



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI, NAIROBI
ELCLC CSASE NO. E646 OF 2025

**EBRAHIM & COMPANY
LIMITED..... PLAINTIFF**

-VERSUS-

**DOMINIC KURIA GICHOMBE
T/A KAGICH INVESTMENTS.....1ST**

DEFENDANT

**STEPHEN MBOYA KAMINDA
T/A KAGICH
INVESTMENTS.....2ND**

DEFENDANT

RULING

1. This ruling is in respect to two applications; the application dated 19th December 2025 and 21st January 2026. Pursuant to the directions issued by this Court, both applications before the Court were directed to be canvassed together to enable the Court to render a comprehensive ruling on the same.

2. The two applications are as follows:

a) The Application dated 19th December 2025

3. The first application is the Notice of Motion dated 19th December 2025 brought by the Plaintiff/Applicant **under Article 40(1) of the Constitution, Sections 14 and 145 of the Land Act and Order 40 of the Civil Procedure Rules**. The Applicant seeks orders for certification of urgency (spent); a temporary injunction restraining the Defendants, their agents or servants from entering, interfering with, constructing on or otherwise dealing with the suit property known as L.R. No. 209/593 (Wazir House); and orders granting the Applicant unhindered access to the said property to continue with repairs pending the hearing and determination of both the application and the suit.
4. The application is grounded on the existence of a lease agreement dated 31st January 2019 under which the Defendants were lessees of the suit premises for a term of ten (10) years and six (6) months. It is the Applicant's case that on 6th January 2024, the premises were razed down by fire allegedly caused by the negligence of the Defendants' sub-tenants, thereby triggering the Defendants' obligation under the lease to make good the damage.
5. The Applicant avers that despite this obligation, the Defendants failed and/or refused to undertake repairs or meet the associated costs, forcing the Applicant to undertake reconstruction at an estimated cost of Kshs. 60 million.
6. The application is supported by the affidavit of Aziz Ebrahim Mavani, who depones that following the fire incident, the Defendants absconded their obligations under the lease and only resurfaced in December 2025, when they allegedly attempted to forcefully re-enter the premises accompanied

by goons, thereby disrupting ongoing repairs. He avers that unless restrained, the Defendants will continue interfering with the property to the Applicant's detriment, occasioning irreparable loss and damage.

Response to the Application dated 19th December 2025

7. In opposition, the Defendants/Respondents filed a Replying Affidavit sworn by the 2nd Defendant. They challenge the competence of the application on the basis that it is not supported by a valid company resolution, rendering it defective. They further affirm that they are lawful lessees under a subsisting lease agreement valid until August 2029 and contend that the Applicant is bound by the terms thereof and cannot unilaterally vary or selectively interpret the same, particularly in relation to alleged VAT arrears which they term as legally untenable.
8. On the merits, the Respondents deny liability for the fire incident and term the allegations of negligence as unproven, further challenging the reliability of the fire report relied upon by the Applicant. They assert that pursuant to the lease, rent ceased to accrue upon destruction of the premises and that the lease remains valid and enforceable. They deny any forcible entry into the premises and contend that they have invested substantial sums in goodwill, renovations and deposit, and have suffered loss of business since the fire. It is their position that the Applicant is attempting to unlawfully terminate the lease and deprive them of their leasehold rights, and they urge the Court to dismiss the application with costs.

b) The Application dated 21st January 2026

9. The second application is the Notice of Motion dated 21st January 2026 brought by the Defendants/Applicants under **Order 40 Rules 1, 4 and 10**

of the Civil Procedure Rules and Sections 1A and 3A of the Civil Procedure Act. The Applicants seek orders for certification of urgency (spent); a temporary injunction restraining the Plaintiff/Respondent, its agents or servants from leasing out, selling, charging, transferring, developing or otherwise dealing with the suit property known as L.R. No. 209/593, Moi Avenue, Nairobi pending the hearing and determination of the application and the suit; and orders directing the OCS Central Police Station to enforce compliance.

