



REPUBLIC OF KENYA



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Njuki v Business Partners Int’L Kenya Ltd & another (Environment and Land Case E003 of 2025) [2025] KEELC 5484 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5484 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E003 OF 2025**

JM MUTUNGI, J

JULY 23, 2025

BETWEEN

DICKSON KABUGA NJUKI PLAINTIFF

AND

BUSINESS PARTNERS INT’L KENYA LTD 1ST DEFENDANT

KENYA SHIELD AUCTIONEERS 2ND DEFENDANT

RULING

1. Before me for determination is a Notice of Motion application dated 10th February 2025, brought under Order 40 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, the *Environment and Land Court Act*, and Articles 40 and 159 of the *Constitution*. The Applicant, Dickson Kabuga Njuki, seeks the following substantive relief:
 1. That this Honourable Court be pleased to grant a temporary injunction restraining the Defendants/Respondents, whether by themselves, their agents and/or servants, from selling through auction Land Parcel Ngariama/Merichi/3225 pending the hearing and determination of this suit.
2. The application is based on the grounds set out in the body of the application as well as the Supporting Affidavit of Dickson Kabuga Njuki, sworn on 10th February 2025. The Applicant asserts that he is a co-registered owner of Land Parcel Ngariama/Merichi/3225, referred to herein after as the suit property, and that he currently resides in the Netherlands. He avers he became aware of the impending public auction after seeing an advertisement in a Kenyan newspaper while reading online. The Applicant contended that he had never taken out a loan with the 1st Respondent and was perplexed as to why his property had been publicized for public auction by the 2nd Respondent on 19th February 2025.
3. The Applicant further averred that the Respondents intend to interfere with the suit property by trespassing upon it. He stated he fears that without court intervention, there will be a breach of peace,



as the Respondents appear determined to proceed with the public auction. The Applicant argued that if the Court does not restrain the Respondents from their actions, he is likely to suffer irreparable harm and significant financial loss.

4. The 1st Respondent opposed the application through a Replying Affidavit sworn by Jenipher Wanjiku Odek, its Portfolio Manager, on 25th February 2025. She averred that the Applicant was fully aware of the transaction, having executed a Power of Attorney in favour of his son, and that the property was lawfully charged to the 1st Respondent as security. It is the 1st Respondent's position that the Applicant has not demonstrated any special circumstances warranting injunctive relief, especially considering that the property was charged as security for a loan that remains unpaid.
5. In response, the Applicant filed a Further Affidavit sworn on 5th May 2025 where he clarified that he co-owned the suit property with his son, George Kabugi Njuki. He averred that before relocating to the Netherlands, he had executed a General Power of Attorney in favour of his son; but contended the authority *vide* the power of Attorney was conditional, limited by an express requirement that any transactions undertaken using the power must be for the Applicant's benefit and subject to ratification by him.
6. The Applicant contended that the loan at the heart of the dispute was advanced not to him, but to Teybridge Limited t/a Petzone, a company associated exclusively with his son. He denied having borrowed, received, or benefited from any part of the loan and further denied being a shareholder or beneficiary of the said Company. According to the Applicant, his signature does not appear on any of the loan instruments, and he never ratified the use of the suit property as security for the loan.
7. The Applicant reiterated that the suit property was his only home in Kenya, developed through his own resources, and that any attempt to sell it through public auction would unjustly dispossess him based on a transaction in respect of which he was not a party. He asserted that the 1st Respondent ought to seek recovery of the loan from the actual borrower and not penalize an innocent co-owner whose proprietary rights are protected by law.
8. The Court on 27th February 2025 directed that the application be canvassed by way of written submission.

Applicant's Submissions

9. The Applicant filed his written submissions dated 29th May 2025. He submitted that he had satisfied the legal threshold for grant of a temporary injunction as he had a *prima facie* case with a probability of success and that he stood to suffer irreparable harm that damages could not compensate. The Applicant in support of his submissions placed reliance on the Case of *Giella v Cassman Brown* (1973) EA 358.

