



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCLC CASE NO. E038 OF 2024

SWIFT PRONTEES INVESTMENTS LIMITED.....
....APPLICANT

VERSUS

ALICE WAMBUI NG'ANG'A.....1ST
RESPONDENT

THE LAND REGISTRAR.....2ND
RESPONDENT

RULING

1. Through the Application dated 9/09/2025 the Applicant is seeking an urgent temporary injunction against the Respondent based on a breach of trust and a violation of a Court-recognized status quo.
2. That both parties informed the Court that they intended to seek an out-of-court settlement. As a sign of good faith, they agreed to maintain the property as it was maintaining the subsisting *status quo*, which led to the demolition of previous structures and the removal of heavy machinery.
3. The Applicant alleges that the 1st Respondent took advantage of this peaceful window to secretly commence the construction of new permanent and semi-permanent

structures such as vending stalls on the land without permission.

4. Therefore, the Applicant argues that this is a direct violation of their Constitutional right to property (Article 40) and an attempt to defeat justice by changing the nature of the land before the Court can make a final decision.

5. As a result, the Applicant has filed this application under Section 1A, 1B and Section 3A of the Civil Procedure Act, Sections 13 of the Environment and Land Court Act, Section 3 (1) of the Trespass Act Cap 294, Sections 24 (a) and 26(1) of the Land Registration Act and Order 40 Rules 1 and 4, Order 51 Rule 1 and requested the following orders:

1) Temporary injunction restraining the 1st Respondent and her agents/employees from entering, trespassing, or interfering with the suit property, parcel No. THIKA/MUNICIPALITY BLOCK 12/475 pending the determination of the suit.

2) Stopping any ongoing construction or occupation of the land.

3) Maintaining these orders until the full hearing and determination of the main lawsuit.

4) That the OCS Thika Police Station be and is hereby ordered to enforce orders from this Court.

5) Costs of the application be paid by the 1st Respondent.

6. The grounds of the application are on the face of the application. The Applicant fears that if the construction

continues, the subject matter of the suit will be destroyed, leading to irreparable loss and damage that cannot be easily remedied later.

7. The Application includes a Supporting Affidavit by Gerald Wamugu Maina, who confirms that he has visited the site and taken photographs which are annexed to the Affidavit and marked as '**GWM-1**' of the unauthorized structures.
8. The application is unopposed despite the Counsel of the 1st Defendant/Respondent informing the Court on 5/11/2025 that the response is ready but was pending signature.
9. Further the Court directed the parties to file their written submissions but at the time of writing this ruling the parties had not filed their submission. That notwithstanding, the Court has proceeded and written its ruling.
10. Before this Court for determination is the Chamber Summons dated 9/09/2025, brought by the Applicant under among others Order 40 Rules 1 and 2 of the Civil Procedure Rules. The Applicant seeks interlocutory injunctive orders to restrain the 1st Respondent from trespassing, constructing, or occupying the suit property known as **THIKA/MUNICIPALITY BLOCK 12/475** pending the hearing and determination of the main suit.
11. The Application is premised on the grounds that the parties had previously expressed an intention to settle the matter out of Court. However, during this olive branch period, a *status quo* was established, resulting in the

demolition of existing structures and the removal of machinery.

12. However, the Applicant contends that the 1st Respondent, in a show of bad faith, breached this *status quo* by commencing the construction of permanent and semi-permanent vending stalls on the land without permission. This is supported by the Affidavit of **Gerald Wamugu Maina** and the photographs annexed as “**GWM-1**”, which evidence the ongoing unauthorized construction.
13. Notably, this Application is unopposed. Although Counsel for the 1st Respondent informed the Court on 5/11/2025 that a response was ready and merely pending signature, no Replying Affidavit or Grounds of Opposition were ever filed.
14. While the Application is unopposed, this Court is guided by the principle that an Applicant must still satisfy the legal requirements for the grant of an injunction. Even if the Respondent does not oppose the motion, the Court must analyze it on its merits and ensure the Applicant has met the legal threshold, such as demonstrating a *prima facie* case with a probability of success, the Court must not grant orders as a matter of course simply because a matter is uncontested; the burden of proof remains with the Applicant.
15. In essence, an unopposed status does not relieve the Applicant of the burden to prove their case, and the Court will still critically evaluate the application to prevent potential injustices.

Issues for Determination

16. The primary issue is whether the Applicant has met the three-pronged test for a temporary injunction as established in the locus classicus case of **Giella v. Cassman Brown & Co. Ltd [1973] EA 358** on the three principles:
- i. A prima facie case with a probability of success.**
 - ii. Irreparable injury that cannot be compensated by damages.**
 - iii. The balance of convenience.**
17. In essence, the issues for determination are primarily governed by the principles set out in **Giella v. Cassman Brown & Co. Ltd (supra)** and the **Civil Procedure Act**.
18. Accordingly, on the principle of *prima facie* case, the Court would grant the relief sought if no evidence to the contrary is offered. The Applicant has demonstrated ownership interests and a subsisting dispute over the land. More importantly, the breach of an agreed *status quo* while negotiations were supposedly ongoing. This constitutes a serious issue to be tried. The 1st Respondent's failure to deny these allegations lends weight to the Applicant's claim. At this point, The Applicant does not need to prove the whole case now he only needs to show the claim is not frivolous or vexatious and in the face of 1st Respondent's alleged breach of the olive branch, in the settlement period and the failure to file a replying affidavit. From my opinion, I am persuaded that it is not a frivolous or vexatious application.

19. The second principle is the one of irreparable damage. The Applicant argues that the 1st Respondent's actions change the character of the suit property. Under Kenyan law, land is unique. The unauthorized construction of permanent structures risks the wasting of the property and may render a final judgment in favor of the Applicant nugatory. In **Nguruman Limited v. Jan Bonde Nielsen & 2 Others [2014] eKLR** it was emphasized that where the subject matter of the suit is at risk of being alienated or destroyed, an injunction is the appropriate remedy.
20. The Court of Appeal in the case of **Nguruman Limited (supra)** pronounced itself thus:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately 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 their 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 adequate remedy.”

21. I find that the continued construction constitutes a threat that cannot be easily cured by a monetary award.

22. Now, should the Court be in doubt, it must determine which party would suffer more if the order is granted or denied. In this instance, the balance of convenience tilts heavily in favor of the Applicant. The 1st Respondent has not offered any legal justification for the new construction. Conversely, maintaining the property's current state ensures that the subject matter remains intact until the Court determines the rightful owner.

23. The Applicant has also sought the assistance of the OCS Thika Police Station. Given the allegations of breach of peace and the 1st Respondent's conduct, the Court finds it necessary to involve law enforcement to ensure the sanctity of Court orders is maintained.

Final Orders

24. Consequently, I find the Application dated **09/09/2025** to be merited and proceed to make the following orders:

- i) A temporary injunction be and is hereby issued restraining the 1st Respondent, her agents, servants, or employees from entering, trespassing, constructing, or in any way interfering with the suit property known as THIKA/MUNICIPALITY BLOCK 12/475 pending the hearing and determination of the main suit.***
- ii) The 1st Respondent is ordered to immediately cease all ongoing construction and/or occupation of the suit land.***
- iii) The OCS Thika Police Station is hereby directed to provide the necessary enforcement and ensure strict compliance with these orders.***
- iv) Costs of this Application are awarded to the Applicant, to be paid by the 1st Respondent.***

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THIS 10TH DAY OF MARCH 2026.

**MOGENI J
JUDGE**

In the presence of:-

.....Plaintiff/Applicant

.....1st

Defendant/Respondent

.....2nd

Defendant/Respondent

MOGENI J

JUDGE

ORIGINAL