



REPUBLIC OF KENYA



**Shariff & another v Anand Maisonettes Ltd & 4 others (Environment and Land Case E488 of 2025) [2026] KEELC 1623 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1623 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E488 OF 2025  
CA OCHIENG, J  
MARCH 24, 2026**

**BETWEEN**

**NAZMUDIN ABDULALI SHARIFF ..... 1<sup>ST</sup> PLAINTIFF**

**ALTAF ABDULALI SHARIFF ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ANAND MAISONETTES LTD ..... 1<sup>ST</sup> DEFENDANT**

**DIRECTOR OF LAND ADMINISTRATION ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 3<sup>RD</sup> DEFENDANT**

**NAIROBI COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before the Court for determination are two Notice of Motion applications dated the 24<sup>th</sup> September, 2025 filed by the Plaintiffs.
2. In Notice of Motion dated 24<sup>th</sup> September 2025, they sought the following Orders:
  - a. Spent.
  - b. Spent.
  - c. Pending the hearing and determination of the Suit herein, an order of injunction do issue restraining the Defendants, jointly and severally, from proceeding with or effecting any subdivision, or change of user in respect of the Suit Property, save that the duly authorised lease extension application may be lawfully processed.



- d. Pending the hearing and determination of the Suit herein, an order do issue restricting any dealings, transfer or disposition of the Suit Property save for the processing of the lawful extension of lease application.
  - e. The costs of and incidental to this Application be provided for.
3. The application is premised on grounds on its face and on the 1<sup>st</sup> Plaintiff's supporting affidavit. He avers that he is a long-term leaseholder of property (residential unit) erected on Nairobi/Block 35/324 christened 'Anand Masionettes estate', which comprises ten (10) Masionettes, three of which operate as a clinic, while seven serve as residential units.
  4. He claims that the 1<sup>st</sup> Defendant, which is the management company of the estate has operated under the direction of two directors who are brothers and who are in the habit of making unilateral decisions affecting home owners in the estate without consultation. Further, that in line with their collective interests, all homeowners in the estate duly authorized the 1<sup>st</sup> Defendant to apply solely for extension of the estate's lease which is set to expire in March 2026 but without their authority and approval, the 1<sup>st</sup> Defendant arbitrarily proceeded to apply for two additional approvals: a sub-division of the Suit Property and a change of user from residential to mixed-use.
  5. He avers that upon discovering the unauthorized dealings, the homeowners requested that the sub-division and change of user applications be cancelled, but their requests were disregarded as the 1<sup>st</sup> Defendant refused to cancel or backtrack them. Further, that final approvals have now been granted for all three applications thus there is imminent and grave risk that they will be effected.
  6. He contends that the intended change of user from residential to mixed-use will fundamentally and irreversibly alter the nature and character of the estate including devaluation of the residential properties, thereby causing irreparable harm to the Plaintiffs' investments and compromising the existing residential environment.

### **Response**

7. The application is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit of its director, Prof. Amin Mohamed A.H Mohamed. He avers that the 1<sup>st</sup> Defendant is the Lessor of the suit property and that the reversionary interest vests in it thus it does not hold the property for the benefit of any person hence it did not require the directions of any person to initiate the process of applying for an extension of lease and conversion of title.
8. He contends that the subdivision of the suit property into two (2) plots and the change of user to mixed urban development specifically for houses 1, 2 and 3 wherein the clinic is operated was undertaken in compliance with the Physical Planning Rules and that the 1<sup>st</sup> Defendant acted in good faith. Further, that the suit property is situated in Parklands which is replete with large hospitals, medical clinics, laboratories and residential estates.
9. In the Notice of Motion dated 29<sup>th</sup> September 2025, they seek the following Orders:
  - a. Spent.
  - b. Spent.
  - c. A permanent order of injunction do issue restraining the 1<sup>st</sup> Defendant, their directors, agents, contractors, or servants, from demolishing, altering, constructing, or in any way interfering with the wall to the main entrance, the gate or access to Anand Maisonettes Estate, save with:



- i. The prior written consent of all homeowners and shareholders of the 1<sup>st</sup> Defendant;
  - ii. Production and disclosure to all homeowners of the relevant approvals, plans, drawings, of the demolishing works; and
  - iii. Correspondence with authorities authorizing such works.
- d. The Officer Commanding Station (OCS) Parklands Police Station do ensure compliance with and enforcement of the orders of this Honourable Court.
  - e. The costs of and incidental to this application be provided for.
10. The application is premised on grounds on its face and on the 2<sup>nd</sup> Plaintiff's supporting affidavit. He avers that Kenya Urban Roads Authority (KURA) commenced drainage works along the public road and pedestrian walk path adjoining the subject estate without notice to the homeowners. Further, that on the day KURA commenced the said works, the 1<sup>st</sup> Defendant circulated a WhatsApp message to homeowners on 27<sup>th</sup> day of September 2025 at 5 a.m, notifying them of the drainage works.
11. He claims that within four (4) hours of the said notice, the 1<sup>st</sup> Defendant demolished the wall next to the Estate's main entrance gate. He annexed photographs depicting the said KURA works and of the estate's demolished gate and avers that homeowners reported the demolition at Parklands Police Station in order to secure their ownership rights, seek police intervention, and prevent further unlawful interference with the Estate entrance.
12. He contends that the abrupt demolition has created an immediate and grave security risk for all homeowners and occupants as it exposes their families and their property to intrusion, theft, and other security threats and unless restrained, the 1<sup>st</sup> Defendant will continue with the demolition including construction works, thereby permanently altering the Estate's entrance, undermining security and access, as well as occasioning irreparable harm to the Plaintiffs.

### **Response**

13. The application is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit and the further affidavit of Prof. Amin Mohamed AH Mohamed. He admits that there is construction being undertaken around the suit property by the 4<sup>th</sup> Defendant in collaboration with KURA with the sole intention of expanding road network and accessibility, which the 1<sup>st</sup> Defendant has no control over.
14. He claims that the 1<sup>st</sup> Defendant was not involved in the planning and the subsequent upgrading of the Parklands road and avers that the estate's wall was destroyed during the construction of the said road. Further, that since the property has housing units and a clinic which has been in operation for more than thirty (30) years, it is a security hazard to leave the premises without fixing the wall area, thus the 1<sup>st</sup> Defendant sought necessary permission, which had been granted by the 4<sup>th</sup> Defendant to have a barrier fixed but a temporary chipboard barrier has been installed by KURA. Further, that KURA has promised to reconstruct the wall upon completion of their work and verbally informed the 1<sup>st</sup> Defendant that it intends to construct pavements and install tarmac on what was the estate's flower bed adjacent to the perimeter wall, then reconstruct the wall after completing their work.
15. In response to the 1<sup>st</sup> Defendant's replying affidavit, the Plaintiffs filed a further affidavit sworn by the 2<sup>nd</sup> Plaintiff. He annexed a copy of the Plaintiffs' advocates letter dated 7<sup>th</sup> October 2025, addressed to KURA and KURA's response dated 15<sup>th</sup> October 2025 in which KURA stated that while its contractor was authorized to undertake routine maintenance works along 3<sup>rd</sup> Parklands Avenue, it did not authorize demolition of a section of the estate's wall.



16. He annexed a copy of a statement dated 7<sup>th</sup> October 2025 allegedly authored by Mr. Brian Kinyua, the alleged contractor engaged by KURA to undertake drainage and improvement works along 3<sup>rd</sup> Parklands road, in which he stated that the 1<sup>st</sup> Defendant's Director (Amin Mohammed) approached him with a request to create a temporary access to the hospital premises in the suit estate to facilitate entry and exit of patients and staff during ongoing works.
17. The Attorney General entered appearance for the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup>

#### **Defendants but did not file pleadings.**

18. The 4<sup>th</sup> Defendant filed a replying affidavit sworn by Wilfred Masinde, its Deputy Director-Planning, Compliance and Enforcement. He avers that after checking the 4<sup>th</sup> Defendant's records for approvals, there is no material evidence that the 4<sup>th</sup> Defendant approved plans or drawings of demolition works at the gate of the main entrance to the subject estate thus the 4<sup>th</sup> Defendant ought to be exonerated from the matter.
19. The applications were canvassed by way of written submissions.

