



**East African Gasoil Company Limited (Gasoil) v Luvai (Environment and Land  
Case E118 of 2025) [2026] KEELC 2460 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE E118 OF 2025**

**CK YANO, J  
APRIL 30, 2026**

**BETWEEN**

**EAST AFRICAN GASOIL COMPANY LIMITED (GASOIL) ..... TENANT**

**AND**

**SOLOMON ESTIMOA LUVAI ..... LANDLORD**

**RULING**

1. The Plaintiff/ Applicant herein filed a Notice of Motion Application dated 8<sup>th</sup> December, 2025, seeking the following orders: -
  - a. Spent
  - b. A temporary injunction restraining the Landlord/Respondent, his agents, servants and/or representatives from threatening evict, or in any manner interfere with the applicant's business premise known as Baraka Petrol Station- Pioneer/ngeria Block 1(EATEC)/13098 situated in Eldoret, along Eldoret/Malaba Road, pending the hearing and determination of this suit.
  - c. A temporary injunction restraining the Landlord/Respondent, his agents, servants and/or representatives from threatening evict, or in any manner interfere with the applicant's business premise known as Baraka Petrol Station- Pioneer/ngeria Block 1(EATEC)/13098 situated in Eldoret, along Eldoret/Malaba Road, pending the hearing and determination of this application.
  - d. That the notice made on 15<sup>th</sup> July 2025 by the Landlord/Respondent purporting to terminate the applicant's tenancy herein be declared unlawful, null and void for all intents and purposes.
  - e. That the landlord/respondent, his servants, agents and or auctioneers be restrained from levying distress for rent, selling, advertising, attaching or in any way dealing with the tenant's goods and assets, pending the hearing and determination of this suit.



- f. That the OCS Kiamba police station be directed to assist in the enforcement of the orders issued herein.
- g. That costs of the application be provided for.
2. The application is premised on the 7 grounds on the face thereof and further supported by the affidavit of ABDI ALI SALAD, the duly appointed representative of the Tenant/ Applicant, sworn on even date.
3. It is the Applicant's claim that they have been in occupation of the suit premises since January 2021, having taken over the lease from the previous tenant. They aver that they have been running a petrol station business on the suit premises and that they have made substantial investments in the business and in the suit premises.
4. The Applicant further contends that although they took possession of the suit property, no formal lease has ever been executed directly between the Respondent and themselves despite several discussions to regularize the relationship. It is also their assertion that upon taking possession, the premises were in a deplorable condition and access to some rooms remained blocked by the former tenant's items.
5. The Applicant states that they raised various tenancy concerns with the Respondent, including lack of full access to the premises, repairs to the drainage system, water shortage, poor cabro works, water storage issues and ceiling repairs. That these concerns affected the smooth operation of its business and occasioned financial loss as they were forced to repair some of these facilities.
6. The Applicant further contends that they requested for rent revision on account of the alleged breaches and losses they suffered. However, that while negotiations were ongoing, the Respondent issued them a notice to vacate and caused auctioneers to proclaim the Applicant's goods, thereby threatening to levy distress for rent and disrupt its business.
7. The Applicant therefore urges the Court to intervene and preserve the tenancy pending the hearing and determination of the suit. It maintains that unless interim orders are granted, the Respondent may proceed with eviction and distress, which may result in the substratum of the suit and the Applicant's business being destroyed and affected before the parties are heard fully on the substantive suit.
8. The application was opposed. The Respondent filed a replying affidavit dated 21<sup>st</sup> January 2026 sworn by Linet Luvai, who described herself as the duly appointed guardian of the Respondent.
9. The respondent admitted that there was a lease dated 06.01.2021 in respect to the suit premises for a period of twenty (20) years. The Respondent further stated that the original lease was with one Simon Kamau t/a Tamarsik Global Logistics, and that through a tripartite arrangement, the respondent consented to Simon Kamau entering into a dealership agreement with the applicant. Subsequently, the Applicant eventually took over the lease upon default by Simon Kamau.
10. The Respondent however denied that the Applicant has at all material times complied with the lease. It is his claim that the Applicant has failed to pay rent as agreed, leading to a demand for distress for rent.
11. On the issue of repairs, the Respondent avers that the tenancy concerns raised by the Applicant were addressed, and that the Respondent engaged a contractor to undertake the repairs requested by the Applicant. It is further deponed that the respondent is not in any way liable for the defects or losses suffered by the applicant as alleged.



12. The Respondent's position is that the notice to vacate and the levy of distress was lawful, having been undertaken pursuant to the provisions of the lease and following the Applicant's alleged non-payment of rent. The Respondent also contends that the Applicant cannot unilaterally seek rent revision, abatement or set-off without express written permission or agreement by the Respondent.
13. In conclusion, the court was urged to dismiss the application with costs.
14. The application was canvassed by way of written submissions. The applicant filed their submissions dated 17.02.2026 together with authorities while the respondent filed his submissions dated 06.03.2026, which I have read and duly considered.

