2) local newspapers of nationwide circulation and since Nilam Dry Cleaners Limited only circulated its notice of loss of title in gazette notices, the same was insufficient thus he is not estopped from claiming the suit land.

11. He reiterates that the transfer from Nilam Dry Cleaners Limited to the 1<sup>st</sup> Defendant was illegal since he is the legal proprietor and he did not consent to it. He avers that while the 2<sup>nd</sup> Defendant claims that it conducted a search before purchasing the suit land, the same is not sufficient due diligence. Further, that conversion of the suit land to **Nairobi /Block 24/1850** was without his knowledge and consent and is part of the fraudulent scheme perpetuated by the 1<sup>st</sup> Defendant. He annexed EKC -1, a one paged certificate of title.

12. The application was canvassed by way of written submissions.

## **Submissions**

13. The Plaintiff submits that it has met the threshold for issuance of injunctions as set in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, having produced evidence of his proprietorship. Further, that if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who have openly declared their intention to commence construction of residential apartments on the suit land are allowed to do so, the character of the said land will be fundamentally and irrevocably altered thereby cause him irreparable loss that cannot be compensated as land being a unique asset, its loss cannot always be measured in monetary terms. To this end, he relied on the decisions of **Kenya Hotels Limited v Oriental Commercial Bank Limited [2019] eKLR** and **Paul Gitonga Wanjau v Gathuthis Tea Factor Company Ltd & 2 Others [2016] eKLR**.

14. He submits that the Defendant's actions threaten to create a web of third-party interests, further making it practically

impossible for him to recover his property in its original state. Further, that the lower risk of injustice lies in preserving the suit land in its current state as granting the injunction sought will maintain the status quo that existed before the Defendant's fraudulent actions and no prejudice will be occasioned to the Defendants that cannot be compensated.

15. On its part, the 1<sup>st</sup> Defendant submits that the Plaintiff has not met the threshold for grant of injunctions having failed to establish a prima facie case. It points out that the Plaintiff produced annexure EKC-1 which is a single page document that bears no signature, is not authenticated, and it's not in the statutory form prescribed under the Land Registration Act. It relies on the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125** to submit that where no recognizable interest is demonstrated, there is no right capable of infringement.

16. It submits that in contrast, the 2<sup>nd</sup> Defendant's documents which are official records emanating from the Chief Land Registrar indicate that it is the registered proprietor of the suit land and sections 25 and 26 of the Land Registration Act protects the title of a registered proprietor unless fraud attributable to the proprietor is proved.
17. Further, that the Plaintiff has not explained the damages he is likely to suffer or why damages would be inadequate if the orders sought are not granted while the 2<sup>nd</sup> Defendant has demonstrated that it has approved building plans ready to develop the suit land and would suffer loss if the orders sought are granted. It reiterated that even the balance of convenience favours the 2<sup>nd</sup> Defendant, which holds a registered proprietary interest.
18. The 2<sup>nd</sup> Defendant submits that the Plaintiff has failed to establish a prima facie case with any probability of success against the Defendants. It points out that the chain of ownership from the original allottee, Nilam Dry Cleaners

Limited, through subsequent transfers to it, is clearly set out while conversely, the Plaintiff relies on a single-page certificate of title purportedly issued under the Land Registration Act which is not supported by any corresponding historical documents under the repealed Registration of Titles Act (Cap. 281) or any allocation.

19. It also submits that the Plaintiff did not tender evidence of imminent loss, destruction, or interference with his alleged proprietary interest that cannot be remedied by damages given that the 2<sup>nd</sup> Defendant, is a solvent corporate entity with sufficient means to satisfy any decree that may arise should the Plaintiff ultimately succeed, thus the balance of convenience tilts in favour of maintaining its lawful title and possession.

20. The 3<sup>rd</sup> Defendant submits that its continued participation in these proceedings would serve no useful purpose, having already discharged its interest in the suit property. It urges the Court to exercise its discretion under Order 1 Rule 10(2)

of the Civil Procedure Rules and strike it out from the suit. To buttress this position, it relied on the case of **Civicon Limited v Kivuwatt Limited and 2 others [2015] eKLR**.