10. The application is grounded on the assertion that the Applicants are lawful lessees under a lease agreement dated 31st January 2019 subsisting until August 2029. They aver that following a fire incident on 6th January 2024 which rendered the premises uninhabitable, reconstruction has since progressed and is near completion. They express apprehension that the Plaintiff intends to alienate the property or create third-party interests in disregard of their leasehold rights, thereby defeating their claim and rendering the suit nugatory.
11. The application is supported by the affidavit of Stephen Mboya Kaminda, who depones that the Applicants have invested substantial sums in the premises including goodwill, rent deposit and renovations amounting to over Kshs. 50 million, and have suffered loss of business since the fire. He avers that the Applicants are ready to resume occupation and continue with the lease, and that unless the orders sought are granted, they stand to suffer irreparable loss and damage.

Response to the Application dated 21st January 2026

12. In response, the Plaintiff/Respondent filed a Replying Affidavit sworn by Aziz Ebrahim Mavani opposing the application. The Plaintiff avers that it has been in control of the property since the fire incident and that the

Defendants vacated the premises and have not contributed towards its reconstruction, thereby breaching the lease agreement. It is further contended that the Defendants are liable for the fire as established by a fire investigation report, the findings of which have not been challenged, and therefore cannot rely on lease provisions that excuse liability where damage occurs without fault.

13. The Plaintiff further contends that the Defendants have misrepresented facts regarding alleged payments of goodwill and renovation costs, and have failed to provide evidence of any contribution towards the reconstruction. It is averred that the Defendants will not suffer prejudice if the injunction is denied, as they have not met their contractual obligations, and that the application is based on misrepresentation and is an abuse of the court process. Consequently, the Plaintiff urges the Court to dismiss the application with costs.

Submissions

14. The two applications were canvassed by way of written submissions.

- a) **Application dated 19th December 2025**

15. In support of the application dated 19th December 2025, the Plaintiff/Applicant submitted that it had satisfied the legal threshold for grant of an interlocutory injunction. Counsel identified the issues for determination as whether the Court ought to grant the injunctive orders sought, whether costs should be awarded, and whether enforcement orders ought to issue. Reliance was placed on the principles in ***Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358***, as developed in ***Suleiman -Vs- Amboseli Resort Ltd (2004) eKLR*** and ***Films Rover***

International Ltd. -Vs- Cannon Film Sales Ltd. (1986) 3 All ER 772, with the argument that the Court should adopt the course that carries the lower risk of injustice.

16. It was further submitted that the Applicant had established a prima facie case within the meaning of ***Mrao Ltd -Vs- First American Bank of Kenya Ltd & 2 Others [2003] KLR 125***, having demonstrated infringement of its proprietary rights. Counsel argued that the Applicant stood to suffer irreparable loss not compensable in damages given the substantial investment in reconstruction of the suit property, and that the balance of convenience tilted in its favour. Additional reliance was placed on ***R.J.R. Macdonald -Vs- Canada (Attorney General)*** and ***Mbuthia -Vs- Jimba Credit Corporation Ltd [1988] KLR 1***, with emphasis that the Defendants were in breach of the lease and liable for the fire damage, and that preservation of the suit property was necessary pending trial.
17. In opposition, the Defendants/Respondents submitted that the Applicant had not met the threshold for grant of an interlocutory injunction. They relied on the principles in ***Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358*** and argued that no prima facie case had been established, as liability for the fire remained unproven and contested. They further contended that the lease agreement remained valid and subsisting, and that the Applicant could not unilaterally alter its terms or rely on disputed allegations to obtain equitable relief.
18. It was also submitted that any alleged loss was quantifiable and compensable by damages, and therefore did not meet the test of irreparable harm. The Defendants maintained that the balance of convenience favoured preservation of their leasehold interest and urged the Court to dismiss the application with costs._

b) **Application dated 21st January 2026**

19. In support of the application dated 21st January 2026, the Defendants/Applicants submitted that they had satisfied the conditions for grant of an interlocutory injunction. They identified the issues as whether they had established a prima facie case, whether they would suffer irreparable harm, and where the balance of convenience lay. Counsel relied on the principles in ***Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358***, as well as ***Suleiman -Vs- Amboseli Resort Ltd (2004) eKLR and Films Rover International Ltd (1986) 3 All ER 772***, urging the Court to adopt the lower risk of injustice test.
20. It was submitted that the Defendants had a subsisting leasehold interest over the suit property and had therefore established a prima facie case. Counsel argued that unless restrained, the Plaintiff risked alienating or otherwise dealing with the property to the detriment of the Defendants' rights, thereby rendering the suit nugatory. Further reliance was placed on ***Mrao Ltd -Vs-First American Bank of Kenya Ltd & 2 Others [2003] KLR 125***.
21. In opposition, the Plaintiff/Respondent submitted that the Defendants had failed to satisfy the threshold for grant of injunctive relief. The issues identified were whether the Defendants had established a prima facie case, whether they would suffer irreparable harm, whether the balance of convenience favoured them, and whether they had approached the Court with clean hands. Reliance was placed on ***Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358***, ***Mrao Ltd -Vs- First American Bank of Kenya Ltd & 2 Others [2003] KLR 125***, ***Suleiman -Vs- Amboseli Resort Ltd (2004) eKLR***, and ***Mbuthia -Vs- Jimba Credit Corporation***

