



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLC NO E376 OF 2025

**UNITED AFRICA CONSTRUCTION
LIMITED.....PLAINTIFF**

=VERSUS=

**TIRIKI ELECTRONICS
LIMITED.....DEFENDANT**

RULING

1. Before me are three applications for determination. The first application is a Notice of Motion dated 30th July 2025, brought under Order 51 Rule 3 of the Civil Procedure Rules, in which the Plaintiff/Applicant seeks the following orders:

a. Spent

b. Spent

c. Spent.

d. That a permanent injunction restraining the Defendant, whether by themselves, servants, employees, and/or agents, or

any other person/body, claiming under it, from interfering with, interrupting, or disrupting the Plaintiffs' activities carried therein or in any other manner whatsoever, depriving the Plaintiffs of its quiet right to enjoyment of the suit property L.R. No. NAIROBI BLOCK 28/585 (Formerly L.R. No. 209/11392 situate in Nairobi, measuring 0.0942 hectares, known as Tuskys Imara, Nairobi Central Business District, Nairobi City County, pending hearing and determination of this suit.

e. Spent.

f. That this Honourable Court be pleased to issue any other order or further directions it may deem fit in the circumstances of this case.

g. That the costs of the application be borne by the Defendant.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joseph Mwangi, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that by a sale agreement dated 16th October 2024, the Defendant agreed to sell the suit property to the Plaintiff for Kshs. 720, 000, 000/=. At the time, the property was charged to Equity Bank Kenya Limited to secure a loan facility of Kshs 661,000,000/=.

4. He further averred that the Applicant paid a deposit of Kshs 220,000,000/=: after which access and possession were granted on 28th November, 2024, and renovation work commenced. He asserted that the Plaintiff's financier disbursed the remaining balance of the purchase price to the Defendant, and the completion was scheduled for 16th January, 2025, when the Defendant was to provide duly executed transfer and discharge documents.

5. He stated that by a letter dated 14th February, 2025, the Defendant requested a ninety-day extension of the completion period and forwarded a draft deed of variation

along with a request for agreed undertakings. The deponent maintains that, despite full payment of the purchase price and the resolution of outstanding issues, the Defendant has refused to execute or release the completion documents, thereby frustrating the registration of the transfer.

6. In conclusion, the Applicant urged the Court to allow the application as prayed.

THE DEFENDANT'S CASE

7. The Defendant filed a replying affidavit sworn by Joseph Muchoki Mugo on 20th August 2025 in opposition to the application.
8. The deponent challenged the competency of the deponent of the supporting affidavit, arguing that he is a stranger to the Plaintiff. He asserted that the sale agreement is null and void due to economic duress and that its validity is the subject matter in HCCOMM E338 of 2025.
9. He stated that the Defendant did not freely negotiate the terms of the agreement and was compelled to sign it due to financial pressure. While confirming that the property was charged to Equity Bank Kenya Limited, the deponent argued

that the payment arrangements were made between the Plaintiff and the lender and were imposed on him without giving him meaningful control over his account.

10. He asserted that any access granted to the Plaintiff was limited and did not authorize possession or renovations. He also claimed that the Plaintiff unlawfully entered the property after the keys were handed over to the financier and that the Defendant intends to recover possession of the property.

11. He contended that the Plaintiff did not complete the transaction within the stipulated timeframe and lacks enforceable rights under the contested agreement. He noted that the property was gazetted for conversion prior to the transaction and that there are ongoing disputes regarding loan balances and interest between the Defendant and the financier. He described the transaction as irregular and indicative of an intent to dispossess the Defendant of the property.

