



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELCLC NO. E250 OF 2025

SOMCHE INVESTMENTS LIMITED.....

.....PLAINTIFF

VERSUS

GIKAMBURA PROPERTIES LIMITED.....1ST

DEFENDANT

BUSINESS REGISTRATION SERVICE.....2ND

DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD

DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 14th May 2025, brought under Order 40 Rules 1, 2, and 4 of the Civil Procedure Rules and Sections 1A, 1B, and 3A of the Civil

Procedure Act, in which the Applicant seeks the following orders:

a) Spent.

b) Spent.

c) Spent

d) Pending the hearing and determination of the main suit, this Honourable Court be pleased to issue a conservatory order preventing the Respondents, whether by themselves, their agents, servants, or anyone acting on their instructions, from selling, transferring, charging, leasing, entering upon or in any other manner dealing with all that parcel of land known as Title No. L.R. 91350/1.

e) Pending the hearing and determination of this suit, this Honourable Court be pleased to grant an order against the 2nd Respondent prohibiting any transfer, alteration, or any dealing whatsoever with the shareholding and or directorship of the Plaintiff Company.

f) Costs of this application be provided for.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Mary Gesare Onderi a director of the Plaintiff, company, sworn on even date.

THE APPLICANT'S CASE

- 3.** The deponent averred that the Plaintiff is a family-owned business that was registered as a limited liability company on 7th July, 2013.
- 4.** She further averred that none of the company's shareholders has surrendered or transferred their shares to any person, and that the shareholding remains as registered.
- 5.** The deponent averred that in 2006, the Plaintiff intended to enter into a joint venture with Mr. Devani, who insisted that the title for the suit property be deposited with his lawyer, Mr. Rustam Hira. After the business venture failed to take off, her family, who are the Plaintiff's shareholders, relocated to the United States of America.
- 6.** She further stated that upon her return to Kenya in March 2025, she attempted to file returns and, in the process, discovered that their shares had been fraudulently transferred. She also discovered that the 1st Respondent had fraudulently caused the transfer of the suit property into its name. She asserted that the Plaintiff neither executed nor authorized the transfer of shares or the change of directors.

7. She also stated that the Plaintiff did not sign any share transfer forms, sale agreement for the suit property, land transfer documents, nor did it receive any consideration for the suit property.
8. She explained that the 1st Defendant had previously attempted to fraudulently purchase shares of the Plaintiff Company from persons unknown to the Plaintiff Company and now purports to have purchased the Plaintiff Company itself.
9. She further stated that the Plaintiff has always been in possession of the suit property, pays for its security, and is registered with the residents' association.

THE 1ST RESPONDENT'S CASE

10. The 1st Respondent filed a replying affidavit, sworn by Maxwell Otieno Okoth on 26th June 2025, opposing the application. The deponent contends that the application and suit are malicious and have been brought without any cogent evidence.
11. He contended that the Applicant failed to meet the criteria for the grant of conservatory orders, as it had neither

demonstrated a prima facie case nor established a real risk of harm.

12. He further argued that the Plaintiff has neither pleaded nor proved that the 1st Defendant fraudulently obtained registration of the suit property. He maintained that the 1st Defendant is a bona fide purchaser for value.

13. He explained that in June 2021, Ronald Waneno, posing as an agent of the Plaintiff, approached him to purchase the Plaintiff's company for Kshs. 25 million. He stated that he paid Kshs 2.5 million to the seller's advocate, but the transaction was not completed due to lack of cooperation from the seller's advocate.

14. He maintained that the 1st Defendant did not execute the share purchase agreement with Jacob Mungeria Kithure, George Ouma Philip, and Amal Devani, who are well known to the Plaintiff, and are the proper parties to respond to the allegations regarding the alteration of directors at the Business Registration service.

15. He averred that in 2022, Ronald Waneno approached the 1st Defendant to purchase the subject property, and after due

diligence, a sale agreement was executed between the Plaintiff and the 1st Defendant. He further averred that upon completion of payment of the purchase price, the suit property was transferred to the 1st Defendant, who took possession and subsequently charged the property to a financial institution.

16. He argued that the 1st Defendant could not have transferred the suit property to itself as alleged. He insisted that the Plaintiff's directors had authority to deal with the suit property and that their non-joinder raises serious doubt on the credibility of the Plaintiff's claim.

17. He contended that the Plaintiff has not met the threshold for the grant of the orders sought. In conclusion, he urged the court to dismiss the application with costs.

THE RESPONSE

18. In a supplementary affidavit dated 24th October 2024, the deponent reiterated that the Plaintiff is the registered owner of the suit property and denied that the 1st Respondent is a bona fide purchaser for value, asserting that it participated in the theft of the original file and the fabrication of the CR 12.

19.She maintained that the Plaintiff did not transfer the suit property, change its directors, or pass any resolution authorizing dealings with the 1st Defendant. She further stated that the named individuals have no relationship with the Plaintiff and are not authorized to act on its behalf.

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

THE PLAINTIFF/APPLICANT'S SUBMISSIONS

21.The Plaintiff filed its submissions dated 24th October 2025.