Ltd [1988] KLR 1.

22. It was submitted that the Defendants were in breach of the lease agreement, had not contributed to the reconstruction of the premises, and were therefore undeserving of equitable relief. Counsel argued that any alleged loss was quantifiable and compensable in damages, and that the balance of convenience lay in favour of the Plaintiff who had expended substantial sums in rebuilding the property. The Court was urged to find that the Defendants had not come with clean hands and to dismiss the application with costs.

Issue for Determination

23. The single issue for determination is whether the parties have met the threshold for grant of interlocutory injunctive relief in their respective applications.

Analysis

24. The principles applicable to an application for an injunction were laid down in the celebrated case of **Giella -vs- Cassman Brown & Co Ltd (1973) EA 358**, as follows:

- a) *First, the applicant must show a prima facie case with a probability of success.*
- b) *Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.*

c) *Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.*

25. The first limb is whether the Applicants have established a prima facie case with a probability of success. A prima facie case was defined by the Court of Appeal in ***Mrao Ltd -Vs- First American Bank of Kenya Ltd & 2 Others (2003) eKLR*** 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.”*
26. It is not in dispute that the parties herein are bound by a lease agreement dated 31st January 2019 in respect of the suit property known as L.R. No. 209/593, and that a fire incident occurred on 6th January 2024 which destroyed the premises. What is contested is liability for the fire, the extent of the parties’ obligations under the lease, and the right to possession and control of the suit property pending determination of the suit.
27. In ***Edwin Kamau Muniu -Vs- Barclays Bank of Kenya Ltd (2006)***, the court held that: *“In an interlocutory application to determine the very issues which will be canvassed at the trial with finality... All the court is entitled at this stage is whether the applicant is entitled to an injunction sought on the usual criteria.”*
28. At this interlocutory stage, the Court is not required to make final findings on contested issues such as liability for the fire, alleged breach of the lease, or the parties’ respective proprietary rights. Those are matters

reserved for trial.

29. From the material placed before the Court, it is evident that the dispute arises from a subsisting lease agreement and the events following the fire incident of 6th January 2024. The Plaintiff asserts rights as lessor who has undertaken reconstruction at substantial cost, while the Defendants assert rights as lessees under the lease.
30. The dispute therefore raises serious triable issues relating to liability for the fire, compliance with the lease terms, and the right to possession and control of the suit property. In the circumstances, the Court is satisfied that a prima facie case has been established to warrant preservation of the suit property pending trial.
31. On the second limb, each party has expressed apprehension of loss of its respective interest in the suit property. The Plaintiff fears interference with its control and investment in reconstruction, while the Defendants fear loss of their leasehold interest should the property be alienated or otherwise dealt with. The Court is persuaded that the subject matter of the suit is unique and that any interference therewith may not be adequately compensated by an award of damages.
32. On the balance of convenience, the Court is guided by the principle that it should adopt the course that carries the lower risk of injustice. In the circumstances of this case, and given the competing claims over possession and control of the suit property, the balance tilts in favour of preserving the status quo pending the hearing and determination of the suit, so as to safeguard the rights of both parties.

Disposition

33. In the circumstances, the Court finds that the appropriate order is to preserve the suit property pending the hearing and determination of the suit.
34. Accordingly, the Court directs that the status quo obtaining on the ground with respect to the suit property known as L.R. No. 209/593 be maintained pending the hearing and determination of the suit.
35. Each party shall bear its own costs of the two applications.

It is so ordered!

DATED, SIGNED and DELIVERED at NAIROBI on this 6th day of May, 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Maina..... for the Plaintiff

Mr. Githaiga..... for Defendant

Philomena W...... Court Assistant