12. The second application is a Notice of Motion dated 20th August 2025, brought under Order 1 Rule 3, Order 51 Rule 1,

Sections 1A, 1B, and 3A of the Civil Procedure Act and Section 103 of the Land Act, in which the Defendant seeks the following orders:

a. Spent.

b. Spent.

c. That the Plaintiff/Respondent be restrained, whether by itself, its servants, employees, agents, or otherwise howsoever, from interfering with, occupying, constructing on, renovating, or in any other manner interfering with the Defendant's/Applicant's quiet possession, use, and enjoyment of the property known as Title Number Nairobi/Block 28/585 (formerly Land Reference Number 209/11392), situate in Nairobi County pending the hearing and determination of this Suit.

d. That the Honourable Court be pleased to issue an order directing the eviction of

the Plaintiff/Respondent, whether by itself, its servants, agents, employees, or otherwise howsoever, from the property known as Title Number Nairobi/Block 28/585 (formerly Land Reference Number 209/11392), situate in Nairobi County, and to restore possession thereof to the Defendant/Applicant, pending the hearing and determination of the suit.

e. That the Officer Commanding Station at Nairobi Central Police Station be and is hereby empowered to enforce the orders of this Honourable Court and to ensure full compliance therewith.

f. That the costs of its application be borne in the suit.

13. The application is based on the grounds appearing on its face together with the supporting affidavit of Joseph Muchoki Mugo, sworn on even date.

THE DEFENDANT/APPLICANT'S CASE

14. The deponent stated that the Defendant is still the registered owner of Title Number Nairobi/Block 28/585 and has not transferred any ownership rights to the Plaintiff or any third party.
15. He further asserted that the suit property was charged to Equity Bank Kenya Limited for a credit facility and that the Defendant, with the bank's knowledge, carried out the demolition of the existing structure and obtained the necessary approvals for redevelopment. He maintained that no valid transfer had been made to the Plaintiff.
16. He asserted that the Plaintiff unlawfully entered and occupied the suit property without permission or legal authority, thereby rendering the Plaintiff a trespasser. He argued that this occupation had caused financial harm, including the continued accrual of interest under the secured facility.
17. He also challenged the validity of the sale agreement, arguing that it was null and void due to economic duress and that its validity was still pending in HCCOMM E338 of 2025. He maintained that any previous access granted did not

transfer possession or ownership rights to the Plaintiff, who, despite objections, continued to occupy the premises.

18. Based on the foregoing, the Defendant urged the Court to allow the application as prayed.

THE PLAINTIFF/RESPONDENT'S CASE

19. The Plaintiff opposed the application through a replying affidavit sworn by Joseph Mwangi, its Financial Controller, on 24th September 2025. He acknowledged that the Defendant remains the registered proprietor and confirmed the existence of the charge in favour of Equity Bank Kenya Limited. He maintained that the property was lawfully sold to the Plaintiff pursuant to the sale agreement dated 16th October 2024 for Kshs 720,000,000/= and that full payment had been made.
20. He argued that the sale agreement authorized the Plaintiff's entry into the suit property and denied being a trespasser. He referred to the ongoing proceedings in HCCOMM E338 of 2025 and maintained that eviction orders could not be properly issued under the circumstances.

21. He maintained that the Plaintiff should not be held liable for any loan obligations because it was not privy to its financial arrangements with the chargee. He attributed the failure to complete the transaction to the Defendant's refusal to execute and release the necessary transfer and discharge documents despite having received the purchase price.
22. He argued that the Defendant had not established a prima facie case and added that the sale agreement remains valid and binding, with the balance of convenience favouring the maintenance of the status quo pending completion.
23. In conclusion, the Plaintiff urged the Court to dismiss the application with costs.
24. The third application is a Notice of Motion dated 9th January 2026, brought under Order 1 Rule 3, Order 51 Rule 1, Sections 1A, 1B, and 3A, and Section 103 of the Land Act, in which the Defendant seeks the following orders:

a. Spent.

b. THAT the Honourable Court do issue an order for status quo pending the ruling scheduled for 4th February 2026.

c. THAT Honourable Court do admit and consider the additional evidence as contained under the supporting affidavit of Joseph Mugo and dated 9th January 2026, prior to the delivery of the ruling scheduled on 4th February 2026.

d. THAT the Officer Commanding Station at Nairobi Central Police Station be and is hereby empowered to enforce the orders of this Honourable Court and to ensure full compliance therewith.

e. THAT the costs of its application be borne in the suit.

