



**Sikorei v Kenya Power and Lighting Company Limited Staff  
Retirement Benefits Scheme 2006 Registered Trustees (Land Case  
E534 of 2025) [2026] KEELC 2424 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2424 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E534 OF 2025  
OA ANGOTE, J  
APRIL 30, 2026**

**BETWEEN**

**LEONARD SUYANKA SIKOREI ..... PLAINTIFF**

**AND**

**THE KENYA POWER AND LIGHTING COMPANY LIMITED  
STAFF RETIREMENT BENEFITS SCHEME 2006 REGISTERED  
TRUSTEES ..... DEFENDANT**

**RULING**

1. Vide a Notice of Motion dated 21<sup>st</sup> October, 2025, brought pursuant to the provisions of Sections 1A, 1B, 3A and Section 63 (e) of the *Civil Procedure Act*, Order 40 Rule 1, and Order 51 Rule 1 of the Civil Procedure Rules, the Plaintiff/Applicant seeks the following reliefs:
  - a. That pending the hearing and determination of the application herein, the Respondents whether by themselves, their agents and/or servants or otherwise howsoever be restrained by injunction from evicting the Applicants, taking possession, transferring, or in any other way interfering with the Applicants' quiet possession of the premises known as town house number 18C at Bogani Park erected on Land Reference Number 2259/708 (Original Number 2259/705/1).
  - b. That pending the hearing and determination of the application herein and the entire suit, the Respondents whether by themselves, their agents and/or servants or otherwise howsoever be restrained by injunction from evicting the Applicants, taking possession, transferring, or in any other way interfering with the Applicants' quiet possession of the premises known as town house number 18C at Bogani Park erected on Land Reference Number 2259/708 (Original Number 2259/705/1).



- c. That the costs of this application be provided for.
2. The Motion is set out on the grounds on the face thereof and supported by the affidavit of Leonard Suyanka Sikorei, the Plaintiff/ Applicant herein of an even date. He deponed that he and the Respondent got into an agreement for lease dated 17<sup>th</sup> December 2019 for the sale and subscription of town house number 18C at Bogani Park erected on Land Reference Number 2259/708 (Original Number 2259/705/1) (suit property).
  3. He explained that he has made payments to the extent of Kshs. 21,655,000 in respect to the purchase price and is in the process of clearing the outstanding balance in the coming months; that the valid lease agreement granted him and his family members exclusive possession of the premises and that he has been in occupation thereof and has made improvements and developments in the tune of Kshs 11, 400,000.
  4. According to the Plaintiff, his rights and interest in the property are under threat by virtue of the eviction notice issued by the Respondent. He avers that he is in the process of clearing the outstanding balance and has undertaken to make a further instalment payment of Kshs 40,000,000 within fifteen days, by 31<sup>st</sup> October 2025.
  5. He deposed that despite these bona fide efforts, the Respondent remains intent on evicting him from the premises and unless the interim injunctive orders are granted, he and his young family stand to suffer injustice, irreparable loss and damage that cannot adequately be compensated by an award of damages.
  6. In response to the Motion, the Defendant/Respondent, through its Chief Executive Officer and Trust Secretary, Edwin Kiprono Ruttoh, swore a replying affidavit on 20<sup>th</sup> November, 2025.
  7. He deponed that the Respondent, a Fund, was established by a Trust Deed and commenced operations on 1<sup>st</sup> July 2006 and that its purpose is to provide retirement and other prescribed benefits to all permanent and pensionable employees of Kenya Power, Nuclear Power and Energy Agency, and, where applicable, benefits to the dependants of deceased members.
  8. He explained that that the Applicant and Respondent entered into an agreement for lease and subscription of share dated 17<sup>th</sup> December 2019 for the purchase of the property by way of sub-lease and that under the sale agreement, the Applicant agreed to pay Ksh 102,000,000 as the purchase price for the property and Kshs 50,000 for the allotment and issuance of one share in the Management Company, of all town houses, for Bogani Park.
  9. Chief Executive Officer and Trust Secretary deposed that pursuant to clause 4 of the Sale Agreement, the Applicant was required to pay a deposit of Kshs 20,410,000 being 20% of the purchase price, on or before execution of the letter of offer, and the balance of the purchase price of Kshs 81,640,000 on or before the contractual completion date, as defined in the sale agreement.
  10. It was deposed that the parties also entered into a licence agreement dated 17<sup>th</sup> December 2019. By the License, it was urged, the Respondent granted the Applicant a license to use the property as a private dwelling home from 1<sup>st</sup> December 2019, to 1<sup>st</sup> December 2021 at a monthly license fee of Kshs 60,000 and a monthly service charge of Ksh 30,000.
  11. It is the Defendant's case that the Applicant defaulted on his payment obligations under both the sale agreement and the licence and, sometime in May 2021, he approached the Respondent seeking more time to pay the purchase price and that the Respondent agreed to the Applicant's request and in that regard, the parties executed a deed of variation dated 23<sup>rd</sup> July 2021 varying the sale agreement



