

THE REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO. E421 OF 2024

SHAURI MOYO FURNITURE MAKERS CO-OPERATIVE SOCIETY LIMITED	-PLAINTIFF/APPLICANT
VS	
FRANCIS NGARUIYA NJOROGE RESPONDENT	-1ST DEFENDANT/
STEPHEN NJOROGE IRUNGU DEFENDANT/RESPONDENT	- 2ND
JOSEPHAT MUTUKU MUSEMBI DEFENDANT/RESPONDENT	- 3RD
STEPHEN MWANGI KIMARU DEFENDANT/RESPONDENT	-4TH
STEPHEN KAMAU MUCHIRI DEFENDANT/RESPONDENT	-5TH
MIRAGE SUPPLY & CONTRACTORS LIMITED	-6TH
DEFENDANT/RESPONDENT	
CHIEF LAND REGISTRAR NAIROBI DEFENDANT/RESPONDENT	-7TH
THE ATTORNEY GENERAL DEFENDANT/RESPONDENT	- 8TH

RULING

(In respect of the Plaintiff's Application dated 16/10/2024)

1. The Application for determination before this court is the Plaintiff's application dated 16/10/2024 seeking substantively for orders that;

- a. Pending the hearing and determination of this suit an interim injunction be granted against the Defendants restraining the Defendants by themselves and/or acting through their servants, agent and or employees from trespassing, or interfering with the Plaintiff occupation of property described L. R. Number 209/1712- located in Shauri Moyo Nairobi
 - b. Pending the hearing and determination of this suit an injunction be granted against the 6th Defendant restraining the 6th Defendant by itself and/or acting through its servants, and or agents from selling, transferring, alienating, disposing off and/or any other manner whatsoever transacting with the land parcel known as L. R. Number 209/1712- located in Shauri Moyo Nairobi
 - c. The Officer Commanding Station; Shauri Moyo Police Station be directed to ensure compliance of these orders.
 - d. Such other orders as this Honourable Court may find necessary to preserve the suit property
 - e. Costs of this application be provided for.
2. The Application is based on the face of it and further supported by the Affidavit of Samuel Kamau Mwangi, its Chairman, dated the same day. The deponent states that the Plaintiff was the registered owner and remains the beneficial owner of the property described as L.R No. 209/1712, which they have occupied since 1973. They were granted adverse possession in Nairobi Civil Case No. 3279 of 2014, as per the Judgement delivered on 24/4/1996. As a result, a vesting order was issued on 5/3/1997 in its favour, and a provisional Title was issued on 14/5/1998.
 3. The deponent further affirms that the Plaintiff members have occupied and continue to occupy the property where they run their furniture-making business since 1973. The lease for the property expired on 1/8/2024, and while seeking renewal, the Plaintiff discovered that the 1st to 5th Defendants illegally transferred the property to themselves as

trustees on 3/6/2002, despite their election being nullified. They later sold it to the 6th Defendant on 22/5/2022. The transfer and registration of the 6th Defendant as the owner are illegal and fraudulent, jeopardising the rights of the Plaintiff members to ownership and occupation of the property. Therefore, they seek the orders specified herein.

The 1st to 5th Defendants' Replying Affidavit

4. The 1st to 5th Defendants opposed the application via the Replying Affidavit of Stephen Mwangi Kimani, the 4th Defendant, sworn on 11/11/2024. The deponent states that Samuel Kamau Mwangi lacks the locus standi to represent the Plaintiff as he is not an official of the society. He asserts that the 1st to 5th Defendants are the registered officials of the Plaintiff, as indicated in the certificate of registration of the society.
5. The deponent asserts that the Plaintiff has not presented any evidence to prove proprietary rights over the suit property. Therefore, the Plaintiff has not established a prima facie case due to the absence of valid title documents. He contends that the Plaintiff has not demonstrated the loss and damage that the members stand to suffer, which cannot be compensated by an award of damages. Additionally, he accuses the Plaintiff of materially non-disclosing the suits that have previously been determined concerning the suit property. These suits include: High Court Civil Case No. 2684 of 1998; High Court Civil Case No. 352 of 2000; Co-operative Tribunal Case No. 4 of 2002; Co-operative Tribunal Case No. 177 of 2003; Judicial Review Misc. Application No. 50 of 2009; and Nairobi ELC No. 353 of 2015, formerly Nairobi HCCOM No. 1 of 2014. They request that the court dismiss the case with costs.