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. 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 on an application based on the balance of convenience.”

10. On the issue whether he had *prima facie* case, the Applicant submitted that he had attached an official search that showed he was a co-owner of the suit property and therefore had a proprietary interest in the suit property. He contended that he had never taken a loan with the Defendants and had never offered the suit property as collateral. Despite that, the land was advertised in a newspaper for public



auction. He maintained that, as a co-owner, his property rights were protected under Article 40 of the Constitution of Kenya, 2010 and he ought not to be deprived of his property.

11. The Applicant made reference to Clause 6 of the General Power of Attorney dated 5th August 2021 granted to his son, to emphasize that any thing done pursuant to the Power of Attorney had to be to his benefit and only then could he ratify:

“It is hereby declared that the Donor will at all times ratify, allow and confirm all and whatsoever the Donee or any substitutes duly appointed shall lawfully do or cause to be done in and about the premises by virtue of these presents.”

12. The Applicant argued that as per this clause the Donee's actions were subject to the Donor's ratification, which was not given in this case. He relied on the case of Said Ahmed v Manasseh Denga & Another (2019) eKLR and Nguruman Limited v Jan Bonde Nielsen & 2 Others (2014) eKLR to support his submission that he had satisfied the criteria of establishing a *prima facie* case.
13. On whether he stood to suffer irreparable harm, the Applicant submitted that it is an undisputed fact that the Respondents intend to auction the suit property to recover the alleged loan. If allowed, this would result in permanent deprivation of the Applicant of his property which was his only residence in Kenya. In support of his submission he placed reliance on the Case of Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR.
14. On the question of the balance of convenience the Applicant submitted that his rights over the suit property was undisputed and that he had developed his residential home on the property. As such, he argued his right to the property deserved protection and in the present matter the balance of convenience tilted in his favour.

1st Respondent's Submissions

15. The 1st Respondent filed written submissions dated 25th April 2025 and framed three issues for determination:
 1. Whether George Kabugi Njuki had the requisite authority to offer the suit property as security for the advancement of financial facilities.
 2. Whether the Plaintiff has satisfied the legal test for the grant of an interlocutory injunction.
 3. Whether the Plaintiff is entitled to the orders sought.
16. On the first issue, Counsel submitted that all relevant facility documents were duly executed by the borrower's Directors and Chargor. It was emphasized that George Kabugi Njuki executed the documents both in his capacity and pursuant to a valid General Power of Attorney dated 4th November 2021, which expressly empowered him to transact on behalf of the Applicant, including the authority to secure financial facilities using the suit property.
17. Counsel further submitted that the Power of Attorney was properly executed and registered, and that the Plaintiff was at all times aware of the transaction. Reliance was placed on the case of Kangogo & Another (Suing as the administrators of the Estate of the Late Richard Chelimo Kangogo) v Industrial and Commercial Development (Civil Case No. 2 of 2023) [2024] KEHC 4501 (KLR), where the Court upheld the validity of a registered Power of Attorney in the absence of any allegations of forgery, duress, or misrepresentation. Counsel noted that no such claims had been raised in this case, nor had the donee (George Kabugi Njuki) been joined as a party or called as a witness to challenge the validity of the authority.



18. On the second issue, the 1st Respondent submitted that the Applicant had failed to meet the threshold for grant of an interlocutory injunction. While the Applicant claimed to have had no part in the loan transaction, Counsel argued that the valid Power of Attorney expressly authorized George Njuki to bind the Applicant in such dealings, including the creation of a charge over the suit property.
19. Lastly, on the third issue, counsel contended that the Applicant had approached the Court with unclean hands. Specifically, it was argued that the interim orders were obtained through material non-disclosure, most notably the Applicant's failure to disclose that he had granted his son a Power of Attorney authorizing him to act on his behalf in property-related matters.
20. Counsel in conclusion submitted that the Applicant had failed to satisfy the well-established criteria in the Case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 (*supra*) and that no injunctive relief should issue.