- to provide that the completion date means 31<sup>st</sup> December 2022 and the balance of the purchase price would be paid as follows;Kshs 20,000,000/=to be paid on or before 31<sup>st</sup> August 2021;Kshs 20,000,000/= to be paid on or before 31<sup>st</sup> December 2021;Kshs 20,000,000/= to be paid on or before 31<sup>st</sup> May, 2022 andKshs 21,640,000 to be paid on or before 31<sup>st</sup> December 2022.
12. Similarly, a deed of variation dated 23<sup>rd</sup> July 2021 was entered into extending the licence term to 37 calendar months from 1<sup>st</sup> December 2019, such that the license would terminate on 1<sup>st</sup> January 2023.
  13. Notwithstanding these indulgences, it was contended, the Applicant sought a further renegotiation of the payment terms and that by a letter dated 15<sup>th</sup> May 2023, the Applicant, through his advocates, proposed to pay, a deposit of Ksh 20,000,000 by 31<sup>st</sup> July 2023; a second deposit of Ksh 20,000,000 by 31<sup>st</sup> December 2023 and full payment of the balance by 31<sup>st</sup> July 2024 and that the Respondent accommodated this proposal but the same was not honoured.
  14. According to Mr Ruttoh, after the virtual meeting held on 15<sup>th</sup> May 2023, the Respondent's advocates issued a default notice to the Applicant's advocates by a letter dated 22<sup>nd</sup> May 2023 notifying him of the default and granting a further opportunity to comply with the renewed terms of the varied sale agreement and licence.
  15. It was deponed by the Defendant' Chief Executive Officer and Trust Secretary that despite issuance of the above default notice, the Applicant again failed to comply and that on 29<sup>th</sup> November 2023, the Respondent's advocates demanded settlement of the balance of the purchase price, being Kshs 81,930,000, within 21 days of receipt of the letter.
  16. Again, it was urged, the Applicant did not honour the demand and instead sought a further extension by a letter dated 8<sup>th</sup> May 2024, committing to pay Kshs 20,000,000 by 26<sup>th</sup> June 2024 and that as pension fund with fiduciary obligations to its members, the Respondent could not continue to extend indulgences to the Applicant without performance. It accordingly instructed its advocates to issue a termination notice for the sale Agreement.
  17. He explained that as had been the Applicant's continued practice, he responded with yet another commitment to pay the outstanding licence fees by 14<sup>th</sup> February 2025 and the outstanding purchase price by 28<sup>th</sup> February 2025 and that on 23<sup>rd</sup> January 2025, the Respondent wrote to the Applicant informing him that further extensions were untenable.
  18. On 3<sup>rd</sup> February 2025, the Fund issued a default notice under the licence, notifying the Applicant that he had failed to pay periodic licence fees from 1<sup>st</sup> January 2021 to 30<sup>th</sup> December 2024, with arrears of Kshs 2,280,000 and demanding payment within 21 days from the date of service of the notice.
  19. Mr Ruttoh noted that on the same date, the Funds advocates issued a default under the sale agreement (as varied), stating that the balance of the purchase price stood at Kshs 80,690,000 and demanded payment within 21 days, failing which, the Fund would rescind the sale agreement, place the property back on the market and the Applicant would forfeit Ksh 10,200,000, already paid to the Respondent, pursuant to clause 8 of the sale agreement.
  20. Nonetheless, it was deposed, by a letter dated 5<sup>th</sup> March 2025, the Applicant's advocates committed, once more, to clear the outstanding payments by paying Kshs 20,000,000 by 31<sup>st</sup> March 2025, Ksh 30,000,000 by 30<sup>th</sup> May 2025 and the balance by 31<sup>st</sup> August 2025.
  21. The Chief Executive Officer and Trust Secretary stated that as a gesture of goodwill, the Respondent wrote on 6<sup>th</sup> March 2025 requesting that the Applicant first clear the outstanding licence fees before any further extension could be considered and that despite repeated indulgences, default notices and



