



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC LC CASE NO. E119 OF 2024

MOSES OKEYO OSUNGA.....1ST

PLAINTIFF

SUSAN AKELLO OKEYO.....2ND

PLAINTIFF

VERSUS

KINGOINA OMWERI ENOCK1ST

DEFENDANT/APPLICANT

DISTRICT LAND REGISTRAR NGONG.....2ND

DEFENDANT

OMBOGA JOB NYAMUMBO 3RD

DEFENDANT

RULING

1. Vide an application dated **19th September 2025** the 1st Defendant/Applicant seeks, a temporary injunction to restrain the Plaintiffs/Respondents from dealing with the property known as Ngong/Ngong/9142 pending the hearing and determination of the suit; and leave to amend his Statement of Defence.
2. The Applicant claims that he is the registered owner of property Ngong/Ngong/9142 which he purchased from the 1st Plaintiff and that the consideration was paid through the 2nd Plaintiff, who is the 1st Plaintiff's daughter. He avers that he constructed his residential house on the suit property where he has been residing. On the 1st September 2025, he received a 30-day eviction notice from the Plaintiffs. He pleads that the threat of eviction is real and imminent as the Plaintiffs may proceed to evict unless restrained by the court.
3. The 1st Plaintiff / Respondent opposes the application on the grounds that he is the registered owner of the suit property and not the 1st Defendant/Applicant. He denies selling the

suit property to the Applicant and insists that any registration in favour of the Applicant, if at all, was procured fraudulently. He deposes that the Applicant was permitted to occupy the property on account of his financial circumstances and that the eviction notice was lawfully issued. He urges the Court to dismiss the Application and order the Applicant to vacate the premises.

4. The Application was canvassed by way of written submissions. Counsel for the Applicant submits that the Applicant has met the threshold for grant of temporary injunction as he has established that he is the owner of the suit property and that he is facing eviction from the Plaintiffs. He submits that if the Defendant is evicted, he would suffer irreparable loss by being rendered homeless. As such, the balance of convenience tilts in his favour.

5. Counsel went on to submit that as under **Order 8 rule 3** of the **Civil Procedure Rules**, the Court has discretion to allow amendments for purposes of determining the real question in dispute and that no prejudice would be occasioned to the parties.

6. The Plaintiffs/Respondents argue that the Applicant had not established a prima facie case as the alleged title to the suit property was fraudulently acquired and there is no valid sale agreement. They further submit that the value of the construction can be compensated by way of damages.
7. On the question of amendment of the Defendants statement of defence it is submitted that the amendment is an afterthought which has not been explained and which would prejudice the Plaintiffs hence the application should be dismissed with costs.
8. Having considered the Application and rival submissions, the twin issues for determination are;
 - i. **Whether the Applicant has met the threshold for grant of a temporary injunction.**
 - ii. **Whether the Applicant should be granted leave to amend his defence.**
9. The law on grant of interlocutory injunctions is set out under **Order 40 Rule 1 (a) and (b) of the Civil Procedure Rules** as follows:

“Where in any suit it is proved by affidavit or otherwise -

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order 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 disposal of the suit or until further orders.”

10. The principles for grant of injunction are well settled by the locus classicus of **Giella Vs Cassman Brown &**

Company Limited [1973] E.A. 358., wherein the court stated thus:

“First, an applicant must show a prima facie case with a probability of success. Secondly, 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. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

11. This court is thus required to determine whether the applicant has satisfied the three conditions for grant of injunction. In **Nguruman Limited Vs Jan Bonde Nielsen & 2** the Court of Appeal had this to say on prima facie case ; ***“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the***

right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion” .

12. The Court went on to hold that these conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... *“If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the*

applicant to injunction directly without crossing the other hurdles in between...”

13. It is on record that the Applicant is in occupation of the suit property. However, ownership of the suit property is contested. The Applicant asserts ownership through purchase, while the Respondent denies any sale and alleges fraud. The Respondent further explains the Applicant’s possession was with the permission of the Respondent and not through proprietary right.
14. These competing positions raise serious and weighty questions regarding ownership and validity of title. These issues cannot be conclusively determined on the basis of affidavit evidence at an interlocutory stage.
15. In the circumstances, the Court cannot make a finding that the Applicant has demonstrated a prima facie case with a probability of success as required. The Applicant’s claim to title remains disputed and unproven at this stage. Guided by the holding in **Nguruman Limited v Jan Bonde Nielsen & 2 others (supra)**, given that the Court finds that no prima facie case has been established, the court will not proceed to

consider the elements of irreparable harm or balance of convenience. Accordingly, the prayer for a temporary injunction is not merited and is hereby declined.

16. Notwithstanding the foregoing, the Court takes judicial notice of the undisputed fact that the Applicant is in actual possession of the suit property and that an eviction notice has been issued. The courts have held that even where the elements for grant of an injunction are not met, the court in the interest of preserving the substratum of the suit can give a status quo order.

17. Justice Murithi J in the case of **Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic -vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel** sought to draw the distinction and opined: ***“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon***

establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

(see in The Matter of an Application By Saifudeen Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition [2013] eKLR).

18. Consequently, the Court directs that the status quo be maintained pending the hearing and determination of the suit. For the avoidance of doubt, no party shall evict the

other, alienate, transfer, charge, or otherwise deal with the suit property in a manner that may prejudice the determination of the suit.

19. The next issue for determination is whether the Applicant should be granted leave to amend his defence. The power of Court to allow Amendment of pleadings with leave is articulated under **Order 8 rule 3 Civil Procedure Rules** which provides that: *the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.*

20. The guiding principle is that amendments should be freely allowed if they are necessary for determining the real questions in controversy, provided that no prejudice is occasioned to the opposite party. In the present case, the Applicant seeks to amend his defence, relief the Respondent opposes on the basis that he has already prepared his case.

21. The record shows that the matter is still at an early stage and the Respondent will have an opportunity to amend

his pleadings. In the circumstances, the Court finds no reason to deny the amendment as sought.

22. The resultant orders thus are:

- i. An order is hereby issued maintaining the status quo of LR No. Ngong/Ngong/9142 pending the hearing and determination of the suit. For avoidance of doubt, no party shall evict the other, alienate, transfer, charge, or otherwise deal with the suit property in a manner that may prejudice the determination of the suit.**
- ii. The 1st Defendant/Applicant is granted leave to file and serve an amended defence and counterclaim within twenty one (21) days of this Ruling.**
- iii. The Plaintiffs/Respondents and the other Defendants shall have leave to file their responses within Twenty One (21) days of service.**

iv. Costs of the Application shall abide the outcome of the main suit.

Dated, Signed and Delivered virtually at Kajiado this 7th day of May 2026.

JUDY OMANGE

JUDGE.

In the Presence of

Mr Allan Kibet for M/S Lumallas for the Plaintiffs.

MS Somba for Dr Kubasu for the 1st Defendant.

Peter - Court Assistant.