#### **Submissions**

20. The Plaintiffs submit that by undertaking demolition, the 1<sup>st</sup> Defendant not only interfered with their proprietary rights but also compromised the safety and wellbeing of all residents in the Estate and that its directors are in breach of the Plaintiff's fiduciary duty which requires them to act with transparency, fairness, and in the best interest of all shareholders including residents. To this end, the decisions of *Wolf v. Superior Court* (2003) 107 Cal. App. 4<sup>th</sup> 25, 29 [130 Cal.Rptr.2d 860] and *Monicah Wangui Njenga & Another v David Kinyanjui Njenga & 3 Others* [2018] eKLR were relied upon.
21. They also relied on the decisions of *James Mulinge v Freight Wings Ltd, Vegpro (K) Ltd and Simba Colt Motors Ltd & High-Class Auctioneers* [2016] KEELRC 11 (KLR) to submit that the director of the 1<sup>st</sup> Defendant committed perjury as he attributed the demolition to KURA, suggesting the action was sanctioned, and necessary for the drainage works but his assertions were contradicted by official correspondence from KURA as well as the contractor.
22. The Plaintiffs also submit that they have met the principles governing the grant of temporary injunctions as settled in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358, having established breach of fiduciary duty, ultra vires action by the 1<sup>st</sup> Defendant and violation of proprietary rights and illegality of the approvals.
23. They submit that the unauthorized applications directly threaten their rights to property under Article 40(1) of *the Constitution*. Further, that the intended subdivision of the mother title necessarily entails the surrender of existing leasehold titles and such surrender without the voluntary consent of leaseholders amounts to trespass including unlawful deprivation of proprietary rights and are amenable to nullification. They further submit that they are exposed to real risk that the lease extension will not be perfected and registered in good time given the reality of administrative timelines within the land registration system and be exposed to the risk of disrupted registrable right.
24. They contend that their position is not to block the lease extension; it is to preserve it, but the unauthorised subdivision and change of user processes have been improperly yoked to the lease extension. Further, that the balance of convenience tilts in favour of granting the injunctive orders sought as the safer course is to freeze the contested components while enabling the legitimate lease extension to proceed.



25. To buttress their averments, the Plaintiffs relied on the following decisions: *Rayit & 2 others v Rayit (Environment & Land Case E159 of 2023) [2024] KEELC 4828 (KLR)* and *Serah Nyambura Ndungu v Ndichu Muchiri & Others [2019] eKLR*.
26. On its part, the 1<sup>st</sup> Defendant submits that it is a management company of the estate and that it was acting in good faith, which it contends is demonstrated by its requests for permits from the County of Nairobi to commence restoration of the estate's wall once KURA has completed its road works. It insists that it was not responsible for demolition of the subject wall and urges the Court to disregard the statement of Brian Kinyua for reasons that it is not verified. Further, that the Plaintiffs are not deserving of the orders sought because they failed to demonstrate damages they stand to suffer if the wall is reconstructed.
27. The 4<sup>th</sup> Defendant did not file submissions.

### **Analysis and Determination**

28. Upon consideration of the two instant Notice of Motion applications including the respective affidavits and parties' submissions, the following are the issues for determination: Whether the Plaintiffs have met the threshold for grant of an interlocutory injunction restraining the Defendants, from effecting subdivision, or change of user in respect to the suit property. Whether the Plaintiffs have made a case for grant of a permanent injunction restraining the 1<sup>st</sup> Defendant from interfering with the wall to Anand Maisonettes Estate.
29. The Plaintiffs seek to restrain the Defendants from proceeding with subdivision and change of user, in respect to the suit property, save for the processing of the lease extension. On its part, the 1<sup>st</sup> Defendant admits to making the application for extension of lease and avers that being the lessor of the suit property, it does not hold the property for the benefit of any person hence it did not require the directions or authority of the Plaintiff or any other person to initiate the process of applying for an extension of lease and conversion of title.
30. In line with the principles established in the case of *Giella Vs Cassman Brown & Company Limited (1973) EA 358*, I will proceed to assess whether the Plaintiffs are entitled to the orders of interlocutory injunction as sought.
31. On whether the Plaintiffs have established a prima facie case to warrant the orders of interlocutory injunction as sought, I will further rely on the definition of the same as described in *Mrao Ltd v First American Bank Limited (2003) K.L.R 125* where the Court described it as follows:

“..... 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”.
32. The Plaintiffs claim that they are not opposed to the extension of lease but oppose subdivision and change of user. They insist that they consented to application for extension of lease only. The 1<sup>st</sup> Defendant on the hand contends that it did not need to seek any authority from anybody to apply for change of user and subdivision as it is the leaseholder.
33. I note the Plaintiffs are shareholders of the 1<sup>st</sup> Defendant. Further, that as per the *Sectional Properties Act*, the 1<sup>st</sup> Defendant is supposed to engage all shareholders or holders of long term leaseholds in any decision concerning their leases. Further, the shareholders are expected to grant consent in terms of any changes to their titles which is the dispute herein. In that regard, I find that the Plaintiffs herein had a



right to know of the 1<sup>st</sup> Defendant's application for extension of lease, change of user and subdivision and to grant their consent to that effect.

34. In the foregoing, I find that the Plaintiffs have indeed established a prima facie case to warrant the orders of interlocutory injunction as sought. I further find that the Plaintiffs will suffer irreparable harm which cannot be compensated by way of damages if the change user and subdivision is allowed to proceed without their participation and consent. I hence find that the balance of convenience tilts in favour of granting an interlocutory injunction to restrain the Defendants from proceeding with registration of change of user and subdivision save for extension of lease.
35. On the second issue, the Plaintiffs contend that the 1<sup>st</sup> Defendant has unlawfully authorized demolition of a section of the estate's wall and avers that the same is confirmed by KURA vide its annexed letter dated 15<sup>th</sup> October 2025 and by a statement authored by Mr. Brian Kinyua.
36. On its part, the 1<sup>st</sup> Defendant contends that the demolition of the estate's wall was sanctioned by KURA and the 4<sup>th</sup> Defendant who were carrying out road and drainage maintenance works. The 4<sup>th</sup> Defendant has denied involvement in the alleged works.
37. Courts have asserted that permanent injunctions should not be sought at an interim stage unless in exceptional circumstances. In the case of Kenya Consortium To Fight Aids, Tb & Malaria & Another V Brigitte Mukui Kitenge & 4 Others [2013] KEHC 3731 (KLR), the Court stated as follows:

“In The Headmaster Kiembeni Baptist Primary School & Another vs. The Pastor of Kiembeni Baptists Church Mombasa HCCA No. 103 of 2004, Maraga, J (as he then was) held that when dealing with applications for interlocutory injunctions it is wrong to grant a permanent injunction whose effect is to conclusively decide the suit as issues of fact should be decided after hearing evidence and that Courts should be wary of parties who make applications for interlocutory injunctive orders which if granted as prayed would have the effect of granting permanent or mandatory injunctions...”
38. I note that the 1<sup>st</sup> Defendant is a management company of the estate and has explained that it requested for permits from the County of Nairobi to commence restoration of the estate's wall once KURA has completed its road works. I opine that the issues on whether it was responsible for demolition of the subject wall can only be determined once viva voce evidence is adduced and the veracity/ authenticity of Brian Kinyua's letter is tested. In my view it cannot be permanently enjoined at this juncture from dealing with the management of the estate.
39. Based on the facts before while associating myself with the decisions cited, I find that this is not a clear-cut case for granting a permanent injunction as sought by the Plaintiffs and will decline to do so.
40. In the foregoing, I find the Notice of Motion application dated the 24<sup>th</sup> September, 2025 merited and will allow it. I however find the Notice of Motion application dated the 29<sup>th</sup> September, 2025 unmerited and will disallow it. I proceed to make the following Orders:
  - i. Pending the hearing and determination of the suit herein, an order of interlocutory injunction be and is hereby issued restraining the Defendants, jointly and severally, from proceeding with or effecting any subdivision, or change of user in respect of the suit property, save that the duly authorized lease extension application may be lawfully processed.
  - ii. Pending the hearing and determination of the suit herein, an order be and is hereby issued restricting any dealings, transfer or disposition of the suit property save for the processing of the lawful extension of lease application.



iii. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH, 2026**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Okelo for Attorney General for Plaintiff

Maina for 1<sup>st</sup> Defendant

Ms Were for Odongo for 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants

Ms Mackutwa holding brief for Masaku for 4<sup>th</sup> Defendant

Court Assistant: Joan

