

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
KAJIADO LAW COURTS
ELC CASE NO. E064 OF 2025

VINCENT CHARLES KARANI 1ST PLAINTIFF

MARY MORAA KARANI 2ND PLAINTIFF

VERSUS

GEORGE WAINAINA NJOGU 1ST DEFENDANT

PEWAKI ENTERPRISES LIMITED 2ND DEFENDANT

LAND REGISTRAR, NGONG 3RD DEFENDANT

TOWN CLERK, OLKEJUANDO COUNTY COUNCIL,
(COUNTY GOVERNMENT OF KAJIADO) 4TH DEFENDANT

DIRECTOR OF SURVEYS 5TH DEFENDANT

THE ATTORNEY GENERAL 6TH DEFENDANT

RULING

*(In respect of the Plaintiffs' notice of motion dated 19th May, 2025
brought under various provisions of the law seeking a variety of
orders.)*

Background

1. The Plaintiffs' application under consideration is brought under the provisions of **Order 40, rule 1, 2, & 3** of the **Civil Procedure Rules**, **sections 3 & 3A** of the **Civil Procedure Act**, **section 3 (3), 24, 25, 26 & 80 (2)** of the **Land Registration Act** and **Article 40** of the **Constitution** of Kenya. Though the application is an interlocutory application, it seeks a variety of orders including final orders of eviction of the 1st and 2nd Defendants from the suit property, compensation for loss of use of the land and illegal entry and damages occasioned to the

property and a third order that the Land Registrar, Ngong be authorized to make proper records in respect of land parcel No. Ngong/Ngong II/338 and cancel the duplicate title No. Ngong/Ngong 2/338.

2. The above cited prayer cannot obviously be granted in an interlocutory application before the case is heard and the evidence tested through cross-examination. As Ringera J. (as he then was) stated in **Airland Tours & Travel Limited vs national Industrial Credit Bank, Nairobi (Milimani) HCCC 1234 of 2002**, in an interlocutory application, the court is not required to make any conclusive or definitive findings of fact or law.
3. Having said so, I am only left with the prayer for a temporary injunction and that for a restriction to consider at this stage of the proceedings.
4. The law is well settled on the conditions for the grant of an interlocutory injunction. The Applicant has to satisfy the triple requirements sequentially, to;
 - a) ***Establish his case only on a prima facie level;***
 - b) ***Demonstrate 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.***
5. It is established that the three (3) conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially. In **Kenya Finance Company**

Limited vs Afraha Education Society (2001) Vol 1 EA 86, the court was explicit that;

“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 Applicant will suffer, in the event that an injunction is not granted will be irreparable. In other words, if damages recoverable in law is 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. The existence of a prima facie case does not permit ‘leap - fragging’ by the Applicant to Injunction directly without crossing the other hurdles in between.”

6. In **Nguruman Limited vs Jan Bonde Nielsen & 2 others (2014) eKLR**, the Court of Appeal was clear that an Applicant for an interlocutory injunction must establish an unmistakable right to be protected which is directly threatened by an act sought to be restrained. The invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.

7. The Plaintiffs/Applicants in this case claim ownership of the suit property Ngong/Ngong II/338 situated at Ngong town which they allege to have bought from one Sarone Ole Sane, who was allegedly the initial registered owner and to whom a title deed had been issued on 17th September, 2004. The Plaintiffs aver that they entered into an agreement with Sarone Ole Sane on **28th September, 2004** and paid him a consideration of Kshs. 1,000,000/- but were issued with a title deed on **27th September, 2004**.
8. Interestingly, the Plaintiff in their Complaint allege that they paid the entire charges and fees towards the transfer and were issued with receipts on **24th September 2004**, four days prior to signing the agreement with the owner of the property.
9. Still more intriguing is the Plaintiff's assertion at paragraph 12 of their Complaint to the effect that the transfer of the land was handled Harrison and Mathews on **5th October, 2005**. I say intriguing because of the earlier averment that the Plaintiffs were issued with a title on 27th September, 2004.
10. The Plaintiffs aver that in the year 2006 - 2007, the 1st Defendant entered into the suit property without their consent and demolished the structures therein including the fence and erected his own structures and further fenced the entire suit property. The Plaintiffs subsequently discovered that the suit property had been transferred to the 2nd Defendant and a title deed issued in its name.

11. The 2nd Defendant which holds a title to the suit property opposes the Plaintiffs' application pointing out to the above cited disparities casting aspersions on the Plaintiffs' claim for the suit property, and further introducing a letter by the Director of Land Administration dated 23rd May, 2025 addressed to the Land Registrar Ngong which confirms that the suit property was allocated to Muriithi Njagi T/A Dether Industries and who sold it to George Wainaina Njogu way back on 12th February, 2004. George Wainaina Njogu was issued with a certificate of lease on 18th May, 2004 long before the alleged Saroni Ole Sane who purportedly sold the suit property to the Plaintiffs. The 2nd Defendant acquired the suit property from George Wainaina Njogu.

12. The Court, without delving into the merits of the case, and in view of the disparities in the Plaintiffs' narrative of acquisition of the suit property, finds and holds that the Plaintiffs have not established a prima facie case. That said, I need not go any further; irreparable injury and balance of convenience need no consideration if prima facie case is not established. Consequently, the Plaintiff's application dated 19th May, 2025 is dismissed with costs to the 2nd Defendant.

It is so ordered.

Dated Signed and Delivered Virtually this 23rd Day of April, 2026.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Njiru for the 1st Defendant

Ms. Kihenjo for the Plaintiffs/Applicants

Mr. Miller for the 3rd, 5th and 6th Defendants

N/A by the 2nd and 4th Defendants

Court Assistant: Peninah

M.D. MWANGI
JUDGE