



REPUBLIC OF KENYA



KENYA LAW
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**Cancer Investments Limited v Onyango & 3 others (Environment and Land
Case E229 of 2025) [2026] KEELC 1847 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1847 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E229 OF 2025**

**MN KULLOW, J
MARCH 25, 2026**

BETWEEN

CANCER INVESTMENTS LIMITED PLAINTIFF

AND

ROBERT ALAI ONYANGO 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

**THE OCS (OFFICER COMMANDING STATION) GIGIRI POLICE
STATION 3RD DEFENDANT**

THE HON ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This matter is in relation to LR 7785/102 IR N0 30597/255(Original no 7785/104/97) referred to as the suit property.
2. The applicant has filed a notice of motion application dated 8th May 2025 in which they seek injunctive orders as against the respondents.
3. That application was supported by the affidavit sworn by Mukhtar Ahmed Parkar applicant on the following grounds interalia
 - a. The plaintiff is and always remained the registered owner of the suit property having purchased it from Transnational bank in the year 1992 and has been in possession since. That the plaintiff has never at any particular point entered into any transaction to transfer the same having title to the same which title was in the hands of Diamond trust Bank under a charge



- b. That the 1st defendant has entered into the suit property and occupied illegally which matter was reported to Runda police station but the 1st defendant through its sent goons barred the plaintiff from accessing his property.
- c. He deponed that based on the illegal acts as stated the plaintiff has file the present application seeking for the following orders
 - i. Pending hearing and determination of this motion, a temporary injunction do issue restraining the 1st Defendant by themselves , their invitees , servants, agents, licensees and/or tenants or otherwise howsoever from trespassing, remaining upon, occupying , leasing, licensing or letting for peppercorn fee or any sum , constructing upon, carrying on any form of business upon doing any act prejudicial to the plaintiff's quiet enjoyment and occupation of the suit property or otherwise howsoever dealing in the plaintiff's parcel known as LR 7785/102 IR N0 30597/255(Original no 7785/104/97) as dealinated on land survey plan No 99184 or any part thereof or as may otherwise be referenced , situate in the Nairobi City County
 - ii. Pending hearing and determination of this suit, an injunction do issue restraining the 1st Defendant by themselves , their invitees , servants, agents, licensees and/or tenants or otherwise howsoever from trespassing, remaining upon, occupying , leasing, licensing or letting for peppercorn fee or any sum , constructing upon, carrying on any form of business upon doing any act prejudicial to the plaintiff's quiet enjoyment and occupation of the suit property or otherwise howsoever dealing in the plaintiff's parcel known as LR 7785/102 IR N0 30597/255(Original no 7785/104/97) as dealinated on land survey plan No 99184 or any part thereof or as may otherwise be referenced , situate in the Nairobi City County
 - iii. The officer commanding county (OCS)do oversee the strict enforcement and observance of the orders issued herein
 - iv. Costs of the application

Respondents reply

4. The application was opposed via the replying affidavit sworn by the respondent on the 26th May 2025.He deponed that Applicant had not substantiated his claims on how he was the registered owner of the suit property. That they had not produced the copy of certificate of title to the property, the sale agreement relied on and the charge document held by DTB bank hence lack of a prima facie case
5. He further deponed that the applicant had not met the conditions necessary for issuance of the injunctive orders as prayed for that is, they had not demonstrated how irreparable loss would be occasioned to them and that the balance of convenience tilted in their favour.

The applicant in response filled a supplementary affidavit in rebuttal to the response by the 1st respondent indicating that as per the documents attached in their bundle of documents, was a certified copy of the certificate of title which title had not been challenged whatsoever with the respondent,

Applicant 'submissions

6. The applicant filed submission dated 22nd August 2025 submitted on the following
Whether the plaintiff has laid out a prima facie case for grant of the injunctions



7. Counsel submitted that the plaintiff was the legally registered member of the property and that the defendant had unlawfully invaded on the same carrying out construction activities which would cause them irreparable harm as they would be unable to enjoy the rights that accrue to a legal owner relying on the case of *Mrao Limited Vs First American Bank of Kenya and 2 others* (2003) KLR 125. Counsel also relied on the provision of section 26 of the *land registration Act* that gave absolute rights to a person who had certificate of title issued by the registrar .
8. On the issue of whether the plaintiff would suffer loss, the applicant relied on the particulars of loss and damage as in the plaint indicating that the continued invasion of the 1st defendant on the suit property would prevent the applicant from utilizing the property as intended. That the invasion to the suit property by the 1st defendant's goons had already converted it into a free user thereby degrading its value and worth.
9. Counsel also submitted that the applicant had proved trespass on the part of the 1st respondent which if trespass was allowed to subsist, then the applicant will be prejudiced hence the need to have the court intervene relying on the case of *Nyangeri Obiye Thomas Vs Yunuke Sakagwa Nyoiza ELC* case no 277 of 2018
10. The applicant submitted that the balance of convenience tilted in their favour being that it would be in the interest of justice to grant the injunctions to preserve the suit property pending determination of the suit.
11. The respondent has not filed any submissions in respect of the application

Analysis and determination

12. I have carefully read and considered all the pleadings herein being the application dated 8th May 2025, the replying affidavit by the 1st Defendant herein, the written submissions, the authorities cited. the relevant and appropriate provisions of *the Constitution* of Kenya, 2010 and the statutes. In order to arrive at an informed, fair, just and reasonable decision, the Honourable Court has framed three (2) issues for determination. These are: -
 - a. Whether the Notice of Motion application dated 8th May 2025 by the Applicant has met the threshold for granting of temporary injunctive orders sought.
 - b. Who bears the costs of the application?
13. The law regarding grant of interlocutory injunctions is found in the provision of Order 40 Rule 1 of the Civil Procedure Rules, 2010 which provide 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;
 - (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 order."