THE DEFENDANT/APPLICANT'S CASE

25. The application is based on the grounds appearing on its face together with the supporting affidavit of Joseph Muchoki Mugo, sworn on even date.

THE APPLICANT'S CASE

26. The deponent averred that after the earlier interlocutory applications were filed and heard, with a ruling

date reserved, the Plaintiff undertook additional construction work and drilled a borehole on the suit property without statutory approvals. He asserted that these activities caused damage to a neighboring property known as the Ebony Building, prompting a demand letter addressed to the Defendant, the registered proprietor.

27. He argued that the Plaintiff had leased or sublet parts of the premises to third parties, who had made internal alterations without the necessary approvals, thereby exposing the Defendant to potential liability and complicating the subject matter of the suit.

28. He asserted that the Defendant's proprietorship rights under Article 40 of the Constitution were being violated, and that continued occupation and commercial exploitation of the property could render any eventual orders in its favor nugatory.

29. In conclusion, he urged the Court to allow the application as prayed.

THE PLAINTIFF/RESPONDENT'S CASE

30. The Plaintiff filed a replying Affidavit sworn by Joseph Mwangi on 2nd February 2026 in opposition to the application. The deponent reiterated that the property was lawfully sold to the Plaintiff pursuant to the sale agreement dated 16th October 2024 and that the full purchase price of Kshs 720,000,000 was paid, as evidenced by documentation, including a letter from the Defendant dated 11th April 2025 acknowledging receipt.
31. He maintained that possession was expressly granted upon payment of the deposit and denied that it was unlawful. He explained that the Plaintiff had invested substantial sums in renovation and improvement work in compliance with applicable approvals.
32. The deponent contended that no injunctive or stay orders have been issued in the separate suit cited by the Defendant, and that the pendency of that suit does not bar completion of the transaction.
33. He described the application as an afterthought intended to delay the proceedings. The Plaintiff denied any knowledge of damage to neighboring property and

disclaimed involvement in the alleged demand by the owners of the Ebony Building.

34. The three applications were canvassed by way of written submissions.

THE PLAINTIFF'S SUBMISSIONS

35. The Plaintiff filed its submissions dated 27th October 2025, 13th November 2025, and 12th February 2026 in support of its application and in opposition to the Defendant's applications dated 20th August 2025 and 9th January 2026.

36. On behalf of the Plaintiff, Counsel submitted that there exists a valid and enforceable sale agreement between the parties dated 16th October 2024 in respect of the suit property, duly executed in accordance with Section 3(3) of the Law of Contract Act.

37. Counsel submitted that the Defendant voluntarily executed the sale agreement and acknowledged receipt of the full purchase price of Kshs 720,000,000/=, which comprised a deposit of Kshs 220,000,000/= paid directly to

the Defendant and a balance of Kshs 500,000,000/= disbursed to the Defendant by Equity Bank Kenya Limited. Counsel further submitted that the Defendant has neither refunded the purchase price nor rescinded the contract.

38. Counsel argued that the allegations of economic duress are unsupported by evidence and insufficient to vitiate the sale agreement. Counsel relied on **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another** to contend that Courts do not rewrite contracts in the absence of proof of coercion, fraud, or undue influence.

39. It was submitted that the Defendant's refusal or failure to execute the transfer and discharge of charge constitutes a breach of contract under Clause 1.2 of the agreement, which unlawfully defeats the Applicant's entitlement to completion. Counsel relied on **Ann Wanjiku Gathumbi v Joseph Mwangi Mwai (2018) KEELC 3829 (KLR)** to argue that a vendor who has received the full purchase price cannot withhold completion documents to frustrate the purchaser's proprietary rights.

40. Counsel further argued that the Court has jurisdiction to compel execution of the completion documents or, in default, to authorize the Deputy Registrar to execute them on behalf of the Defendant. To support this argument, reliance was placed on **Gichuri v Kigunda (ELC No 821 of 2015) KEELC 6530 (KLR)**.
41. Counsel submitted that the Plaintiff's possession is lawful and is based on Clause 7 of the agreement. Counsel further submitted that possession was voluntarily granted following payment of the deposit and later confirmed upon full payment of the purchase price.
42. It was argued that once the full purchase price was paid and possession granted, the Defendant held the legal title in trust for the Plaintiff pending registration. Counsel relied on **Macharia Mwangi Maina & 87 Others v Davidson Mwangi Kagiri [2014] eKLR**, where the Court of Appeal held that constructive trust and proprietary estoppel arise where a vendor receives the full purchase price and allows possession.

43. Counsel maintained that the Defendant cannot retain both the purchase price and the legal title while denying the Plaintiff's equitable interest. Counsel contended that any attempt to reclaim possession would offend equitable principles. Based on the foregoing, Counsel argued that the Defendant failed to establish a prima facie case and argued that any alleged loss by the Defendant is financial and can be compensated with damages if proven. Conversely, Counsel contended that the Plaintiff continues to suffer prejudice as the Defendant unlawfully withholds the transfer of property that it has already sold and fully paid for.

44. Counsel submitted that the Defendant's application dated 9th January 2026 was filed after both interlocutory applications had been heard, with a ruling date reserved. Counsel argued that the Court should not reopen or disturb matters already concluded except in exceptional circumstances. Reliance was placed on **Raila Odinga v Independent Electoral & Boundaries Commission & 3 Others (2013) eKLR** on the principle of finality once the hearing is concluded.

45. Counsel further submitted that an order for status quo is, in substance, an interlocutory injunction and must satisfy the criteria outlined in **Giella v Cassman Brown & Co Ltd [1975] EA 358**, as reaffirmed in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**. Counsel argued that the Defendant had failed to demonstrate a prima facie case, show that it will suffer irreparable harm, or that the balance of convenience favours it.
46. Citing **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, Counsel argued that the Defendant's legal rights had not been violated. Counsel maintained that any alleged financial prejudice results from the Defendant's own refusal to complete the transaction and can be compensated by damages.
47. Regarding the alleged third-party liability and structural damage, Counsel submitted that these are disputed factual issues that require proof of causation and actual harm. Reference was made to the Occupiers Liability Act and to the case of **American Cyanamid Co v Ethicon Ltd [1975] AC 596**, cautioning against injunctive relief based on

speculative injury. Counsel argued that such disputes require viva voce evidence, as observed in **Zehrabanu Janmohammed (SC) & Another v Rai Plywood (K) Limited & Others (2022)**.

48. The Plaintiff relied on the principles outlined in **Ladd v Marshall [1954] 1 WLR 1489**, as adopted in **Mahamud v Mohamad & 3 Others (2018) KESC 62 (KLR)**, to oppose the prayer to admit additional evidence. Counsel argued that such evidence should not be used to fill evidentiary gaps and must be unavailable despite due diligence.

49. Counsel contended that the Defendant's application was intended to cure deficiencies in its earlier case after possession had already been granted. Counsel relied on **Jasbir Singh Rai & 3 Others v Tarlachan Singh Rai & 4 Others [2007] eKLR**, to argue that litigation must come to an end.

50. Counsel argued that eviction is a substantive remedy that must be pursued through a properly instituted suit or counterclaim supported by evidence. To support this point, reliance was placed on **Ndung'u & 2 Others v Mutisya**

(2023) KEELC 20573 (KLR), where the Court held that eviction orders cannot be granted through miscellaneous or interlocutory proceedings without proper pleadings and proof.

51. In the matter at hand, Counsel argued that an eviction order cannot be obtained through an interlocutory application in a suit primarily seeking specific performance.

52. In conclusion, Counsel urged the Court to allow the Plaintiff's application and to dismiss the Defendant's applications with costs.

THE DEFENDANT'S SUBMISSIONS

53. The Defendant filed its submissions dated 19th November 2025 in support of its application for interlocutory injunction and eviction, and further submissions dated 11th February 2026 in support of interim preservatory orders and the admission of additional evidence.

54. On behalf of the Defendant, Counsel submitted that the sale agreement dated 16th October 2024 is the subject of a bona fide dispute in HCCOMM E338 of 2025, where its

validity is challenged on grounds of economic duress. Counsel further submitted that the Plaintiff failed to discharge the burden of proving free and voluntary consent.

55. On that basis, Counsel invoked the doctrine of *lis pendens*, arguing that the pendency of the parallel proceedings requires the preservation of the suit property until the dispute over the contract is heard and determined.

56. Counsel submitted that the Defendant, as the registered proprietor and chargor to Equity Bank Kenya Limited, would suffer irreparable harm if interlocutory relief is denied. Counsel further submitted that the property remains charged, that rental income was intended to service the loan, and that interest continues to accrue.

57. Counsel argued that the Plaintiff is occupying the suit property without a registered transfer, a discharge of charge, or consent from either the registered proprietor, thereby exposing the Defendant to depreciation of the charged asset, frustration of the bank's security, and financial loss. To emphasize this point, reliance was placed on **Suraya Investment Limited & Another v Diamond**

Trust Bank Limited & Another (2025) eKLR and **Anne Karura Kibati v Samuel Bede Ogembo** to submit on the principles governing irreparable harm.

58. Counsel further submitted that damages would not be an adequate remedy given the continuing interference with its proprietary rights and the bank's security. Citing **Nguruman Limited v Jan Bonde Nielsen & Another [2014] eKLR** and **Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd [2016] eKLR**, Counsel argued that the balance of convenience favours the registered proprietor. Counsel also argued that the Plaintiff's lack of a registered title and its reliance on a contested agreement would not suffer comparable prejudice if required to vacate.
59. Counsel maintained that an interlocutory injunction and eviction orders are necessary to preserve the parties' legal and equitable rights pending the trial. To support this point, reliance was placed on **Onyango Otuko v Joseph Muinami Kinyanjui (2012)**, **Kibirech Arap Chemiron & Another v Cooperative Bank of Kenya Limited [2019] eKLR**, and **JM v SMK & Others (2022)**.

60. Counsel relied on **C.K.K Estate (1973) Limited v County Government of Kiambu & Another [2018] eKLR** to submit that the Plaintiff is a trespasser on the suit property. Counsel emphasized that no valid transfer of the suit property to the Plaintiff has occurred and described its continued occupation as unlawful.
61. In the further submissions dated 11th February 2026, Counsel argued that interim preservative orders are necessary to maintain the status quo pending the determination of the suit and delivery of the reserved ruling.
62. Counsel argued that during the pendency of the ruling, the Plaintiff undertook unauthorized construction work and drilled a borehole, resulting in water seepage and damage to the neighboring Ebony Building, thereby exposing the Defendant to third-party liability.
63. It was submitted that, unless restrained, continued alterations and introduction of third-party occupants risk rendering the suit nugatory and complicating the enforcement of any eventual orders in favour of the Defendant.

64. Regarding the admission of additional evidence, Counsel relied on **Mohammed Abdi Mohamud v Ahmed Abdullahi Mohamed & 3 Others [2018] eKLR**, to submit that the developments complained of occurred after earlier affidavits were filed and are relevant to the Court's determination. Counsel argued that the evidence is necessary to enable the Court to assess ongoing prejudice and prevent multiplicity of proceedings.
65. Counsel further contended that the Plaintiff has not demonstrated possession of the requisite statutory approvals for renovation or drilling works and that the documents exhibited consist merely of receipts without proof of compliance.
66. Counsel submitted that the balance of convenience favours the preservation of the property in its current state. Any loss to the Plaintiff would be remedied by damages, whereas the Defendant faces continuing financial exposure, deterioration of its charged asset, and third-party claims.
67. In conclusion, Counsel urged the Court to allow the application as prayed.

ANALYSIS AND DETERMINATION

70. Having considered the three applications, the respective affidavits, and the rival submissions, the following issues arise for determination:

- a. Whether the Defendant's application dated 9th January 2026 is merited.*
- b. Whether interlocutory injunctive relief should be granted, and if so, in whose favor and under what conditions.*
- c. Whether an order of eviction can issue at the interlocutory stage.*

71. Regarding the first issue, the Defendant seeks an order to maintain the status quo pending the delivery of this ruling and leave to introduce additional evidence. The status quo prayer was limited to the period preceding this determination and was overtaken by events upon delivery of this ruling. It therefore requires no further pronouncement.

72. Regarding the prayer for admission of additional evidence, the Court may admit additional evidence when it is

necessary for a just determination, when it is not intended to fill gaps after the event, and when its admission does not occasion prejudice that cannot be remedied by a response.

73. In **Kidero & 4 others v Waititu & 4 others (Petition 18 & 20 of 2014)** **(Consolidated)**

[2014] KESC 11 (KLR), the Supreme Court stated as follows:

“I am of the view that the decision whether to admit additional evidence in the course of a trial is a discretionary power that the Court enjoys. A Court must however exercise this discretion judiciously taking into account the particular facts at hand. This is the view that this Court expressed in Raila Odinga where we held that: “The other issue the Court must consider when exercising its discretion to allow a further affidavit is the nature, context and extent of the new material intended to be produced and relied upon. If it is small or limited so that the other party is able to respond to it, then the Court

ought to be considerate, taking into account all aspects of the matter. However, if the new material is so substantial involving not only a further affidavit but massive additional evidence, so as to make it difficult or impossible for the other party to respond effectively, the Court must act with abundant caution and care in the exercise of its discretion to grant leave for the filing of further affidavits and/or admission of additional evidence.”

74. In the present matter, the additional material consisted of a demand letter from the proprietors of the neighbouring Ebony Building and photographs depicting the alleged work and activities on the suit premises. The material is limited in scope and does not alter the nature of the interlocutory dispute. The Plaintiff has not shown that it would be prejudiced by the admissions. I will therefore admit the additional evidence for the purpose of the interlocutory determination.

75. Regarding the second issue, both parties sought competing injunctive orders pending the hearing and determination of the suit. The principles applicable in an application for an injunction were established in the celebrated case of **Giella vs Cassman Brown & Co Ltd, 1973 EA 358**, as follows.

a) First, the applicant must show a prima facie case with a probability of success.

b) Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.

c) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

76. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya and 2 others, (2003) KLR 125**

as:

"A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

77. The dispute between the parties arose from a sale transaction involving Title Number Nairobi/Block 28/585, formerly L.R. No. 209/11392, which was at all material times registered in the Defendant’s name and was charged to Equity Bank Kenya Limited to secure a loan of Kshs 661,000,000.

78. The Plaintiff contends that the Defendant executed a sale agreement dated 16th October 2024 for a consideration of Kshs 720,000,000, received the deposit, permitted access and possession from 28th November 2024, and subsequently received the balance of the purchase price through the Plaintiff’s financier. The Plaintiff exhibited funds transfer documents and correspondence, including a letter dated 11th April 2025 acknowledging receipt of the balance of the purchase price, and contended that the Defendant thereafter

refused to execute and release the completion documents, including the discharge of charge and the transfer instruments.

79. The Defendant, while acknowledging its registered ownership and the charge, contested the sale agreement on grounds of economic duress and claimed that its validity was in question in HCCOMM E338 of 2025. The Defendant also argued that any access granted did not amount to possession, that the Plaintiff's entry and activities were unlawful, and that the ongoing occupation subjected it to continuous financial loss and possible third-party liability.

80. Based on the evidence presented by the parties, it is clear that the Defendant remained the registered proprietor, and the charge had not been discharged. It is also evident that the Plaintiff demonstrated, prima facie, that a written sale agreement existed, that substantial sums were paid toward the purchase price, and that possession was granted. Whether the agreement was vitiated by duress, whether the completion was properly achieved, and whether the

Plaintiff's occupation and improvements were contractually authorized are issues that require full examination at trial.