### **Analysis and Determination**

21. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Plaintiff has met the threshold for grant of interlocutory injunctions to restrain the Defendants from interfering with the suit land pending outcome of this suit.
  
22. In line with the principles on injunctions as set out in the case of **Giella vs Cassman Brown & Company Ltd (1973) EA 358** including the definition of a prima facie case as espoused in the decision of **Mrao Ltd vs First American Bank Ltd (2003) KLR 125**, I will proceed to decipher whether the Plaintiff has established a prima facie case as against the Defendants to warrant the orders of temporary injunction as sought.

23. The Plaintiff claims to be the registered owner of the suit land as a lessee from the Government of Kenya and contends that the 1<sup>st</sup> Defendant purportedly charged the property to the 3<sup>rd</sup> Defendant and subsequently transferred it to the 2<sup>nd</sup> Defendant. It seeks an injunction restraining the Defendants from developing the suit land on the basis that allowing physical developments thereon would be to sanction an irreversible injustice as he would suffer irreparable harm.
24. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants claim that the suit land was originally allocated to Nilam Dry Cleaners Limited, subsequently transferred to the 1<sup>st</sup> Defendant, and thereafter to the 2<sup>nd</sup> Defendant, which is the current registered proprietor. They contend that granting an injunction would freeze a legitimately held asset on the strength of the Plaintiff's single-page certificate of title without any documentary support evidencing a chain of title and that any potential loss can be adequately compensated.

25. On its part the 3<sup>rd</sup> Defendant seeks to be struck out as a party in the suit under Order 1 Rule 10(2) of the Civil Procedure Rules, on the basis that although a charge was registered in its favour to secure an intended facility of Kshs. 60 million, the facility was never disbursed to the 1<sup>st</sup> Defendant and the charge was subsequently discharged.
26. Looking at the documents presented by each party, I note the Plaintiff, 1<sup>st</sup> and 2<sup>nd</sup> Defendants all claim proprietary interest over the suit land. Further, the 2<sup>nd</sup> Defendant has even obtained approval for construction in the suit land. The Plaintiff has argued that once the 2<sup>nd</sup> Defendant is allowed to develop the suit land, he will suffer irreparable harm which cannot be compensated by way of damages since the said land will be altered. The 2<sup>nd</sup> Defendant insists that it purchased the suit land from the 1<sup>st</sup> Defendant that had purchased it from the original allottee Nilam Drycleaners Limited. Further, that in the year 2005, Nilam Drycleaners Limited had misplaced its title and obtained a replacement of

the same after applying for a provisional one which was even gazetted. To my mind I find that the veracity of this explanation can only be tested once viva voce evidence is adduced. It is my considered view that the issues being raised by the Plaintiff which touch on the root of the 2<sup>nd</sup> Defendant's title raise a prima facie case.

27. In the case of **Joel Mugambi Mukira & 2 others (for and on behalf of Kimathi tenants welfare group) v County Government of Nyeri [2019] eKLR**, the Court held that:

*“As was held by the Court of Appeal in the case of **Mugah -v- Kunga [1988] KLR 748**, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.”*

28. In the foregoing, while associating myself with the aforementioned decision, since the Plaintiff and the 2<sup>nd</sup> Defendant both claim to hold title to the suit land, at this juncture, I opine that the maintenance of status quo and inhibiting the title pending the outcome of this suit will suffice, so as to preserve the substratum of the suit before the real owner of the suit land is determined by this Court. I note the 3<sup>rd</sup> Defendant has sought to be struck off this suit but I opine that it needs to move Court in the proper manner as stipulated in the Civil Procedure Rules to be struck off this suit.

29. In the foregoing, I find the instant Notice of Motion application merited but will allow it in the following terms:

- a. An order of Obtaining Status Quo be and is hereby issued where no party should interfere with the suit land in terms of changing the registration status or topography pending the outcome of this suit.**

**b. Costs will be in the cause.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup>  
DAY OF MARCH, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Ikua for Plaintiff

Mahmoud holding brief for Jama for 1<sup>st</sup> Respondent

Dadu for 2<sup>nd</sup> Respondent

Kyalo for 3<sup>rd</sup> Respondent

Court Assistant: Joan