

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELCLC CASE NO. E006 OF 2025

WEYLAND MUEMA NZIOKA:.....APPLICANT

VERSUS

**MAVOKO LAND DEVELOPMENT COMPANY
LIMITED:.....1ST RESPONDENT**
DIRECTOR OF SURVEYORS:.....2ND RESPONDENT

RULING

The application is dated 24th January 2024 and is brought under Sections 1A,3A &63(e) of the Civil Procedure Act, Order 42 Rule 6(2) & Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. That this Application be certified as extremely urgent and service of the same be dispensed with in the first instance.
2. That this Honourable Court be pleased to issue on order of injunction to the Respondents either by themselves or through their authorized agents and/or servants and/or employees from evicting the Applicant or erecting beacons or interfering with the Applicant's vacant and/or peaceful possession of the parcels of land known as ATHI RIVER/ATHI RIVER BLOCK 9/95 and

ATHI RIVER/ATHIRIVER BLOCK 9/97 pending the hearing and determination of this application.

3. That this Honourable Court be pleased to issue an order of injunction Respondents either by themselves or through their authorized agents and or servants and/or employees from evicting the Applicant or erecting beacons or interfering with the Applicant's vacant and/or peaceful possession of the parcels of land known as ATHI RIVER/ATHIRIVER BLOCK 9/95 and ATHI RIVER/ATHIRIVER BLOCK 9/97 pending the hearing and determination of the suit before this Honourable Court.
4. That this Honourable Court be pleased to issue an order of stay of execution of the judgment rendered on 31st May 2019 by Hon. O. Angote in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY LIMITED VERSUS KASINA HOUSING SCHEME SOCIETY & 4 OTHERS pending the hearing and determination of this Application.
5. That this Honourable Court be pleased to issue an order of stay of execution of the judgment rendered on 31st May 2019 by Hon. O. Angote in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY VERSUS KASINA HOUSING SCHEME SOCIETY & 4

OTHERS pending the hearing and determination of the suit before this Honourable Court.

6. That the costs of this application be provided for.

It is based on the following principal grounds that sometimes around the month of December, 2023 some people visited the Applicant's home and issued him with verbal imminent threats of eviction from his parcels of land; Athi River/Athi River Block 9/95 and Athi River/Athi River Block 9/97. That the Applicant inquired from his neighbours, who told him that there was a judgment which was delivered in Environment and Land Court at Machakos requiring them to vacate from their land as it had been determined, the same belonged to another person. That the Applicant then went to the registry Machakos Law Courts to inquire even further and to his shock he discovered that Justice Angote had delivered a judgment in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY LIMITED VERSUS KASINA HOUSING SCHEME SOCIETY & 4 OTHERS and which judgment had adverse effects on him and particularly his parcel of land hitherto known as Athi River/Athi River Block 9/95 and Athi River/Athi River Block 9/97.

That sometimes prior to the delivery of the said judgment; the Applicant has sued the Respondents herein together with County Government of Machakos for

constructing a road in his parcels of land; Athi River/Athi River Block 9/95 and Athi River/AthiRiver Block 9/97 as well as seeking to be declared as the legal proprietor of parcel of land known as Athi River/ Athi River Block 9/95 and Athi River/AthiRiver Block 9/97 and which case is still pending in Court. That the Applicant all this time was aware that the 1st Respondent has colluded with some unknown high ranking government officials as well as public servants who assisted it in making a different plan F/R No. 213/82 though he was not privy the said forged map was being used to prosecute a case in Court. That the survey map which was produced in Court by the 1st Respondent to convince the Court to enter judgment in its favor in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY LIMITED VERSUS KASINA HOUSING SCHEME SOCIETY & 4 OTHERS was not authentic and the same was forged.

That the Applicant's constitutional guarantee to fair hearing as clearly captured under Article 50 of the Constitution of Kenya, 2010 was violated as the orders issued in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY LIMITED VERSUS KASINA HOUSING SCHEME SOCIETY & 4 OTHERS adversely affected his ownership of Athi River/ AthiRiver Block 9/95 and Athi River/AthiRiver Block 9/97 when he was actually not a party to the said suit.

This court has considered the application and the supporting affidavit therein. The application was not opposed. The principles of granting temporary injunctions are well settled and are set out in the judicial decision of *Giella vs Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“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, ally 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”.

Consequently, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) EKLR the Court of Appeal gave a determination on a prima facie case. The court stated that;

“... 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.”

In support of the application, the Applicant stated that he discovered that Justice Angote had delivered a judgment in ELC CASE NO. 366 OF 2009; MAVOKO LAND DEVELOPMENT COMPANY LIMITED VERSUS KASINA HOUSING SCHEME SOCIETY & 4 OTHERS and which judgment had adverse effects on him and particularly his parcel of land hitherto known as Athi River/Athi River Block 9/95 and Athi River/Athi River Block 9/97.

Secondly, the Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there

is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.

The Applicant states that sometimes prior to the delivery of the said judgment the Applicant has sued the Respondents herein together with County Government of Machakos for constructing a road in his parcels of land; Athi River/Athi River Block 9/95 and Athi River/Athi River Block 9/97 as well as seeking to be declared as the legal proprietor of parcel of land known as Athi River/ Athi River Block 9/95 and Athi River/Athi River Block 9/97 and which case is still pending in Court. That the Applicant all this time was aware that the 1st Respondent has colluded with some unknown highranking government officials as well as public servants who assisted it in making a different plan F/R No. 213/82 though he was not privy the said forged map was being used to prosecute a case in Court, hence the adverse judgement against him.

Thirdly, the Plaintiff has to demonstrate that the balance of convenience tilts in their favour. In the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) EKLK which defined the concept of balance of convenience as:

'The meaning of balance of convenience will favour of the Plaintiff' is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than

that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

The decision of Amir Suleiman vs Amboseli Resort Limited (2004) eKLR where the learned judge offered further elaboration on what is meant by “*balance of convenience*” and stated;

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

The 1st Respondent submitted that in Machakos ELC No. 366 of 2009, the court directed that the beacons of the leasehold title LR. No. 25062 be re surveyed and restored to its original form. The Applicant was then found to be within the 1st Respondents leasehold LR. No. 25062 and was a beneficiary of the overlapped

land of the 1st Respondent. I find that this court cannot overrule a judgement of a court of concurrent jurisdiction.

Bearing this in mind, I am convinced that there is a risk in granting orders of temporary injunction than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the current situation on the ground. I have also not had the opportunity to interrogate the annexures therein.

In Robert Mugo wa Karanja vs Ecobank (Kenya) Limited & Another (2019) eKLR where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the Civil Procedure Rules requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

In view of the foregoing, I find that the application is not merited and I dismiss it. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF
MARCH 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL