

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NANYUKI
ELC LC NO. E020 OF 2025

TAWI VILLAGE LIMITED.....
.....PLAINTIFF

VERSUS

WOODPARK HOLDINGS (KENYA)
LIMITED.....DEFENDANT

RULING

- 1.** This ruling relates to two applications; the first one for injunctive orders dated 1.10.2025 was brought forth by the plaintiffs, while the second one filed by the defendant dated 31.10.2025 seeks to set aside the temporary injunctive orders issued by this court on 7.10.2025.
- 2.** The application dated 1.10.2025 was filed contemporaneously with the suit. The plaintiff seeks

orders of injunction restraining the defendant from evicting them or interfering with its peaceful enjoyment of the leased portion of parcel L.R.11633 located in Timau within Laikipia County. The application is premised on grounds on the face of the application and the affidavits of one Agnes Mumbi Baraza.

3. The plaintiff contends that it entered into a lease agreement with the defendant dated 4.11.2021 where the leased property was 150 acres out of the suit land. That the lease was for 6 years ending on 30.6.2027. That the plaintiff has performed all the obligations relating to the lease, but on 11.9.2025 and on 28.9.2025, the defendant violently entered the suit premises and destroyed the gate, crops, farm equipment's, attacked workers and even kidnapped the farm manager. The plaintiff terms the actions of the defendant as malicious and unlawful.

4. When the application was placed before this court for the first time on 7.10.2025, the court granted the injunctive orders until the next court date. The defendant was to

file an application dated 31.10.2025 to set aside the said interim orders. However, it is noted that the said orders were not extended and have therefore lapsed. Thus the application of 31.10.2025 is moot.

5. The defendant filed a replying affidavit dated 28.10.2025 where it contends that indeed the protagonists had a lease, but the same was breached by the plaintiff prompting the defendant to inform the plaintiff of its intention to re-enter the suit premises under clause 5.1 of the lease via letters dated 11.3.2025 and 15.4.2025, thus the plaintiff was required to give vacant possession of the suit premises. That upon refusal to yield vacant possession, the defendant re-entered the suit premises and is actively in possession of the same. It denies that it was involved in any criminal activities. That in any event, the lease is null and void as there was no consent from the land control board.

6. On 26.1.2025, the advocates for the parties could not agree on the issue of ground status-quo, thus the court gave further directions for the scene to be visited by the

Deputy Registrar to capture the nature and extent of the developments and utilization of the suit premises. On 9.3.2026, the court gave orders that parties were at liberty to file further affidavits relating to the scene visit report by 12.3.2026. The defendant has filed an affidavit sworn by one Joseph Muchiri Gitari, a caretaker of the defendant who contends that he lives on the suit land, whereby the plaintiff was utilizing the farm until the month of September 2025. He contends that the plaintiff ceased all farming activities upon eviction, but he noticed resumption of farming activities on 29.1.2026, which continued upto 20.2.2026.

7.The Deputy Registrar's report is dated 20.2.2026. In summary, the land is piped for irrigation and various crops are on the land, there is evidence of recent ploughing, there is a green house, beehives, dam, borehole, water pump housed in a structure, power transformer, CCTV cameras and flood lights. There is also a store for harvested produce. There was evidence of a fire having occurred of which a tractor and two

metal carts have been burnt down, while a part of the fence has fallen down.

8. I have considered the arguments for and against the grant of injunctive orders sought in the application dated 1.10.2025. In doing so, the court has taken into account the pleadings so far filed, the scene visit report and the various affidavits filed as well as the rival submissions. The sole issue for determination is; Whether the Applicant has met the threshold to warrant the grant of the orders sought?

9. The present Application has its foundation under Order 40 of the Civil Procedure Rules which deals with the grant of temporary injunctive orders and interlocutory orders. Order 40 Rule 1 provides as follows;

“Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in 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 or delayed 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 to 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.

Emphasis added

10. Whereas Order 40 Rule 2 provides states;

“(i)In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not,

the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2)The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit”.

11. The principles underpinning the grant of temporary injunctions are were settled in the celebrated case of **Giella vs Cassman Brown (1973) EA 358** and expounded in the case of **Nguruman Limited V Jan Bonde Nielsen & 2 Ors [2014] eKLR .**

12. It is quite apparent that the crux of the dispute is centered on the question of breach of the lease agreement and whether clause 5.1 on re-entry has taken or should take effect. The scene visit report reveals that there are robust farming activities being undertaken on the land, but there was definitely a violent or destructive attack visited on the suit land, going by the burning of the machineries. There is no rocket science needed to discern that such an attack could only emanate from the entity alleging re-entry and take over of the suit premises who happens to be the defendant.

13. It is evident that the farm is actively being run. The defendant through its caretaker avers that the plaintiff was evicted, he doesn't know how this happened, that farming activities resumed on 29.1.2026, then stopped again on 20.2.2026. The said averments are not in tandem with the scene visit report. What more the defendant has not explained as to who is undertaking the activities on the farm. The logical conclusion to make is that the plaintiff is the one running the farm.

14. It is pertinent to note that the court has already set the matter down for hearing in just a months time. Thus the court cannot delve into the contested substantive issues of breach of the lease, validity of the lease, or the right of re-entry at this interlocutory stage of the trial. The court cannot purport to hold a mini trial examining the merits of the case.

15. In the case of **Cyanamid Co. vs Ethicon Ltd (1975) 1 ALL ER 504; (1975) A.C 396 HL** cited in **Tritex Industries Limited & 3 others v National Housing Corporations & another [2014] eKLR**, it was held that;

“It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations.

These are matters to be dealt with at the trial”.

16. In Paul Gitonga Wanjau vs. Gathuthi Tea Factor Company Ltd & 2 Others [2016] eKLR, the court stated thus;

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which

party will suffer the greater harm with the outcome of the motion”.

17. In the case at hand, the balance of convenience tilts in favour of the entity running the farm which happens to be the plaintiff. In the circumstances, I find that the application dated 1.10.2025 is merited, the same is hereby allowed, but costs there of shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 18TH DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.

**LUCY N. MBUGUA
JUDGE**

In the presence of:

Ms. Msando holding brief for Mr. Kanyonge for plaintiff.

Mwangi Kariuki for defendant.

Nancy Mwangi – Court Assistant

Original File Copy