The 6th Defendant's Replying Affidavit

6. The 6th Defendant opposed the application via the Replying Affidavit sworn by James Mwangi Kanyi dated 11/4/2025. The deponent asserts that the 6th Defendant is the lawful registered proprietor of the suit

property known as LR No. 209/1712. It is contended, as a preliminary issue, that the Honourable Court lacks jurisdiction to entertain the present suit pursuant to Section 76(1) of the Co-operative Societies Act, on the grounds that the dispute concerns the internal control of the Plaintiff and therefore constitutes a dispute solely between members of the Plaintiff society.

7. Without prejudice to that objection, it is further stated that the suit property was validly transferred to the 6th Defendant by the 1st to 5th Defendants pursuant to a vesting order issued by the High Court in Civil Case No. 3279 of 1994 (O.S.) on 3/5/2002. The decree dated 3/6/1996 was subsequently amended by an order made on 24/4/2002 and issued on 3/5/2002. Consequently, the Court cannot issue a restraining injunction against the Defendants, who are the lawful owners. It is imperative for the Court to first determine who the rightful members of the Plaintiffs are.

The Plaintiff's Further Affidavit

8. The Plaintiff filed a Further Affidavit sworn by Samuel Kamau Mwangi on 12/2/2025 in response to the 1st to 5th Defendants' Replying Affidavit. The deponent states that the Plaintiff comprises 68 members and that the attachments are forgeries. He asserts that he has the locus standi to institute this proceeding by virtue of being the Plaintiff's Chairman. He maintains that the Plaintiff is the registered owner of the suit property and that the transfer to the 6th Defendant was fraudulent. He contends that it is in the interest of justice that the orders sought be granted.

The Written Submissions

9. The applications were canvassed by way of written submissions. Parties complied. The Court has had occasion to read through the submissions and considered the arguments raised by the parties.

Analysis and Determination

10. I have considered the applications, the replies as well as rival submissions, in my considered view the issues for determination are as follows:

- a. Whether this Court has jurisdiction hear and determine the dispute herein
- b. Whether the applicant in this case has satisfied the test for the grant of an order of temporary injunction.
- c. Which orders should the court issue?

Whether this Court has jurisdiction hear and determine the dispute herein

11. In any litigation, jurisdiction is central. A court of law cannot validly take any step without jurisdiction. See the Supreme Court decision in the Matter of Interim Independent Electoral Commission [2011] Eklr.

12. The Jurisdiction of this Court to hear and determine disputes relating to the environment and the use and occupation of and title to land is provided for under Article 162 (2) (b) of the Constitution as read with Section 13 of the Environment and Land Act, 2011. The Court has jurisdiction to hear and determine disputes relating to, “the environment and use and occupation of, and title to land.”

13. The 6th Defendant argues that this Court lacks the jurisdiction to hear and determine this dispute based on Section 76 (1) of the Co-operative Societies Act (Cap. 490, Laws of Kenya). The provision sets out the legal framework for the compulsory settlement of disputes within a co-operative society. It states that disputes concerning the society's business, management, or bylaws must be referred to the Co-operative Tribunal rather than to conventional Courts.

14. It is noted that the dispute here concerns ownership of the suit property, not the management of the Plaintiff. This Court must determine whether the Plaintiff or the 6th Defendant is the lawful owner of the suit property. That is a matter that clearly falls within this court's jurisdiction.

15. The Court of Appeal in the case of Dias property Limited & 5 others -vs- Githae & 10 others (Civil Appeal E155 & E157 of 2023 (Consolidated)) [2024] KECA 318 (KLR) stated at Paragraph 36 and 37 that;

“Under Article 165(5)(b) of the Constitution, the High Court shall not have any jurisdiction in respect of matters within the jurisdiction of the Environment and Land Court. Under Article 162(2) of the Constitution and section 13 of the Environment and Land Court Act, 2012, all matters relating to land, its ownership, use, tenure, boundaries, and so on, are reserved for the Environment and Land Court.

