



**Mutwol v Koima Developers Limited (Environment and Land Case E040 of 2024) [2025] KEELC 5568 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5568 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE E040 OF 2024**

**EM WASHE, J  
JULY 28, 2025**

**BETWEEN**

**PHYLLIS JEROTICH MUTWOL ..... PLAINTIFF**

**AND**

**KOIMA DEVELOPERS LIMITED ..... DEFENDANT**

**RULING**

1. The Plaintiff [hereinafter referred to as “The Applicant”] moved the Court through a Notice of Motion application dated 26.06.2024 [hereinafter referred to as “the present application”] seeking for the following Orders against the Defendant [hereinafter referred to as “the Respondent”]; -
  - a. This Application be certified urgent, its service dispensed with and the same be heard on priority basis in the first instance. [spent]
  - b. The Defendant/Respondent and its agents/servants restrained from developing, selling, leasing out or in any way interfering with the Plaintiff’s/Applicant’s ownership of LR.No. Eldoret Municipality Block 14/29 pending inter-parte hearing and determination of this Application. [spent]
  - c. The Uasin Gishu Land Registrar to register an Inhibition on LR.No. Eldoret Municipality Block 14/29 to prevent any transaction over it pending interparty hearing and determination of the Application. [spent]
  - d. The Defendant/Respondent and his agents/servants are restrained from developing, selling, leasing out or in any way interfering with the Plaintiff’s/Applicant’s ownership of LR.No. Eldoret Municipality Block 14/29 pending the hearing and determination of this suit.



- e. The Uasin Gishu Land Registrar to register an Inhibition on LR.No.Eldoret Municipality Block14/29 to prevent any transactions over it pending hearing and determination of this suit. [spent]
  - f. Costs of the Application be awarded to the Plaintiff/Applicant.
2. The facts in support of the prayers above are contained in the body of the present Application, the Supporting Affidavit attached thereto and the Further Affidavit sworn on the 14.04.2025 and can be summarized as follows; -
- i. The Applicant is the registered owner of the property known as LR.No.Eldoret Municipality Block 12/29 [hereinafter referred to as “the suit property”].
  - ii. On or about 26.08.2014, the parties herein executed an Agreement For Sale for the sale and purchase of the suit property.
  - iii. The terms of the Agreement For Sale dated 26.08.2014 provided as follows; -
    - a. The Purchase Price was a sum of Kenya Shillings Twenty Million [KShs 20,000,000/-]
    - b. The Purchase Price was to be liquidated by payment of Kenya Shillings Ten Million [KShs 10,000,000/-] on execution of the Agreement For Sale and the balance of Kenya Shillings Ten Million [KShs 10,000,000/-] within 90 days from the date of execution.
    - c. The Applicant was to process and procure the Completion documents within 90 days from the date of the Agreement.
    - d. The possession of the suit property would be handed over to the Respondent on completion of the terms and conditions of sale provided in the Agreement for Sale.
  - iv. The Applicant admits that the Respondent remitted and/or paid the initial sum of Kenya Shillings Ten Million [KShs 10,000,000/-] directly to the Chargee of the Applicant’s property to facilitate the discharge of Charge on the suit property.
  - v. Consequently, the Charge over the suit property registered in the name of the Applicant was discharged and the Respondent collected the original Ownership documents and is still in possession of the same to date.
  - vi. In an effort to settle the remaining portion of Kenya Shillings Ten Million [KShs 10,000,000/-], the Respondent offered a portion of 100 acres within the property known as LR.No.10930,6802 and 7557/2.
  - vii. However, the Respondent has not prepared, executed and/or transferred the portion of land measuring 100 acres within the properties known as LR.No.10930,6802 and 7557/2 which ought to be the payment of the remaining Kenyan Shilling Ten Million [KShs 10,000,000/-] provided in the Agreement For Sale dated 26.08.2014.
  - viii. The Respondent upon failure to transfer the portion of 100 acres within the properties known as LR.No.10930,6802 and 7557/2 has also failed and/or neglected to settle the balance of Kenya Shillings Ten Million [KShs 10,000,000/-] based on the Agreement For Sale dated 26.08.2014 hence in breach of the terms therein.
  - ix. Despite the failure and/or breach by the Respondent to comply with the terms and conditions of sale pursuant to the Agreement For Sale dated 26.08.2014, the Respondent unlawfully and



without the consent of the Applicant took possession of the suit property and demolished all the developments that were on the ground.