81. Based on the evidence on record, the Plaintiff has demonstrated an arguable proprietary claim of an equitable nature arising from the asserted full payment and the grant of possession. Conversely, the Defendant has established an arguable proprietary claim based on registered title and an existing charge, along with a contention that the underlying contract was challenged.

82. Regarding whether the Plaintiff or Defendant will suffer irreparable harm that cannot be adequately compensated by damages, the Applicant must prove that it is a harm that cannot be quantified in monetary terms. In **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, the Court of Appeal stated as follows:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be remedied by damages in the absence of an injunction, is a

threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which its 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 an adequate remedy.”

83. The Plaintiff’s primary remedy in this case is specific performance. Should the Plaintiff be successful at trial, the failure to maintain possession and the integrity of the

property during the pendency of the proceedings could significantly jeopardize that remedy, especially if the property were substantially modified, leased, or otherwise managed in a way that complicates its finalization and enforcement.

84. The Defendant's complaint about harm is twofold. The first relates to financial harm from a ongoing loan facility secured on the property. The second involves exposure to third-party claims and regulatory noncompliance due to alleged unauthorized construction activities and borehole work. Pure financial loss is generally eligible for damages. However, when the issue involves land, and the alleged acts might change the property, create third-party interests, or increase exposure to regulatory or occupant liability, the harm goes beyond just monetary loss. It includes the risk of practical irreversibility or enforcement complications.

85. Based on the material before the Court, the more immediate risk is ongoing construction and renovation of the suit property. These activities, if not restrained, could alter

the property's character and complicate the Court's eventual orders.

86. Considering the balance of convenience in situations like these, where both parties present competing claims, and the Court cannot definitively determine validity and completion, the balance favors maintaining the status quo on the ground while preventing any further actions that could alter the property or escalate the dispute.

87. The Plaintiff currently possesses the property. Therefore, the appropriate order is essentially a status quo order, maintaining the Plaintiff's possession but prohibiting both parties, and those claiming under them, from undertaking any further construction or renovations that could jeopardize the outcome of the case.

88. Regarding the third issue, eviction is a substantive remedy usually granted after a trial.

89. In the matter at hand, the Plaintiff's possession was not clearly shown to be unlawful on the face of the record, based on the exhibited sale agreement, payment documentation, and admitted history of access. The dispute is centered on

contested issues of possession, validity and completion of the contract. These questions are not appropriate for a final decision at the interlocutory stage.

90. In the result, this Court issues the following orders:

a. The Defendant's prayer for an order of status quo pending delivery of this ruling is struck out for having been overtaken by events.

b. The Defendant's prayer for leave to admit and rely on additional evidence contained in the application dated 9th January 2026 is allowed. The said additional evidence was admitted for purposes of this interlocutory determination.

c. The Defendant's prayer for a prohibitory injunction pending hearing and determination of the suit is declined.

d. The Defendant's prayer for eviction of the Plaintiff pending hearing and determination of the suit is declined.

e. Status quo orders are hereby issued and directed as follows:

- i) The Defendant, whether by itself, its directors, officers, employees, servants or agents, is restrained from interfering with the Plaintiff's quiet possession of the suit property pending the hearing and determination of the suit.***
- ii) The Plaintiff, whether by itself, its directors, officers, employees, servants, agents, tenants, licensees, contractors or any person claiming under it, is restrained from undertaking or causing to be undertaken any further construction or renovations, pending the hearing and determination of the suit.***
- iii) The Plaintiff's possession of the suit property known as Title Number Nairobi/Block 28/585, formerly Land Reference Number 209/11392, situate in Nairobi County, is maintained, and***

the Plaintiff shall remain in possession pending the hearing and determination of the suit.

iv) The prayer for police assistance to enforce the eviction is declined.

v) Costs to abide by the outcome of the suit.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 4TH DAY OF MARCH, 2026.

.....
HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

Arasa for the Plaintiff

Wamae for the Defendant

Ahmed - Court Assistant