**Analysis and Determination:**

15. I have carefully considered the grounds in the application, the supporting affidavit and the annexures thereto, the response by the respondent and the annexures thereto as well as the rival submissions in totality.
16. Consequently, it is my considered view that the following issues arise for determination: -
  - i. Whether the applicant has met the requirements for the grant of an order of temporary injunction.
  - ii. Who shall bear the costs of the application
17. Order 40 (1) (2) of the Civil Procedure Rules governs the grant of temporary injunction. Further, section 13 (7) (a) of the *Environment and Land Court Act*, 2015 also empowers this court to grant interim preservation orders, including an interim order of injunction in the nature sought herein.
18. The principles governing the grant of temporary injunctions are now well settled. The same was set out in the case of *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360 and has been reiterated in a number of cases over the years.
19. The Court of Appeal in the case of *Nguruman Limited vs. Jan Bonde Nielsen & 2 others* [2014] eKLR restated this position and held as follows:

“...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 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. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
20. These 3 principles and/or elements are to be applied as separate, distinct and logical hurdles which an applicant is expected to prove sequentially. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.



## **Prima Facie Case;**

21. The applicant is under a duty to demonstrate the existence of a prima facie case which raises arguable and triable issues with a probability of success. The Court of Appeal in *Mrao Ltd vs. First American Bank of Kenya and 2 Others* (2003) KLR 125 explained what amounts to a prima facie case and stated as follows: -

“ a prima facie case in a civil application includes but is 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 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.”
22. The question that therefore follows is whether the applicant has established an arguable case and demonstrated that there exists a right which has been infringed by the defendant/respondent to warrant the grant of the injunctive orders.
23. In land and tenancy disputes, the Court must be particularly cautious not to determine contested facts conclusively at an interlocutory stage. The court is however called upon to preserve the subject matter where there is a real danger that, unless restrained, one party may alter the prevailing circumstances in a manner that renders the eventual trial an academic exercise.
24. In this case, it is not in dispute that the Applicant is in occupation of the suit premises and is carrying on its business therefrom. There is also no dispute that the relationship between the parties arises from a lease arrangement in respect of the suit property. The Respondent himself relied on the lease dated 06.01.2021 and confirmed that the lease was for twenty (20) years. That fact alone demonstrates that the Applicant's occupation is not that of a trespasser or a casual entrant but rather, its occupation is grounded in a continuing commercial relationship whose exact terms, breaches and consequences require interrogation at the hearing.
25. The Applicant has placed before the Court complaints relating to access to the premises, alleged poor condition of the property, alleged failure or delay in repairs, water and drainage concerns, and the resultant effect on its petrol station business. The Respondent, on the other hand, says the concerns were addressed and repairs were undertaken. This sharp conflict cannot be resolved on affidavit evidence alone without the benefit of viva voce evidence, cross-examination where necessary, and examination of the lease, correspondence, photographs, repair agreements, notices and accounts.
26. It is true, as the Respondent argues, that a landlord is entitled to rent and that a tenant should not use litigation as a shield against clear contractual obligations. It is equally true that distress for rent is a lawful remedy where rent is due and the process is undertaken in accordance with the law. However, the legality of distress for rent in this matter is itself contested and goes to the substantive claim herein.
27. The Applicant alleges that the distress and threatened eviction was premature, oppressive and calculated to interfere with their business while the parties were still engaging on the dispute. The Respondent on the other hand insists that the process followed a lawful demand and was justified by non-payment of rent. This is a live controversy which calls for trial.
28. At this point, this Court is not satisfied that the dispute herein can fairly be reduced to a simple rent recovery matter. The pleadings disclose broader questions touching on the nature of the Applicant's tenancy, the obligations of the parties under the lease arrangement, the alleged repairs and condition of the premises, the alleged business losses, the claimed entitlement to rent revision or set-off, and the propriety of the notice to vacate and proclamation.



29. The Court is therefore persuaded that the Applicant has established a prima facie case, that raises an arguable and bona fide claim. Consequently, it is my considered opinion that the applicant has sufficiently demonstrated and established a prima facie case.