- x. The Applicant therefore submitted that in view of the fact that the Respondent is unlawfully holding onto the original ownership document and is in actual possession, there is an imminent risk that the Respondent may likely interfere with the ownership of the suit property before the present suit is heard and determined.
  - xi. Further to that, the Applicant stated that the Respondent has already unlawfully and without his consent taken possession and its activities on the suit property prior to the determination of the present suit are in contravention of her ownership rights hence should be stopped through a temporary injunction herein.
3. The present Application was served on the Respondent who opposed the same by filing a Replying Affidavit sworn on the 27.09.2024.
  4. The grounds relied upon by the Respondent in opposition of the present Application are summarized as follows; -
    - i. To begin with, the Respondent termed the present Application to be an abuse of the Court process and similarly stated that the Applicant had approached the Court with unclean hands hence not deserving of the Orders sought therein.
    - ii. The Respondent accused the Applicant of abusing the Court process and approaching the Court with unclean hands and hence not deserving of the remedies of equity.
    - iii. The Respondent stated that it was the Applicant who approached it with an offer to Sale the suit property based on the fact that it was about to be auctioned by the Chargee therein.
    - iv. The Respondent admitted that he accepted the offer For Sale by the Applicant and an Agreement For Sale dated 26.08.2014 was duly executed by the parties herein.
    - v. Upon execution of the Agreement for Sale dated 26.08.2014, the Respondent paid the initial amount of Kenya Shillings Ten Million [KShs 10,000,000/-] directly to the Chargee of the suit property on behalf of the Applicant herein.
    - vi. Thereafter, the balance of Kenya Shillings Ten Million [Kshs10,000,000/-] was paid by the Respondent's Advocate on the 29.04.2016 through a payment of Kenya Shillings Seventeen Million [Kshs 17,000,000/-] transferred to the Applicant's bank account.
    - vii. According to the Respondent, the figure of Kenya Shillings Seventeen Million [Kshs 17,000,000/-] transferred to the Applicant's Account was to be applied in the following manner; -
      - a. A sum of Kenya Shillings Ten Million [Kshs 10,000,000/-] as payment of the outstanding balance in the Agreement For Sale dated 26.08.2014.
      - b. The other portion of Kenya Shillings Seven Million [Kshs 7,000,000/-] was a refund to a director of a company known as Elgeyo Border Investment Limited who had directed the funds to be paid to the Applicant's account.
    - viii. In essence, the Respondent denied the allegation that the properties known as LR.No. 10930,6802 and 7557/2 or any portion measuring 100 acres on the said properties was ever offered to the Applicant as a form of settling the balance of Kenya Shillings Ten Million [Kshs 10,000,000/-] provided for in the Agreement For Sale dated 26.08.2014.



