



Sheikh v Lugatsi & 3 others; Nairobi City County (Interested Party) (Environment and Land Case E074 of 2025) [2026] KEELC 1289 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1289 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E074 OF 2025**

**CA OCHIENG, J
MARCH 5, 2026**

BETWEEN

ABDULLAHI MOHAMED SHEIKH PLAINTIFF

AND

PATRICK LUGATSI 1ST DEFENDANT

ANTONY WAWERU 2ND DEFENDANT

PATRICK WAMBUI 3RD DEFENDANT

EVANS OGANA 4TH DEFENDANT

AND

NAIROBI CITY COUNTY INTERESTED PARTY

RULING

1. What is before the Court for determination are two applications dated 6th February 2025 and 28th March 2025 respectively.

Notice of Motion Application dated 26th February 2025

2. It is filed by the Plaintiff who seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. That pending the final determination of this suit, the Honourable Court be pleased to grant orders by way of an injunction so as to restrain the Defendants/ Respondents whether by their agents, servants and /or employees from interfering with the Plaintiff's /Applicant's



possession of land parcel numbers plot 17, 22, 23 and 24 Eastleigh Section III, Nairobi by way of trespass, illegal occupation, construction and/or in any other way which may interfere with the Plaintiff's/Applicant's possession and ownership of the said suit land.

- d. That any other order which the Honourable court may deem fit and just to grant in the circumstances.
 - e. The costs of this application be provided for.
3. The application is premised on grounds on its face and on the Plaintiff's affidavits. He avers that he is the registered proprietor of Plot Nos. 17, 22, 23 and 24 Eastleigh Section III Nairobi, hereinafter referred to as the 'suit plots'. Further, that during a routine inspection of the suit plots in February 2025, he discovered that the Defendants have erected a foundation thereon and despite demand to vacate, they have neglected to do so.
4. In opposition, the Defendants filed a replying affidavit sworn by the 1st Defendant. He asserts that the Defendants have no interest in the suit plots but are just employees of one John Ngaruro who is allegedly constructing temporary kiosks on the road reserve, with the approval of the Interested party. He points out that the Plaintiff has filed a similar suit over the subject properties, being MCELC No. 8067 OF 2018 against the said individual alongside Joseph Kiragu Waichai t/a Kiraton Investments, Jorally Industries and Medona Supermarket where he contests ownership of the suit plots and where status quo orders were issued.

Notice of Motion Application dated 28th March 2025

5. It is filed by the Plaintiff who seeks the following Orders:
- a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. That the Honourable court be pleased to issue mandatory orders to the Defendants/ Respondents to remove the container structures unlawfully erected on the Plaintiff's property being land parcel number plot numbers 17, 22, 23 and 24 Eastleigh Section III, Nairobi forthwith, pending the hearing and determination of the suit herein.
 - f. That the Officer Commanding Station (OCS) -California police station be directed to ensure compliance with the court orders issued herein.
 - g. That any other order which the Honourable court may deem fit and just to grant in the circumstances.
 - h. That the costs of this application be provided for.
6. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that there is continued trespass on the suit plots by the Defendants who have erected customized container structures thereon despite knowledge of the suit and that their actions are embodied by the Interested Party through issuance of permits despite knowledge that the said structures are also encroaching on part of a road reserve.



7. In opposition, the Defendants filed a replying affidavit sworn by the 1st Defendant. He denies the allegation of erecting any structures on the suit plots and reiterates that the Defendants are employees of one John Ngaruro Mugo and that any action they have undertaken on erecting containers on the road reserve were subject to his instructions.
8. The Interested party did not participate in both applications.
9. Both applications were canvassed by way of written submissions.