- demand letters, each affording the Applicant further opportunities, he failed to settle the outstanding licence fees and the purchase price.
22. It was deposed by the Defendant's CEO that on 12<sup>th</sup> June 2025, the Respondent's advocates issued termination notices to the Applicant terminating both the sale agreement and the licence and that by the letters, the Respondent reminded the Applicant of his failure to comply with his obligation to pay the balance of the purchase price and was directed to vacate the property and return possession to the Respondent.
  23. In response to the termination notices, the Applicant's advocates, by a letter dated 16<sup>th</sup> June 2025, gave yet another commitment to pay the licence fees by 30<sup>th</sup> June 2025 and the balance of the purchase price within 60 days (on or before 15<sup>th</sup> August 2025). Nonetheless, to date, the Applicant has failed to comply with the payment schedules set out in the sale agreement and the licence, or with the timelines he himself set in his repeated requests for extensions.
  24. It is the Defendant's case that on 1<sup>st</sup> September 2025, to bring closure to the matter, it wrote to the Applicant advising him that it has made deductions from the sums paid towards the purchase price and licence fees, requested his bank details for refund of the net amount, and required him to vacate and deliver vacant possession.
  25. He explained that as at September 2025, the Applicant owed the following amounts to the Respondent: Unpaid utilities - KES 650,799.91/= Unpaid Land Rent & Rates – KES 742,602 / =Balance of the Purchase Price - Kshs 80,690,000/= Unpaid licence fees – Kshs 2,700,000/=
  26. The deponent averred that he is unaware of any requirements for approval by the Respondent's in relation to any alleged substantial improvements made to the property and that the Applicant neither sought nor obtained the Fund's approval and did not share any requests, invoices, or building plans prior to undertaking any alleged improvements.
  27. He urged that a party who is in persistent default and approaches the court without first remedying that default is undeserving of equitable relief, having come to court with unclean hands. In his view, the Applicant has failed to establish a prima facie case with any likelihood of success, nor has he demonstrated the nature of the irreparable harm he would suffer if the orders sought are not granted.
  28. On the other hand, he submitted that the Respondent, being a pension fund with fiduciary obligations to its members, stands to suffer substantial prejudice if the orders are granted, given that the Applicant remains indebted in the sum of Kshs 84,783,401.91 without any credible or satisfactory proposal for settlement.
  29. He further contended that continued restraint of the Respondent would expose the Fund to unrecoverable losses to the detriment of its pensioners. Accordingly, he maintained that the balance of convenience tilts in favour of the Respondent and urged the court to dismiss the motion.

## **Submissions**

30. The Plaintiff's/Applicant's counsel filed submissions dated 10<sup>th</sup> February, 2026. Counsel submitted that the Applicant has satisfied the threshold for the grant of an interlocutory injunction pending determination of the main suit. Reliance was placed on Order 40 Rule 1 of the Civil Procedure Rules, which empowers the court to grant injunctive relief where property in dispute is in danger of being wasted, damaged, alienated or wrongfully sold in execution, or where there is a reasonable probability that execution of any decree may be obstructed or delayed.



31. Counsel submitted that the Applicant has established a prima facie case, having already paid Kshs 21,655,000 towards the purchase price and undertaken improvements on the property valued at Kshs 11,400,000 which, according to him, the Respondent has failed to account for. Counsel further submitted that the Applicant has demonstrated willingness and readiness to settle the outstanding balance of the purchase price without delay.
32. Counsel further argued that the Applicant and his family occupy the suit property as their matrimonial home and it is their only known place of residence, and that unless the orders sought are granted, they stand to suffer irreparable loss and damage not capable of being remedied by an award of damages. It was contended that the Applicant's rights have been threatened by the eviction notice issued by the Respondent and that the Applicant stands to lose his lifetime investment in the property.
33. On the issue of balance of convenience, Counsel relied on Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR, where the court explained that the balance of convenience favors the party likely to suffer greater inconvenience if the injunction is refused and the suit eventually succeeds, as compared to the inconvenience likely to be suffered by the opposing party if the injunction is granted but the suit ultimately fails.
34. Counsel therefore urged the court to find that the Applicant had satisfied the requirements for the grant of an interlocutory injunction.
35. The Defendant's/Respondent's counsel filed submissions on 23<sup>rd</sup> February, 2026. Counsel submitted that an order for temporary injunction cannot issue because the Applicant has not demonstrated the threshold set out in the case of Giella vs Cassman Brown & Co Limited[1973]EA 358.
36. It was submitted that the Applicant has failed to demonstrate that there is a prima facie case with probability of success as set out in Mrao Ltd vs First American Bank of Kenya Limited and 2 otheers[2003]KECA 175 (KLR) and that he signed an agreement and license both of which contained explicit repayment terms which, despite indulgence by the Respondent, he failed to adhere to.
37. Also cited was the decision in William Kazungu Karisa vs Cosmus Angore Chanzera[2006]KEHC 1974(KLR) to support the assertion that parties must perform their respective obligations as per the terms and conditions of a contract executed by them. Reliance was also placed on Sisto Wambugu vs Kamau Njuguna [1983]KECA 69(KLR).
38. Counsel submitted that the Applicant has not demonstrated that he stands to suffer irreparable harm or damage which cannot be adequately compensated by an award for damages. It was submitted that as stated by the Court of Appeal in Housing Company of East Africa Limited vs Board of Trustees National Social Security Fund & 2 Others[2018]KECA 71(KLR) where a purchaser has dragged his feet and been guilty of unnecessary delay, a vendor is entitled to serve upon him a rescission notice.
39. In any event, it was submitted, any damage by the Applicant can be remedied by damages. Cited in support was Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] KECA 606(KLR), and Otieno Onyango & 5 Others [2025]KEECL 5085 (KLR).

