

IN THE ENVIRONMENT AND LAND COURT AT EMBU

ELCLA NO. E054 OF 2024

NICASIO MUCHIRA

NANCY APPELLANT

VERSUS

JOSEPH KARIUKI MUGO

RESPONDENT

(Being an Appeal from the Ruling of Hon. Mundia (PM) in Embu CM-ELC No. E009 of 2024 delivered on 5th November 2024)

JUDGMENT

Introduction

1. This is an appeal against the Ruling of the Principal Magistrate's Court at Embu delivered on 5th November 2024, in which the trial court granted a temporary injunction restraining the Appellant/Defendant from entering, leasing, trespassing upon, threatening, evicting and/or interfering with Plot No. 21A Manyatta measuring 50x100 ft, pending the hearing and determination of the main suit.
2. The Appellant was aggrieved and preferred this appeal on five grounds, which can be distilled into the following: (i) that the Respondent failed to satisfy the established legal threshold for the grant of a temporary injunction; (ii) that the trial court failed to give due weight to the Appellant's documentary evidence of lawful acquisition; and (iii) that the effect of the

order amounted to a premature eviction of the Appellant before hearing on the merits.

3. The principles governing the grant of a temporary injunction are well settled in Kenya and were authoritatively stated in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, where the Court of Appeal held that an applicant must satisfy the following cumulative conditions:
 - o (a) The applicant must establish a prima facie case with a probability of success;
 - o (b) An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; and
 - o (c) If in doubt on the foregoing, the court should decide the application on a balance of convenience.
4. These principles have been consistently applied by Kenyan courts including in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, where the Court of Appeal emphasised that the three conditions are conjunctive and must each be satisfied. A failure on the first limb is generally fatal to an application for injunction.
5. Additionally, courts have held that where a party is in actual, peaceful possession of disputed property, an injunction that dispossesses that party pending trial ought not to be granted unless the applicant's case is unusually strong. As stated in **Halsbury's Laws of England**, the court should be slow to

disturb the status quo in a manner that pre-determines the result of the suit.

6.

Analysis

(i) Prima Facie Case

6. On the first condition, the Respondent relied principally on a letter dated 22nd January 2009 from the County Council of Embu (exhibit JKM 1) as evidence of his late grandfather's ownership of a half share in Plot No. 21A Manyatta, and on a Certificate of Confirmation of Grant dated 18th October 2022 in the estate of Francis Njue Giakanu (exhibit JKM II).
7. This court notes that the said letter is a general correspondence from the County Council and does not constitute an allotment letter, a lease, or any instrument of title recognised under Kenyan land law. The Certificate of Confirmation of Grant, whilst establishing the Respondent's standing as an administrator and beneficiary of the estate of the late Francis Njue Giakanu, does not by itself establish the Respondent's proprietary right to the suit plot as against a third party who has since transacted on that plot.
8. The Appellant, on the other hand, produced: a sale agreement dated 17th April 2018; consent of the Embu County Management Board to transfer (MIN No. 4/22/03/CDCC/2018 of 22/03/2018); consent of the National Land Commission dated 18th April 2018; proof of payment of transfer fees; and annual land rate receipts for 2023 and 2024. These documents paint a

picture of a purchaser who followed due process in acquiring an interest in the suit land.

9. The trial Magistrate appears not to have engaged meaningfully with the strength of the Appellant's documentation or considered its effect on the Respondent's prima facie case. The question of whether the vendors in the 2018 transaction had the capacity and authority to sell Plot No. 21A Manyatta — and whether the Respondent's late grandfather's estate had any subsisting, enforceable interest capable of overriding that transaction — are substantial factual and legal questions requiring full trial. However, on the material before the lower court, the Respondent's evidence in support of a prima facie case was comparatively thin. The trial Magistrate erred in concluding otherwise without any analysis of the competing documents.

(ii) Irreparable Harm

10. The Respondent deposed that the Appellant has been collecting rental income of approximately Kshs. 35,000 per month from six rental houses on the suit plot. This is quantifiable monetary loss. The law is settled that where alleged damage is capable of being measured and compensated in money, it does not constitute irreparable harm for purposes of an injunction: see **Kenya Commercial Bank Ltd v Muiri Coffee Estate Ltd & Another [2016] eKLR**. The Respondent did not demonstrate any harm of a nature

that an award of damages could not adequately remedy at the conclusion of the suit.

11. Conversely, the Appellant — who has been in possession since 2018, has paid for and developed the land and continues to pay land rates — would suffer real and immediate harm from an order that, in practical effect, ejected him from his plot before the court determined whether his title was valid. The trial Magistrate did not address this dimension of the case.

(iii) Balance of Convenience

12. Given the failure by the Respondent to adequately satisfy the first two conditions, it is strictly unnecessary to belabour the third. However, the balance of convenience plainly lay with the Appellant. He is in actual occupation; he has a documentary trail showing consent from both the County Management Board and the National Land Commission; he has been paying land rates; and the equities of disturbing an established physical status quo — particularly by granting what amounts to a mandatory injunction in substance, compelling the Appellant to vacate — weigh heavily against the Respondent.
13. The Court notes ground 5 of the appeal, namely that the Appellant was denied a chance to be heard. The record shows that parties agreed to canvas the application by way of affidavit evidence and written submissions, and both parties filed their respective affidavits and submissions. This ground therefore lacks merit. The Appellant was heard, and the

grievance is properly characterised as one of incorrect evaluation of the evidence — which is addressed under grounds 1 to 4.

Disposition

14. For the foregoing reasons, this court finds that the trial Magistrate erred in law and fact in granting the temporary injunction. The Respondent failed to establish a prima facie case of sufficient strength, failed to demonstrate irreparable harm, and the balance of convenience did not favour the grant of the order. The impugned Ruling of 5th November 2024 is hereby set aside.
15. The temporary injunction granted in the lower court in terms of Prayer No. 2 of the Notice of Motion dated 26th February 2024 is hereby discharged and vacated forthwith.
16. The main suit, Embu CM-ELC No. E009 of 2024, shall proceed to full hearing and determination on its merits before the trial court, with both parties at liberty to adduce all relevant evidence, including as to the validity of the 2018 sale agreement and the extent of the estate's interest in the suit plot.
17. Costs of this appeal shall be borne by the Respondent.

It is so ordered.

DATED, SIGNED and DELIVERED at EMBU this 30th Day of April, 2026.

HON. E.C CHERONO
ELC JUDGE, EMBU

In the presence of;

1. Appellant/Advocate-absent
2. Respondent-present
3. Diana Kemboi C/A