14. Further, the principles upon which an interlocutory injunction may be granted are well settled in the famous case of “Giella – Versus - Cassman Brown & Co Ltd (1973) EA 358 ’. One has to establish a prima facie case with a probability of success and an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. If in doubt, the court will decide the matter on a balance of convenience.
15. The above are the three pillars on which rests the foundation of any order of injunction. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable.
16. Has the applicant established a prima facie case? In Mrao Limited – Versus - First American Bank of Kenya and 2 others, (2003) KLR 125 which was cited with approval in “Moses C. Muhia Njoroge & 2 others – Versus - Jane. W. Lesaloi & 5 Others (2014) eKLR”, the Court of Appeal defined a prima facie case as: -

“A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.
17. The applicant alleges that the 1st defendant has invaded the suit property without any legal rights over the same being that they have never entered into any transfer over the same to the 1st defendant. That the 1st defendant sent goons on the suit property who attacked the applicant causing bodily harm, and damage on his car. That further the goons went ahead to demolish the concrete pillar against which the gate to the suit property was grounded forcing entry in the suit property. He deponed that he is apprehensive that the forcible entry by the 1st defendant is aimed at illegally taking over the suit property and deprive the applicant of its proprietary rights.
18. The 1st defendant’s case is that the applicant has not provided evidence on his claim to the suit property and hence lack of a prima facie case to warrant the grant of injunctive orders.
19. I have perused the applicant’s list of documents produced as exhibits and there is a certificate of title registered in its name. He has further attached a copy of the transfer in favour of the plaintiff. This then waters down the argument by the 1st respondent on failure of the applicant to proof ownership as the certificate of title proves that indeed the applicant had identifiable legal claim worth of being protected. The 1st defendant has not challenged the legality of the certificate of title neither produced any other document to counter the same title.
20. It is now established that a certificate of title is held to be prima facie evidence of ownership of the stated land. This is provided for in Section 26(1) of the *Land Registration Act* which provides; -“The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner ... and the title of that proprietor shall not be subject to challenge, except –
 - a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or



- b. (b)where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
21. It is evident from the above provisions that while title is supposed to be taken by all courts as prima facie evidence of ownership of the person registered as proprietor, the same can be challenged and impeached on the basis of the above grounds namely fraud, misrepresentation and illegality.
22. It is long established that where the legality or existence of a title is being challenged then the holder of the title must show how he acquired the title. This is not the case here and as such the applicant reserves the rights as per section 26 Land Registration Act hence proof of a prima facie case.
23. On the issue of irreparable loss, the applicant has indicated that the 1st defendant invasion on the suit property will prevent it from embarking on developing of the property and that it if allowed to continue, will dispose the applicant and forcibly take over the property denying the plaintiff its proprietary rights.
24. The photographs attached to the supporting affidavit do point out to acts of vandalism and destruction of property in particular there is a gate that has been brought down and car whose windows have been smashed. There is also proof of people on the suit property armed with weapons as alluded to in the supporting affidavit. There is evidence of armed police men in uniform pointing to a possible confrontation that had happened that needed the involvement of the police all this backing up the applicant’s claim of invasion. I am persuaded that there is imminent threat of the applicant being locked out of the suit property and therefore not able to use the property in the manner envisaged occasioning irreparable loss.
25. On the issue of balance of convenience, having established that the applicant had demonstrated to be the owner of the suit property, the balance of convenience tilts in granting the injunction as against not granting and not deny the owner his rights to the suit property .In the case of Nguruman Limited vs Jan Bonde Nielsen and others [2014] eKLR the court addressed the question of granting orders as against the registered owner of the property in applications for temporary injunctions.
26. The court observed thus:
- “It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.”
27. Flowing from the analysis as above, it is evident and apparent that the Applicant herein has satisfied the requisite ingredients that underpin the grant of an order of temporary injunction having demonstrated the existence of a prima facie and a likelihood of irreparable loss arising and the balance of convenience tilting in its favour.
28. Consequently, and in the circumstances, the final orders are as follows
- i. The Application dated 8th May 2025 be and is hereby allowed
 - ii. Costs of the Application be and hereby awarded to the applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 25TH DAY OF MARCH, 2026.

MOHAMMED N. KULLOW

JUDGE



Ruling delivered in the presence of: -

Mr. Kinyanjui for the Applicant

No appearance for the Respondent

Philomena W. Court Assistant