- ix. The Respondent therefore insisted that the full purchase price provided in the Agreement For Sale dated 26.08.2014 had been settled and currently the Applicant has no ownership rights over the same.
  - x. Further to the foregoing, the Respondent admitted that it had taken possession of the suit property and has even erected a perimeter fence around the suit property.
  - xi. As regards the Completion documents provided in the Agreement For Sale dated 26.08.2014, the Respondent pleaded that the original ownership document of the suit property was surrendered to it by the Applicant together with other completion documents in line with the terms and conditions of the transaction.
  - xii. However, the Respondent confirmed that it had not transferred the suit property from the Applicant's name to its own name and due to this inaction, the Respondent was losing a sum of about Kenya Shillings Three Million [Kshs 3,000,000/-] annually from the year 2014.
  - xiii. In conclusion, the Respondent sought this Court to dismiss the present Application for lack of merit with costs.
5. The Applicant upon service of the Respondent's Replying Affidavit filed a Further Affidavit sworn on the 04.11.2024 which stated as follows; -
- i. The Applicant reiterated the facts of the supporting affidavit sworn in support of the present Application.
  - ii. The Applicant similarly denied the allegations that there was another suit known as Eldoret ELC Case No.. 250 of 2016 or the resultant Appeal known as Eldoret Court of Appeal Civil Appeal No. E011 of 2022.
  - iii. The Applicant stated that the party known as Tarzan Limited in the other proceedings known as Eldoret ELC Case No.. 250 of 2016 and the resultant Appeal known as Eldoret Court of Appeal Civil Appeal No. E011 of 2022 was never a party in the Agreement dated 26.08.2014.
  - iv. Similarly, the properties in dispute in the proceedings known as Eldoret ELC Case No.. 250 of 2016 and the resultant Appeal known Eldoret Court of Appeal No. E011 of 2022 are different and not the same.
  - v. As regards the sum of Kenya Shillings Seventeen Million [Kshs 17,000,000/-] paid to the Applicant's Account on 29.04.2016, the Applicant denied that Kenya Shillings Ten Million [Kshs 10,000,000/-] was to be applied towards the balance in the Agreement For Sale dated 26.08.2014.
  - vi. The Applicant clarified that the sum of Kenya Shillings Seventeen Million [Kshs 17,000,000/-] transferred to her account was for a Refund emanating from the transaction relating to the properties known as LR.No.10930,6803 and 7557/2 and did not have any relation with the Agreement For Sale dated 26.08.2014.
  - vii. As such, the Applicant urged this Court to preserve the suit property so that it is not wasted and/or alienated by the Respondent pending the hearing and determination of this suit.
6. The Court then directed that the present Application would be canvassed by way of written submissions in which the Applicant filed her written submission dated 04.11.2024 while the Respondent filed its submissions dated 02.12.2024.



7. The Court has carefully perused the present Application, the Replying Affidavit in opposition and the Further Affidavit together with both submissions and identified the following issues for determination;

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Issue No. 1 – Is The Applicant Entitled To A Prayer Of Temporary Injunction Or Not?

Issue No. 3 – Who Bears The Costs Of The Present Application?

8. The Court having identified the above issues for determination, the same will be discussed as outlined below.

**Issue No. 1 – Is The Applicant Entitled To A Pray Of Temporary Injunction Or Not?**

9. The first issue for determination by the Court is whether or not the Applicant has satisfied the conditions provided for in granting a Temporary Injunction.
10. To begin with, the Applicant invoked the provisions of Order 40 [1] and [2] of the Civil Procedure Rules, 2010 as read with Section 13 [7] [a] of the *Environment and Land Court Act*.
11. In considering an Application for Temporary Injunction, the Court is guided by the principles identified in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* CA No. 177 of 2012 [2014] eKLR, the Court of Appeal pronounced itself on the ingredients of an interlocutory injunction as follows; -

“in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, if any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

12. Based on the above authority, the Court identifies three main principles that an Applicant seeking an Order of Temporary Injunction must satisfy to enable the Court exercise its discretion allow the same.
13. The first principle is to demonstrate the existence of a Prima facie case for the Court.
14. The description of a Prima Facie case was discussed in the case of *Mr Rao v First American Bank Of Kenya Limited* [2003] eKLR wherein the Court stated as follows;-

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

15. In the present Application, the Applicant in the suit before the Court pleaded that there is a dispute about the Agreement For Sale dated 26.08.2014 between the parties herein.
16. The Applicant pleaded that she is the registered owner of the suit property which was the subject of the Agreement For Sale dated 26.08.2014.
17. The Applicant confirmed to the Court that the suit property was sold to the Respondent for a consideration of Kenya Shillings Twenty Million [Kshs 20,000,000/-].