### **Analysis and determination**

40. Having considered the Motion, and responses, the issue that arise for determination is whether the Plaintiff/ Applicant has met the threshold to warrant the grant of a temporary injunction.
41. The grant of interlocutory injunctions is governed by Order 40 Rule 1 of the Civil Procedure Rules, 2010. The provision empowers the court to issue a temporary injunction where it is demonstrated, by affidavit or otherwise, that the property in dispute is in danger of being wasted, damaged, or alienated,



or where a defendant threatens to dispose of property in circumstances that may obstruct or delay the execution of any decree that may ultimately be issued.

42. In determining whether a plea for injunction is merited, the court must have regard to the well-settled principles enunciated in *Giella vS Cassman Brown & Co. Ltd* [1973] EA 358, namely, an applicant must establish a prima facie case with a probability of success, demonstrate that irreparable injury would result if the injunction is not granted, and where the court is in doubt, the matter is to be determined on a balance of convenience.
43. These requirements must be satisfied sequentially. As affirmed by the Court of Appeal in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR, the establishment of a prima facie case, proof of irreparable harm, and the balance of convenience are distinct and logical hurdles, each of which must be satisfied before the court can grant interlocutory injunctive relief.
44. Beginning with a prima facie case, as cited by the parties, the same was succinctly defined in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR thus:

“...So what is a prima facie case? I would say 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 right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
45. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others*(supra), the Court of Appeal affirmed the definition of a prima facie case in *Mrao Ltd v First American Bank of Kenya Ltd*(supra) and clarified that an applicant must demonstrate a clear and identifiable right that is directly threatened by the act sought to be restrained. The invasion of the right must be substantive and that there must be urgency to prevent irreparable harm.
46. It further held that, at the interlocutory stage, the court does not conduct a mini-trial but only determines whether an applicant has shown a bona fide and arguable claim, proved on a balance of probabilities, which appears more likely than not to ultimately succeed.
47. By way of a brief background, the Applicant seeks vide the suit, inter-alia, an injunction restraining the Respondent or any other persons acting under its authority from in any way interfering with the Plaintiff's quiet possession, occupation, and enjoyment of the said premises, an order compelling the Defendant to accept payment of the outstanding lease balance under the agreed or reasonable terms of settlement, general damages for threatened eviction, distress, and inconvenience caused to the Plaintiff and his family.
48. It is the Applicants' case that vide an agreement for lease dated 17<sup>th</sup> December 2019, he agreed to purchase the suit property from the Respondent. He paid Kshs. 21,655,000 towards the purchase price, was granted exclusive possession of the property, and has remained in occupation with his family ever since. He further avers that he has carried out improvements valued at approximately Kshs. 11,400,000 and remains ready, willing and able to settle the outstanding balance, including a further sum of Kshs. 40,000,000.
49. According to the Applicant, despite this, the Respondent issued him an eviction notice dated 1<sup>st</sup> September 2025 threatening to remove him and his family from the property. The Applicant contends that the threatened eviction is unlawful, would occasion emotional distress, displacement and irreparable loss noting that the same constitutes his matrimonial and family home.