### **Irreparable Loss and Injury;**

30. The second element is that an applicant must demonstrate the irreparable loss and injury that he is likely to suffer that cannot be adequately compensated by an award of damages unless an order of injunction is granted.
31. The onus is on the applicant to demonstrate the nature and extent of the irreparable loss and harm that they are likely to suffer if the order of injunction sought is not granted. This injury must be actual, substantial and demonstrable and not mere unfounded fears or apprehension.
32. In the Court of Appeal case of Nguruman Limited v Jan Bonde Nielsen & 2 Others (supra) while defining what amounts to an irreparable injury, the court held as follows;

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

33. From the facts presented by the applicant, it is not in dispute that the applicant is running a petrol station business within the suit property. A petrol station is not an ordinary movable commercial venture that can be packed and moved without serious disruption. It involves location-specific goodwill, licensing, clientele, infrastructure, branding, equipment and commercial reputation. If the Respondent proceeds with distress, removal of goods, interference with assets or eviction before the hearing, the Applicant's business may be substantially disrupted or brought to a halt and occasion them significant loss that may not be compensated by an award of damages.
34. However, this court is also mindful that the orders of temporary injunction, in the nature sought herein, if granted is not to be used to punish the landlord or excuse the tenant from its contractual obligations. Its purpose should be to preserve the substratum of the suit pending the hearing and determination of the dispute and to further ensure that neither party is prejudiced before the dispute is heard and finally determined.
35. Be that as it may, given the circumstances of this case, this court finds that the applicant has sufficiently demonstrated the existence of real risk of harm that cannot be adequately remedied by damages alone. Consequently, it is my finding that the applicant has satisfactorily demonstrated the second element.

### **Balance of convenience;**

36. The final element is on the balance of convenience. On this element, the court is called upon to balance the hardship or inconvenience likely to be caused to the applicant by declining the injunction against the hardship or inconvenience likely to be caused to the respondents by granting the injunction.



37. In totality of the foregoing, it is my finding that the balance of convenience tilts in favor of the applicant in granting the orders of temporary injunction as sought and preserving the prevailing state of affairs.
38. The Applicant is in occupation and running a business. The Respondent's interest is primarily in receiving rent and enforcing the lease. That interest can be protected by appropriate conditional orders requiring the Applicant to continue paying current rent and to prosecute the suit expeditiously.
39. On the flipside, if the orders of temporary injunction is not granted and the distress or eviction proceeds/ensues, the Applicant risks losing possession, disruption of its business and ultimately, the suit may be rendered substantially nugatory. It is this court's considered view, that the lesser risk of injustice lies in granting the order of temporary injunction sought.
40. However, the same should be granted on terms that ensure the Respondent is not unfairly deprived of rent during the pendency of the suit. The grant of the said orders should not operate as a licence to withhold rent or ignore obligations under the lease. The Applicant is hereby reminded of its duty and obligation to continue meeting their rental obligations as soon as they fall due, without prejudice to its claim for reduction, set-off or any other relief which may be determined at the substantive hearing hereof.
41. The upshot of the above is that the plaintiff/applicant has sufficiently proved all the three elements/conditions required for the grant of an order of temporary injunction to the required standard.

**Who shall bear the costs of the present Application;**

42. It is well settled that costs follow the event and a winning party is ordinarily entitled to costs unless the court directs otherwise.
43. In this case, although the court has held that the applicant has sufficiently proved its application, it is my finding that costs of the application be in the cause.

**Conclusion:**

44. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 8<sup>th</sup> December, 2025 is merited and is hereby allowed on the following terms: -
  - a. A temporary injunction be and is hereby issued restraining the Landlord/Respondent, whether by himself, his agents, servants, employees, representatives and/or auctioneers, from evicting, threatening to evict, interfering with, disrupting or in any manner obstructing the Tenant/Applicant's quiet occupation and business operations on L.R. No. Pioneer/Ngeria Block 1 (EATEC)/13098, also known as Baraka Petrol Station, pending the hearing and determination of this suit.
  - b. A temporary injunction is hereby issued restraining the Landlord/Respondent, his agents and/or auctioneers from levying distress for rent, attaching, advertising for sale, selling or otherwise dealing with the Tenant/Applicant's goods, equipment and assets on the suit premises pending the hearing and determination of this suit.
  - c. The above injunctive orders are granted on condition that the Tenant/Applicant shall continue paying the current rent as and when it falls due, without prejudice to its claim for rent revision, set-off or any other relief to be determined at the hearing.



- d. For avoidance of doubt, the orders herein shall not be construed as a final determination of the parties' rights and obligations under the lease, nor as a waiver of any rent lawfully found due during and after trial.
- e. The parties shall take immediate steps to comply with pre-trial directions and to set down the suit for hearing on priority basis.
- f. Costs of the application shall be in the cause.

45. It is so ordered.

**DATED, SIGNED AND DELIVERED IN ELDORET THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. C. K. YANO**

**JUDGE**

Ruling delivered in the presence of: -

No appearance for Applicant.

Mr. Kimani for Respondent.

Court Assistant – Laban