18. However, the Respondent has so far paid only a sum of Kenya shillings Ten Million [Kshs 10,000,000/-] leaving a balance of Kenya Shillings Ten Million [Kshs 10,000,000/-] yet to be settled.
19. According to the Applicant, the outstanding balance of Kenya Shillings Ten Million [Kshs 10,000,000/-] was to be settled by the Respondent within 90 days from the date of execution of the Agreement For Sale dated 26.08.2014.
20. Consequently, the Applicant pleaded and has submitted that the Respondent is in breach of the Agreement For Sale dated 26.08.2014 and not entitled to the suit property herein.
21. Be as it may, the Application informed the Court that the Respondent proceeded to take possession of the suit property and the ownership documents without her authority and/or consent.
22. Consequently therefore, there is a high likelihood that the Respondent is going to meddle with the suit property both in terms of possession and/or occupation as well as registration of the ownership.
23. The Applicant therefore sought this Court to grant a Temporary Injunction to prohibit any further meddling of the suit property and/or alienation of the same through registration of unwarranted entries of the title.
24. The Respondent on the other hand admits that the suit property is registered in the name of the Applicant.
25. The Respondent further admits that the suit property was a subject of the Agreement For Sale dated 26.08.2014 with the Applicant.
26. The Respondent however insists that the full purchase price of Kenya shillings Twenty Million [Kshs 20,000,000/-] provided in the Agreement For Sale was fully paid through a transfer done on the 29.04.2016.
27. The Respondent confirmed to the Court that he is in actual possession of the Applicant's ownership document over the suit property as well as the possession and use of the suit property which he has so far already erected a perimeter wall.
28. To resolve this issue of whether there is a prima facie case established by the Applicant or not, the Court needs to check if there is any legal right belonging to the Applicant which has been infringed by the Respondent and warrants an explanation or rebuttal and a determination by the Court.
29. Based on the facts pleaded by the Applicant in the main suit and the present Application, there is no doubt that the suit property is registered in the name of the Applicant.
30. This being the case, then the Applicant has legal rights over the suit property based on the provisions of Section 24 and 25 of the *Land Registration Act*, No. 3 of 2012.
31. If indeed the Applicant has legal rights recognized under Section 24 and 25 of the *Land Registration Act*, No.3 of 2012, did these rights lawfully alienated to the Respondent?
32. According to the Applicant, the ownership rights of the suit property were never alienated to the Respondent due to none compliance of the terms and conditions provided in the Agreement For Sale dated 26.08.2014.
33. In other words, the Applicant pleaded and submitted that the Respondent has no legal rights of ownership relating to the suit property and cannot therefore either take possession and/or keep the ownership documents therein.



34. The Respondent on the other hand stated that the full purchase price under the Agreement For Sale dated 26.08.2014 was paid based on the Transfer done on the 29.04.2016.
35. Based on this transfer dated 29.04.2016, the Respondent acquired legal rights over the suit property including taking possession and keeping the ownership documents thereof.
36. Clearly, the two conflicting versions of facts regarding the Agreement For Sale dated 26.08.2014 establishes various issues for determination by this Court.
37. Some of these issues include whether or not the Respondent settled the full purchase price within the 90 days provided in the Agreement For Sale dated 26.08.2014, whether or not the amount of Kenya shillings Seventeen Million [Kshs 17,000,000/-] made on the 29.04.2016 related to the Agreement For Sale dated 26.08.2014 or not, whether or not the Applicant ever handed over possession of the suit property to the Respondent as provided for in the Agreement For Sale dated 26.08.2014 and lastly, whether or not the Applicant handed over any Completion Documents including the ownership document of the suit property to the Respondent or not.
38. All of these issues amongst others that will be raised at the main hearing directly deal with the legal rights and/or ownership rights of the Applicant over the suit property and the Respondent has a case to answer or give a rebuttal so that the Court can make determinations thereof.
39. As such, this Court is of the Considered view and finding that the Applicant has established an prima facie case against the Respondent as required under law.
40. The second principle for consideration in an Application for Temporary injunction under Order 40 [1] is whether there is need to preserve the property in dispute from being wasted, damaged, or alienated by any party to the suit.
41. In particular, the provision of Order 40 Rule 1 of the Civil Procedure Rules, 2010 states as follows; -
  - “ 1. Where in any suit it is proved by affidavit or otherwise-
    - a. That any property in dispute is a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
    - b. That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed in the execution of any decree that may be passed against the Defendant in the suit,
 

