

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. E010 OF 2026

SOLOMON KIM KARIUKI-----
PLAINTIFF/APPLICANT

VERSUS

PETER **N.**
MBURU-----DEFENDANT/RESPONDEN
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RULING

- 1.** By an application dated **10/2/2026**, the court is asked to grant a temporary order of injunction barring and restraining the respondent, his agents, servants, employees, or proxies from trespassing, entering, laying claim, occupying, causing damage, or causing destruction, or in any manner interfering with Parcel No. **2116/827 Kitale Municipality Block 5/31**, pending hearing and determination of this suit.
- 2.** The reasons are contained on the face of the application and in a supporting affidavit of Solomon Kim Kariuki, sworn on **10/2/2026**. The applicant deposes that there is in existence a lease agreement for **5 years**, dated **12/2/2022**, with the defendant, attached as annexure **SK-(1)**, payable

quarterly in advance, which the defendant breached by failing to pay rent and secretly letting the premises to I-Procure Ltd, who are in occupation of the same, leading to a termination notice issued on **4/1/2023**.

- 3.** It is deposed that the defendant proceeded to file a complaint under **Section 12(4)** of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, **Cap 301** dated **10/2/2023**, terming the notice as illegal, and also sought interim orders to stop the eviction or levying of distress. The applicant deposes that even though the notice was found defective, the tribunal held he had a right to rental income, and dismissed the application filed by the respondent as per a ruling attached as **SK-(2)**.
- 4.** The applicant deposes that the respondent filed **Appeal No. E012 of 2023**, which was summarily rejected by a ruling marked **SK-2(a)**. The applicant deposes that on **30/4/2024**, he issued a formal proper termination notice, a copy attached as **SK-(3)**, which the respondent never challenged other than sending a reply conceding to the notice marked **SK-(4)**.
- 5.** The applicant deposes that through the intervention of friends, a draft dated **15/9/2025**, a mediation agreement was tentatively agreed upon, but the

respondent unfortunately refused to execute it, attached herein as **SK-(5)**. The applicant deposes that during those negotiations, the defendant had already given up possession.

- 6.** The applicant deposes that he then, on **8/11/2024**, wrote a letter to the defendant, warning him against removing structures, which was followed by another reminder dated **5/5/2025**, attached as **SK-(6)** and **(7)**.
- 7.** Despite all these, the applicant deposes that the defendant still harbours an intention of creating a disturbance on the premises.
- 8.** The applicant deposes that the said acts of the defendant were demonstrated during **November 2025** when he forced his way in and destroyed the electric installation therein, whose repair was **Kshs. 300,000/=**, yet he had formally handed over keys on **1/9/2025**, and again on the first week of **December 2025**, placed locks on the door, and the plaintiff had placed his on **1/9/2025**, hence denying him access. The applicant therefore urges that the court grant the reliefs sought.
- 9.** The application is opposed by the replying affidavit sworn on **13/3/2026**. The respondent terms the prayers sought as untenable, since he is still in occupation of the suit premises, where he has extensive developments valued at **Kshs.**

25,000,000/=, but the applicant carried away **150** pieces of iron sheets valued at **Kshs 184,500/=**, one office desk valued at **Kshs 20,601/=**, padlocks valued at **Kshs 8,000/=**, one piece of a high-pressure car washing machine valued at **Kshs 45,000/=** and locked the premises.

10. The respondent deposes that he was issued with the notice to terminate or to alter the tenancy, which at **clause 4** required him, within a month of receipt, to notify him in writing whether or not he agreed to comply.

11. The respondent deposes that he responded and disagreed since there were ongoing negotiations and had done vast developments. Further, the respondent deposes that the cancellation agreement is not binding since the applicant declined to sign.

12. The respondent attached copies of the valuation report, lease agreement, letter dated **8/11/2024**, and letter dated **5/1/2025**, ruling in **ELC Appeal No. E012 OF 2023**; properties receipts and ownership documents; notice and response dated **15/5/2024**; consents and approvals, and the cancellation agreement as annexures marked **PNM1- 5**.

13. Section 63(e) of the Civil Procedure Act and **Order 40 Rule 1** of the Civil Procedure Rules provides that

where in any suit it is proved by affidavit or otherwise, that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or sold in execution, or where the defendant threatens or intends to remove or dispose of his property, the court may by order grant a temporary injunction to restrain such an act or make such other orders for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the suit is disposed of or until further orders.

14. The principles governing temporary injunction were set out in **Giella -vs- Cassman Brown Co. Ltd 1973] EA 358**, and **American Cyanamid Co. -vs- Ethicon Ltd [1979] AC 135**. They include;

- (a)** *A serious and fair issue to be tried.*
- (b)** *Damages are not adequate.*
- (c)** *Balance of convenience lies in favour of granting or refusing the application.*

15. To establish those principles, the court does not make a definitive finding on facts or law, but rather, as held in **Mbuthia -vs- Jimba Credit Finance Corporation & another [1988] KECA 116 (KLR)**, to weigh up the relevant strength of each side's proposition.

- 16.** In ***Mrao Ltd -vs- First American Bank of (K) Ltd & Others [2003] eKLR***, a *prima facie* case was defined as one where, looking at the material presented, a right has been threatened, infringed, or breached to call for an explanation from the opposite party.
- 17.** In ***Nguruman Limited -vs- Jan Bonde Nielsen & 2 Others [2023] eKLR***, irreparable loss or damage is one that cannot be quantified or compensated monetarily. It must be real, apparent, imminent, and not imagined or speculative.
- 18.** Balance of convenience is the inconvenience being greater to be suffered if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, than that caused to the defendant if an injunction is granted and ultimately the suit is dismissed. See ***Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai [2018] eKLR and Chebii Kipkoech -vs- Barnabas Tuitoek Bargarora & another [2019] eKLR***.
- 19.** In ***Philes Nyokabi Kamau -vs- Industrial & Commercial Development Corporation [2017] eKLR***, the court cited ***Margaret Njoki Migwi -vs- Barclays Bank of Kenya Ltd [2016] eKLR*** where the court held that the phrases *prima facie* case, irreparable loss, and balance of convenience are not mere rhetoric phrases or incantations but are

important factors to be carefully weighed and considered in every case, and the facts of each case must therefore be considered in the light of the three pillars as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially as held in **Kenya Commercial Finance Co. Ltd -vs- Afraha Educational Society [2001] Vol. 1 EA 86.**

20. There is no dispute that the applicant has shown that the lease to the suit property expired, and there was a legal termination notice which the respondent has not challenged in law. The respondent has not shown justification for why he should remain in the rented premises in the absence of a valid lease or tenancy agreement. **Article 40** of the Constitution, as read together with **Section 26** of the Land Registration Act, grants a proprietor of land the right to quiet enjoyment, use, and possession of his land.

21. Unless the plaintiff is granted the temporary injunction, the respondent shall continue to subject him to immeasurable loss and damage. The balance of convenience in the circumstances favours the granting of a temporary injunction, to last for **one (1) year** from the date hereof.

22. Orders accordingly.

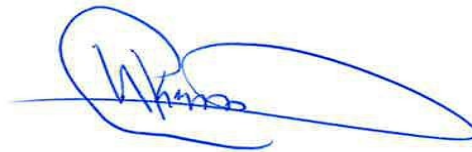
Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **6th** day of **May 2026**.

In the presence of:

Court Assistant - Dennis

Miss Keya for the plaintiff present

Mr. Nakitare for the defendant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**