Submissions

10. The Plaintiff submits that he has satisfied the principles for grant of injunctions in *Giella v Cassman Brown* [1978] EA 358, having established ownership of the suit plots vide the annexed letter from the Interested party dated 4th April 2023 confirming that he had purchased the suit plots from its original allottees. Further, that he has also demonstrated that he has always been in possession of the suit plots until the Defendants' trespassed thereon. He submits that interference with land ownership rights amounts to irreparable harm. Further, that the balance of convenience titles in favour of preserving status quo ante as the Defendants who have no known legal claim on the suit plots stand to lose nothing while he has lawful ownership to lose.
11. To buttress his averments, the Plaintiff relied on several decisions including: *Joseph Siro Mosiema v HFCK & 3 Others* [2008] eKLR Kenya Commercial Finance Co. Ltd v *Afraha Education Society* [2001] VOL 1 EA 86 and *Said Ahmed v Mannasseh Benga & another* [2019] eKLR.
12. On their part, the Defendants submit that the Plaintiff failed to meet the threshold for grant of injunctions as set out in *Giella v Cassman Brown & Company Ltd* 1973 EA 358 and points out that the Defendants were just employees of one John Ngaruro Mugo who was issued with a permit by the Interested Party on 25th March 2025 to erect containerized kiosks on L.R. No. NBI/BLK 50/685, which is different from the suit plots thus the Plaintiff has not established a prima facie case since there is no evidence of interference with the said properties.
13. They reiterate that the Plaintiff had filed ELC E499 OF 2025 (formerly MCELC No. 8067 of 2018) seeking similar orders thus he is forum shopping and is abusing the Judicial process. Further, that the balance of convenience tilts in their favour since the Plaintiff has not provided evidence as of interference with the suit plots.
14. To buttress their averments, the Defendants relied on the following decisions: *Amir Suleiman vs Amboseli Resort Limited* (2004) eKLR, *John Musyoka Musembi (Suing as the legal representative of the estate of Nashon Musembi Musomba (Deceased) v Henry Muli Kisenga* [2015] eKLR and *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR.

Analysis and Determination

15. Upon consideration of the two instant Notice of Motion applications including the respective affidavits and rivalling submission, the sole issue for determination is whether the Plaintiff has established grounds for grant of an interlocutory injunction to restrain the Defendants from interfering with the suit plots.
16. In line with the principles on injunctions as stated in *Giella vs Cassman Brown & Company Ltd* (1973) EA 358 and the definition of a prima facie case as stated in *Mrao Ltd vs First American Bank Ltd* (2003) KLR 125, I will proceed to determine whether the Plaintiff has established a prima facie case as against the Defendants to warrant the orders of temporary injunction as sought.



17. The Plaintiff claims that the Defendants have trespassed and interfered with his ownership of Plots Nos. 17, 22, 23 and 24 Eastleigh Section III, Nairobi. Further, that they are erecting containerized structures on the suit plots and have declined to cease doing so. He has annexed a Letter from the Interested Party dated 4th April, 2023 claiming it confirmed he owns the suit plots.
18. The Defendants' assert that they are merely employees of one John Ngaruro Mugo and are acting under his instructions. They contend that pursuant to a permit allegedly issued by the Interested Party on 25th March 2025, they were to erect containerized kiosks on L.R No. NBI/BLK 50/685. Further, that the said plot is different from the suit plots. They deny interfering with the suit plots and insist that the Plaintiff has sued the said principal alongside others vide MCELC No. 8067 of 2018 Abdullahi Mohammed Sheikh vs Josphat Kiragu Waichai T/A Kiraton Investments, Jorally Industries and Medona Supermarket and John Ngaruro Mugo over the subject parcels herein.
19. Looking at the documents presented by each party, I note the Plaintiff has not provided any Letters of Allotment or documents of title to prove ownership. Further, the Plaintiff has not denied that there is a related suit being MCELC No. 8067 of 2018 Abdullahi Mohammed Sheikh vs Josphat Kiragu Waichai T/A Kiraton Investments, Jorally Industries and Medona Supermarket and John Ngaruro Mugo, whose fulcrum revolves around the ownership dispute over the suit plots. I have had a chance to peruse the further amended Plaint from the said Lower Court matter and note the fulcrum of the dispute therein is same as herein. The Plaintiff has argued that he will suffer irreparable harm which cannot be compensated by way of damages since the Defendants have constructed containers on the suit plots including on the road reserve. The 1st to 4th Defendants contends that they do not own the suit plots but are simply employees of the owner. Further, that the Interested Party granted permits for construction of the containers on the road reserve. To my mind I find that the veracity of these explanations provided by the parties herein can only be tested once viva voce evidence is adduced. Insofar as the issues the Plaintiff has raised confirm there is a prima facie case, however, since there is already a related suit revolving around dispute as to the ownership of the suit plots, noting that the Plaintiff has failed to join John Ngaruro Mugo in this suit, I opine that it is pertinent to preserve the substratum of the suit.
20. 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.
21. In the foregoing, while associating myself with the aforementioned decision, at this juncture, I opine that the maintenance of status quo and inhibiting any title to the suit plots pending the outcome of this suit will suffice, so as to preserve the substratum of the suit before the real owner of the said plots is determined by Court.
22. 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 plots 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 5TH DAY OF MARCH, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Otieno for Plaintiff

Ms Oketch for 1st, 2nd, 3rd and 4th Defendants

Ms Wanjala for Interested Party

Court Assistant: Joan

