

other manner whatsoever dealing with occupying land parcel numbers Machakos/Mamba/454 and 455.

3. THAT pending the hearing and determination of this suit injunction do issue restraining the Respondents by themselves, their agents, servants and/or employees and any person, working under their authority from trespassing, occupying, encroaching, subdividing, selling, interfering or in any other manner whatsoever dealing with land parcel numbers Machakos/Mamba/454 and 455.
4. THAT the orders be enforce by Officer Commanding Station, Yatta Police Station.
5. THAT the costs be provided for.

It is grounded on the following grounds that the Applicant with his late mother took possession of all that parcel of land known as Machakos/Mamba/153 measuring about 2.2 Hectares in the year 1972 and have been in physical possession thereof uninterrupted and continuously since the year 1972 to date. That the said parcel was originally registered in the names of the Applicant's late mother and one Caesas Kimani who is also deceased and the latter has never taken possession of the land before his demise. That the Applicant has developed the land extensively by constructing permanent buildings, digging trenches, planting

fruit trees. That the Applicant has come to learn that the land known as Machakos/Mamba/153 was

unlawfully, illegally subdivided into two portions to wit; Machakos/Mamba/454 and 455. That the Applicant has come to learn that the 1st and 2nd Respondent are claiming ownership of land parcel Numbers Machakos/Mamba/454 which was created from the original Land parcel number Machakos/Mamba/153. That the Applicant has come to learn that the two parcels of land created out of land parcel number Machakos/Mamba/153 are now registered under the name of 3rd Respondent.

That the office of the Assistant County Commissioner Matuu Division has been summoning the Applicant to his office on several occasions with a view to intimidate him to give vacant possession of his land to the Respondent herein. That unless this Honourable Court issues orders sought in this motion the Applicant will suffer irreparable loss because he has always been in possession of the suit property since the year 1972 to date and that the 1st and 2nd Respondents have never set foot on the suit property and neither have they ever developed, occupied and/or taken any possession of the suit property.

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 the applicant with his late mother took possession of all that parcel of land known as Machakos/Mamba/153 measuring about 2.2 Hectares in the year 1972 and have been in physical possession thereof uninterrupted and continuously since the year 1972 to date.

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 the said parcel was originally registered in the names of the Applicant’s late mother and one Caesas Kimani who is also deceased and the

latter has never taken possession of the land before his demise. That the Applicant has developed the land extensively by constructing permanent buildings, digging trenches, planting fruit trees. JMM3 are photos of the said developments.

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 Applicants stated that the Applicant has come to learn that the land known as Machakos/Mamba/153 was unlawfully, illegally subdivided into two portions to wit; Machakos/Mamba/454 and 455. That the Applicant has come to learn that the 1st and 2nd Respondent are claiming ownership of land parcel Numbers Machakos/Mamba/454 which was created from the original Land parcel number Machakos/Mamba/153. That the Applicant has come to learn that the two parcels of land created out of land parcel number Machakos/Mamba/153 are now registered under the name of 3rd Respondent.

Bearing this in mind, I am convinced that there is a risk in not 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 merited and order that status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF APRIL 2026.

N.A. MATHEKA

JUDGE

ORIGINAL