22.On behalf of the Plaintiff, Counsel outlined the following issues for the Court's determination:

- a) *Whether the Applicant has established a prima facie case with a likelihood of success.*
- b) *Whether the Applicant is likely to suffer irreparable harm if the orders sought are not granted.*
- c) *Whether the balance of convenience tilts in favour of granting the orders sought.*
- d) *Whether the Applicant is entitled to interlocutory relief pending the hearing and determination of the suit.*

- 23.**On the first issue, Counsel submitted that the Applicant has demonstrated that it is the registered owner of the suit property. It was further submitted that the 1st Defendant failed to produce a transfer, a board resolution, or a sale agreement to establish ownership of the suit property. To support this point, Counsel relied on **Mrao Ltd v First American Bank of Kenya (2003) KLR 123 and Giella v Cassman Brown & Company Ltd (1973) EA 358.**
- 24.**On the second issue, Counsel relied on **Board of Trustees of African Independent Pentecostal Church of Africa v Peter Mungai & another (2021) eKLR** to submit that the Plaintiff risks losing its proprietary interest in the suit property if the orders sought are not granted.
- 25.**On the third issue, Counsel argued that the balance of convenience favours maintaining the status quo pending the hearing and determination of this suit.
- 26.**Counsel asserted that the Plaintiff has established a prima facie case and is therefore entitled to the orders sought.

27. Counsel further argued that the Plaintiff has met the criteria for the grant of an injunction as outlined in **Giella vs. Cassman Brown and Company Limited.**

THE 1ST DEFENDANTS' SUBMISSIONS.

28. The 1st Defendants filed its submissions dated 24th October 2025. On their behalf, Counsel identified the following issues for the Court's determination:

a) Whether the Plaintiff has established a prima facie case against the 1st Defendant.

b) Whether the 1st Defendant is properly joined in these proceedings and liable under the law.

c) Whether the reliefs sought are available to the Plaintiff in the circumstances of the case.

29. On the first issue, Counsel submitted that the Plaintiff has not established a prima facie case as it has not discharged its burden of proof. Counsel further submitted that the 1st Defendant is a stranger to the allegation as no privity of obligation has been demonstrated.

30.On the second issue, Counsel relied on the replying affidavit to submit that the 1st Defendant has been improperly joined in the suit as there is no cause of action against it.

31.In conclusion, Counsel submitted that the Applicant has failed to meet the threshold for the grant of the orders sought and urged the Court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

32.Having considered the application, the affidavits, and the rival submissions, the only issue that arises for determination is whether the Applicant has met the threshold for the grant of an injunction.

33.The principles applicable to an application for an injunction were laid down 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.

34. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.

35. A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others (2003) eKLR** as follows;

“A prima facie case in a civil application includes but is 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 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.”

36. It is not in dispute that both parties claim ownership of the suit property. The ownership of the suit property is seriously

contested. The Applicant contends that the shareholders did not sell or transfer their shares in the company.

37.The Applicant challenged the authenticity of the CR12, alleging that it was altered to add unknown directors and shareholders who purported to authorize the sale of the suit property. The Applicant has alleged fraud in the transfer of the suit property to the Defendant and asserted that she remains in possession of the suit property and pays its security expenses.

38.On the other hand, the 1st Respondent asserted that it was an innocent purchase for value and that the Applicant failed to prove fraud on its part.

39.These allegations raise serious triable issues regarding the legality of the transfer of the suit property, which can only be determined at trial.

40.In **Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd (2006)**, the court held that;

“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality All the court is entitled at this stage

is whether the applicant is entitled to an injunction sought on the usual criteria.”

- 41.**At the interlocutory stage, the court is not required to make final findings on the contested matters. The issues of ownership and fraud can only be determined in a full trial where the parties will have an opportunity to call evidence and have it challenged through cross-examination.
- 42.**Based on the material on record, I find that the Applicant has established a prima facie case with a probability of success.
- 43.**Regarding irreparable harm, the Applicant must demonstrate that the harm cannot be adequately compensated by an award of damages.
- 44.**The Applicant is apprehensive that it will lose its proprietary interest in the suit property if the orders sought are granted. In an application for an interlocutory injunction, the applicant must satisfy three conditions before an injunction is granted. The court is convinced that the Applicant’s fears are not baseless.

45.Based on the material placed before me, I find that the Applicant will suffer irreparable loss if it loses its interest in the suit property.

46.On the balance of convenience, the court must weigh the hardship the Applicant would suffer if the injunction is denied against the hardship the Respondent would suffer if the injunction is granted. Based on the evidence presented by the parties, I find that the balance of convenience favours preserving the suit property pending the hearing and determination of this suit.

47.In the end, I find that the application dated 14th May, 2025 is merited and is hereby allowed in the following terms:

a) An injunction is hereby issued restraining the Respondents, whether by themselves, their agents, servants, or anyone acting on their instructions, from selling, transferring, charging, leasing, or in any other manner dealing with all that parcel of land known as title No. 91350/1 pending the hearing and determination of this suit.

b) The Applicant is awarded costs of the application.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF JANUARY, 2026.

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Mwanga holding brief for Ms Malowa for the 1st Defendant
Mwalosi for the 3rd Defendant