



Hantoosh v Bafundi & 6 others (Environment and Land Case E111 of 2025) [2026] KEELC 1317 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E111 OF 2025**

**YM ANGIMA, J
MARCH 5, 2026**

BETWEEN

MOHAMED HANTOOSH PLAINTIFF

AND

MOHAMED BAFUNDI 1ST DEFENDANT

KITUI FLOUR MILLS LIMITED 2ND DEFENDANT

ALI RAMADHAN MWATSAHU 3RD DEFENDANT

NAMAN MOHAMED 4TH DEFENDANT

THE COUNTY GOVERNMENT OF MOMBASA 5TH DEFENDANT

THE LAND REGISTRAR, MOMBASA 6TH DEFENDANT

THE NATIONAL LAND COMMISSION 7TH DEFENDANT

RULING

1. By a notice of motion dated 24.10.2025 the plaintiff sought a temporary injunction against the defendants to restrain them from, inter alia, utilizing or dealing with Plot No. Mombasa/Block 1517/XVII in whatever manner 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 Mohamed Hantoosh on 24.10.2025. It was contended that one Said Swallem Gethan, the registered proprietor of Plot No. Mombasa/Block 1098 hived off a portion of his plot and donated it to the residents of Floringi, Kilifi to use as a parking area. That the said portion was registered as Plot No. Mombasa/Block 1517/XVII in the name of the Municipal Council of Mombasa as the custodian. It was contended that the suit property remained a parking space for the residents



of the area until 12.10.2025 when the 1st and 2nd defendants commenced construction in the parking yard. It was contended that the suit land was fraudulently transferred to the 3rd and 4th defendants.

3. The 1st defendant filed grounds of opposition dated 12.01.2026 in response to the application. It was argued that the plaintiff had failed to establish any legal, equitable or proprietary interest in Land Parcel No. Mombasa/Block 1517/XVII or Mombasa/Block 1098 which was capable of being enforced against the defendants. It was the 1st defendant's case that the suit property was privately owned and had never been designated as a public utility land. It was contended that the plaintiff's allegation of fraud was based on unverified evidence and failed to meet the strict standard of proof required by law. The court was urged to dismiss the application with costs to the 1st defendant.
4. The 2nd defendant responded to the application with a replying affidavit sworn by Faith Nafula on 26.01.2026. It was contended that the 2nd defendant had neither claimed ownership nor occupied any portion of Land Parcel No. Mombasa/Block 1517/XVII. That any allegations that it had fraudulently interfered with the registration of the suit property were unfounded. It was further contended that the allegations that the 2nd defendant moved into the suit property and clamped vehicles parked were false and misleading. It was the 2nd defendant's case that any of its branding materials on the suit property were erected upon request and that it did not assert ownership, possession or control over the premises. The 2nd defendant maintained that the plaintiff had failed to establish a prima facie case with a probability of success and had no basis to claim an injunctive relief. The court was urged to dismiss the application with costs to the 2nd defendant.
5. 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 that none of the parties had filed submissions at the time of preparing this ruling.
6. The court has perused the application and the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the plaintiff has made out a case for the grant of the interim injunction sought
 - b. Who shall bear the costs of the application
7. The court has considered the material and submissions on record on this issue. The principles for the grant of an injunction were set out in the case of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358 as follows:
 - a. First, the applicant must demonstrate a prima facie case with a probability of success at the trial.
 - b. Second, an injunction will not be normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.
 - c. Third, if the court is in doubt on the second principle it shall determine the matter on a balance of convenience.
8. For the court to issue an interlocutory injunction, the plaintiff must demonstrate a prima facie case with a probability of success against the defendants. In *Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 the Court of Appeal considered a 'prima facie' case as follows:

“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.”

9. In considering whether the plaintiff has a prima facie case, the court takes caution not to be seen to make a final finding based on the material before it in view of the fact that the main suit is still pending before it. The plaintiff claimed that Said Swallem Gethan, the registered proprietor of Plot No. Mombasa/Block 1098, had donated a portion of the land to the residents of Floringi, Kilifi, to use as a parking area. He further claimed that the said portion was registered as Plot No. Mombasa/Block 1517/XVII in the name of the Municipal Council of Mombasa. Despite the said allegations, there was no evidence attached to the application to support this claim. It is the finding of this court that the plaintiff has failed to demonstrate a prima facie case with a probability of success.

10. No credible evidence has been adduced by the plaintiff to demonstrate that he has any legal or equitable interest in the suit property that has crystallized into a right that would be protected by an order of temporary injunction pending the hearing and determination of the suit. As held by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), the plaintiffs must show;

“a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

Without establishing a prima facie case, the court shall not consider whether irreparable injury and balance of convenience have been demonstrated, and the application must fail.

11. 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. However, where the application is dismissed, costs should be awarded against the applicant. In the instance case, the costs shall be awarded to the 1st and 2nd defendants since they are the only defendants who defended the application.

12. The upshot of the foregoing is that the court finds no merit in the plaintiff's application for interim orders. As a consequence, the court makes the following orders for disposal thereof:

- a. The notice of motion dated 24.10.2025 is hereby dismissed.
- b. Costs of the application are awarded to the 1st and 2nd defendants.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 5TH DAY OF MARCH 2026.

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Y. M. ANGIMA
JUDGE

In the presence of:

Nechesah - Court assistant



Mr. Mummiri for the plaintiff

N/A for the 1st respondent

Ms. Waithera for the 2nd respondent

N/A for the 3rd respondent

N/A for the 4th respondent

Mr. Ng'ang'a for the 5th respondent

Mr. Kemei for the AG for the 6th respondent

N/A for the 7th respondent