50. On its part, the Respondent does not dispute that the parties entered into an agreement for lease in respect of the suit premises as alluded to by the Respondent. It states however that after entering into the agreement, the Applicant was unable to pay the purchase price within the agreed upon timelines. This led to variations in the agreements aimed at accommodating the Applicant.
51. Despite this, the Applicant began a pattern of repeatedly seeking extensions, which the Respondent, in good faith, continued to grant. However, on 12<sup>th</sup> June 2025, the Respondent formally terminated both the sale agreement and the licence agreement and required the Applicant to vacate the property and deliver vacant possession.
52. Even after the termination, it was deposed, the Applicant continued to seek further indulgence. Consequently, on 1<sup>st</sup> September 2025, in an effort to bring the matter to a close, the Respondent wrote to the Applicant advising that deductions had been made from the sums already paid towards the purchase price and licence fees, requested his bank details for purposes of refunding the net amount due, and again required him to vacate and hand over vacant possession.
53. According to the Respondent, as at September 2025, the Applicant owed it Kshs. 650,799.91 in utilities, Kshs. 742,602 in land rent and rates, Kshs. 80,690,000 being the balance of the purchase price, and Kshs. 2,700,000 being the licence fees.
54. The court has carefully considered the pleadings and the evidence on record. Certain facts are undisputed, namely that the Applicant entered into an agreement for lease and a licence agreement with the Respondent with respect to the suit property pursuant to which the Applicant took possession of the property.
55. Further, pursuant to the aforesaid agreements, the Applicant was under an obligation to pay the purchase price within the stipulated timelines and to continue paying the agreed licence fees and service charge.
56. The material before the court shows that the Applicant failed to comply with those obligations and repeatedly sought extensions of time from the Respondent. The record demonstrates a consistent pattern of indulgence on the part of the Respondent, followed by repeated default by the Applicant, including failure to honour even the revised timelines proposed by himself.
57. Indeed, even in the present Motion, the Applicant undertook to make a further payment of Kshs 40,000,000 by 31<sup>st</sup> October 2025, yet there is no evidence to that the said amount was paid. It is also not disputed that substantial sums remain outstanding.
58. The evidence shows that the Respondent repeatedly extended time for payment, issued notices of default, granted further opportunities to comply, and only terminated the sale agreement and licence after prolonged default by the Applicant. In the court's view, the Applicant has not demonstrated an enforceable right that has apparently been infringed so as to call for rebuttal by the Respondent.
59. Having considered the foregoing, the court is therefore unable to discern a prima facie case with a probability of success. The Applicant has not demonstrated that the Respondent acted outside the terms of the parties' agreements or that the Respondent's right to terminate the transaction arose unlawfully.
60. With respect to irreparable harm, the Applicant must demonstrate that the injury likely to be suffered cannot be adequately remedied by an award of damages. As stated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the burden lies on the applicant to show that the threatened injury



is real, substantial, and incapable of adequate compensation in damages, and not merely speculative or based on apprehension.

61. In the present case, the Applicant's claim is fundamentally one of a failed commercial transaction. The Applicant himself quantifies the sums allegedly paid towards the purchase price at Kshs. 21,655,000 and the value of the alleged improvements at Kshs. 11,400,000. Those are quantifiable monetary claims capable of ascertainment and compensation should the suit ultimately succeed.
62. While the Applicant asserts that the property constitutes his matrimonial home and only known residence, the material before the court shows that his occupation of the premises arose from a contractual licence and lease arrangement, both of which were subject to express payment obligations and timelines. In the circumstances, any loss arising from termination of the transaction, loss of possession, or recovery of monies expended is capable of being remedied by an award of damages.
63. Indeed, it has not been alleged by the Applicant, or proved, that the Respondent would be unable to compensate him in damages should the court eventually find in his favour. In the premises, the court is not persuaded that the Applicant has established irreparable harm within the meaning of *Giella Versus Cassman Brown* (1973) EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
64. As regards the balance of convenience, the court does not find that the same tilts in favour of the Applicant. The Applicant has remained in occupation of the suit premises for several years while consistently failing to comply with the payment obligations under both the sale Agreement and the licence agreement. To continue restraining the Respondent from dealing with the property would effectively compel it to continue accommodating a purchaser who has persistently defaulted on his contractual obligations.
65. Further, the Respondent is a pension fund with fiduciary obligations to its members. It has demonstrated that continued delay exposes it to ongoing prejudice, including unrecovered licence fees, unpaid utilities, land rent and rates, and the inability to dispose of the property. In those circumstances, the inconvenience likely to be suffered by the Respondent if the injunction is granted far outweighs the inconvenience likely to be suffered by the Applicant if it is refused. The balance of convenience therefore tilts in favour of the Respondent.
66. In the end, the court finds the Motion dated 21<sup>st</sup> October, 2025, to be unmerited. The same is dismissed with costs.

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

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Owour for Plaintiff/Applicant

Mr. Wameo for Adeya for Defendant/Respondent

Court Assistant: Tracy