16. Guided by the provisions of law and the cited authorities, I am convinced that this Court has the requisite jurisdiction to entertain this matter.

Whether the Applicant in this case has satisfied the test for the grant of an order of temporary injunction.

17. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of Giella Versus 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 versus 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”.

18. Consequently, the Plaintiff should, first, establish a prima facie case. The Plaintiff/Applicant submitted that they have established a prima facie case and relied on the judicial decision of Mrao Ltd -vs- First American Bank of Kenya Ltd (2003) eKLR, in which the Court of Appeal provided 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.”

19. In support of their application, the Plaintiff has presented a Certificate of Registration issued by the Registrar of Societies, as well as a Provisional Certificate of Title to establish ownership of the contested parcel of land. The Plaintiff, on the face of it, is entitled to the protection of its proprietary rights in the property.

20. Secondly, an Applicant has to demonstrate that irreparable injury will be occasioned to him 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.

21. Regarding the irreparable injury, it is common ground that the Plaintiff’s members have been in possession and occupation of the suit property since 1973. Conversely, the 6th Defendant, who also holds a Certificate

of Title for the suit property, argues that they cannot be enjoined due to being the registered owner of the property.

22. It cannot be denied that both the Plaintiff and the 6th Defendant claim ownership of the suit property. While the Plaintiff is in possession of the property, the 6th Defendant, who holds a title, can deal with the property adversely to the detriment of the Plaintiff. I have considered the material before me, and as this is a land matter, although issuing an injunction might be relevant at this stage, it does not suit the circumstances I have observed.
23. Section 13 (7) (a) of the Environment and Land Court Act (2011) grants this Court the authority to issue preservation orders. Additionally, the Environment and Land Court Practice Directions 2024 permit this Court to issue status quo orders to maintain the subject matter until the case is fully decided. These status quo orders can be issued by the Court suo motu, exercising its general jurisdiction.
24. Black's Law Dictionary, Butterworths 9th Edition, defines Status Quo as a Latin term meaning "the situation as it exists".
25. The purpose of an order of status quo has been reiterated in a number of decisions; in Republic -vs- National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. state,

"When a Court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."

26. In TSS Spinning & Weaving; Company Ltd -vs- NIC Bank Limited & Another [2020] e KLR, the unpacked the purpose of a status quo order as follows:

“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention.’

27. In Kenya Airline Pilots Association (KALPA) -vs- Co-operative Bank of Kenya Limited & another [2020] e KLR, the purpose of a status quo order was explained as follows:

“..... By maintaining the status quo, the Court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

28. Whereas the Applicants had sought injunctive orders at this stage, which orders differ from those of the status quo, in my view, the situation I have considered warrants the issuance of status quo orders; therefore, the instant application succeeds to that extent, and I hereby issue the same to preserve the substratum of the suit property based on the materials presented before me as follows:

- a) The Plaintiff and the Defendants shall maintain the prevailing status quo in respect of the suit property at the time of this ruling.
- b) The Plaintiff who is currently in possession of the suit property shall continue to be in possession thereof but shall not develop, sell, subdivide, transfer, alienate, disposing off and/or any other manner whatsoever transacting with the suit property until this matter is heard and determined.

- c) The 6th Defendant shall not sell, transfer, alienate, dispose off and/or any other manner whatsoever transacting with the land parcel known as L. R. Number 209/1712 using the Certificate of Title in its name until this matter is heard and determined.
- d) The Officer Commanding Station; Shauri Moyo Police Station be directed to ensure compliance of these orders.
- e) Costs of the application shall be in the cause.

29. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

Delivered Online in the Presence of:

1. Ms Chepngeno for the Plaintiff
2. Mr Kiluva for the 1st to 5th Defendants
3. Mr Kiluva H/B for Mr Sisanya for the 6th Defendant
4. Mr Allan Kamau for 7th & 8th Defendants
5. C/A - Ms Yvette Njoroge