The Court may by order grant a temporary injunction or restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”
42. The above provision places the obligation on the Court to evaluate the facts placed before it and make a finding whether or not there is a need to preserve the suit property in a manner that the parties are able to execute their respective Decrees at the end of the litigation.
43. In the Application before the Court, it is not contested that the suit property is registered in the name of the Applicant.



44. Further to that, it is not contested that there is an Agreement For Sale dated 26.08.2014 between the parties herein.
45. It is a settled issue that the terms and conditions in the Agreement For Sale dated 26.08.2014 are in dispute in terms of whether or not the parties complied with the same.
46. It is also admitted by the Respondent that he is in occupation of the suit property which in fact it has erected a perimeter wall and demolished the developments which had been undertaken by the Applicant.
47. Similarly, the Respondent confirmed that it is in possession the original ownership document of the suit property even though it is registered in the name of the Applicant.
48. Clearly therefore, although the Applicant is still the registered owner of the suit property, the Respondent is actually in full occupation of the same and retains the ownership documents.
49. The Respondent's action of demolishing the Applicant's development on the suit property before the same was formally hand over points to a real development that the suit property is being wasted by the Respondent even before the present suit is heard and determined.
50. Further to that, the action of the Respondent to erect a perimeter wall around the suit property without a proper hand over by the Applicant demonstrates a dispossession of the same before this suit is heard and determined.
51. As such, if the Respondent is allowed to continue occupying the suit property without any restraint, there is a high likelihood that it will develop the same in a manner contrary to the rights of the Applicant.
52. In the event the Applicant does succeed in the main suit, the suit property will likely be in a state it was not at the time of entering the Agreement For Sale dated 26.08.2014 and therefore be a hindrance to the execution of the Decree and/or if the same can be executed, it will cause a lot of harm and injury to the Respondent itself.
53. In essence, this Court is of the considered view and finding that this is a deserving case where a temporary injunction requires to be issued to preserve the suit property in dispute as it is pending the hearing and determination of the main suit.
54. The third and last element in an application for Temporary Injunction is where the Court is in doubt, then the same should be decided on a balance of probability.
55. However, in view of the findings in the two principles above, this Court is clear in its mind that the Applicant is entitled to an Order of Temporary Injunction pending the hearing and determination of the main suit herein.

### **Issue No. 3 – Who Bears The Costs of The Present Application?**

56. The last issue for determination is who should bear the costs of the present Application.
57. Costs usually follow the event and in the present Application, the Applicant is successful and the Respondent should bear the costs.

### **Conclusion**

58. In view of the foregoing, I find that the Notice of Motion Application dated 26.06.2024 is merited and this court makes the following Orders: -



- A. An Order of Temporary Be And Is Hereby Issued Restraining The Defendant/respondent From Demolishing, Erecting Any New Structures, Developing, Selling, Leasing Out Or In Any Way Interfering With And/or In Whatsoever Manner With The Suit Property Known As Lr. No. Eldoret Municipality/ Block 14/ 29 Pending The Hearing And Determination of This Suit.
- B. The Defendant/respondent Is Further Directed To Deposit And/or Hand Over The Ownership Documents Relating To The Property Known As Lr.No. Eldoret Municipality Block 14/29 In The Name of The Plaintiff/applicant To The Deputy Registrar of The Environment & Land Court, Eldoret Within 7 Days From The Date of This Ruling For Safe Keeping Pending The Hearing And Determination of This Suit.
- C. Costs of The Application To Be Borne By The Defendant/respondent.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 28<sup>TH</sup> DAY OF JULY 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence of:

Court Assistant: Brian

Applicant: Ms. Korir Holding Brief Mr. Kenei

Respondent: Ms. Martin Holding Brief Mr. Arusei For The Defendant