Analysis and determination

21. I have considered the application, the Replying Affidavit, the parties' submissions, including the 1st Defendant's Supplementary submissions. The primary issue for determination is whether the Applicant has met the threshold for the grant of an interlocutory injunction.
22. The principles upon which an interlocutory or temporary injunction will be granted are well settled as articulated in the submissions made by the parties. The principles were established in the *Giella v Cassman Brown Case* (*supra*) and are that an Applicant has to demonstrate a *prima facie* case with a probability of success; has to show that unless the injunction was granted he stood to suffer injury that damages would not adequately compensate; and finally in the event there was doubt, the Court would determine the application based on consideration of the balance of convenience. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) eKLR defined what constitutes a *prima facie* case as follows:-

“In Civil cases, a *prima facie* case 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 to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”
23. In the later case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* (2014) eKLR while adopting the definition of *prima facie* case given by the Court in the *Mrao Ltd Case* (*supra*) the Court of Appeal by way of explanation stated as follows:-

“The party on who the burden of proving a *prima facie* 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. We reiterate that in considering whether or not a *prima facie* case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation-----”
24. In the instant case, the Applicant, Dickson Kabuga Njuki and his son, George Kabugi Njuki are the joint registered proprietors of land parcel Ngariama/Merichi/3225. As per the exhibited copy of



- certificate of official search the two were registered on 6th October 2021. The 1st Defendant advanced a loan facility to Teybridge Ltd of Kshs 11,000,000/- that was secured under a charge dated 30th March 2022 and registered on 7th April 2022 over land parcel Ngariama/Merichi/3225. The charge was executed by George Kabugi Njuki on behalf of himself and on behalf of his co-proprietor Dickson Kabuga Njuki pursuant to a General Power of Attorney donated to him by the said Dickson Kabuga Njuki (the Plaintiff herein). The exhibited General Power of Attorney was executed by both the donor and the donee on 5th August 2021 and was registered on 9th November 2021.
25. The Plaintiff does not dispute that he executed the Power of Attorney, only that he avers that his son was only to utilize the Power of Attorney for purposes that were of benefit to him (Plaintiff) and that he was to ratify and consent to any undertaking that the son was to undertake on the basis of the Power of Attorney. He denied he had any association with the Company that was advanced the loan and maintained and insisted that he had not approved and/or ratified any such borrowing.
 26. On the other hand, the 1st Respondent relies on the General Power of Attorney dated 4th November 2021, through which it claims the son validly executed all loan and charge instruments on the Applicant's behalf. The 1st Respondent argues that the Applicant cannot now disown that authority. The validity of this power and the scope of the authority conferred thereby are sharply contested.
 27. The tenor of the General Power of Attorney on close scrutiny would appear to only sanction the acts that were for the benefit of the donor. It does not appear to me that the Donee could do anything he wished with the property in the guise that the Donor had approved of it. There is no evidence to suggest that the Donor was even aware that the son was utilizing the land to obtain a loan facility for a company that he, the Plaintiff, was neither a shareholder and/or Director. Clauses 2, 3 and 4 of the General Power of Attorney are all prefaced "for the Donor and in the Donor's name and benefit" meaning a benefit had to accrue to the Donor in regard to the acts the Donee was to execute pursuant to the Power of Attorney on behalf of the Donor. A reading of the Power of Attorney suggests the only acts that were sanctioned under the Power of Attorney were those that were of benefit to the Donor (Plaintiff). This should be an issue for determination at the trial.
 28. Clause 6 of the Power of Attorney that provides:-
 6. And it is hereby declared that the Donor will at all times ratify, allow and confirm all and whatsoever the Donee or any substitutes duly appointed shall lawfully do or cause to be done in and about the premises by virtue of these presents."
 30. In my view clause 6 above refers to action undertaken by the Donee lawfully for the benefit of the Donor and cannot relate to acts undertaken outside the scope of the Power of Attorney. The authority conferred to the Donee by the General Power of Attorney was limited to those acts that benefitted the Donor or so it appears.
 31. In my view, the Applicant's status as a co-owner of the suit land is not in dispute. Whether his son's use of the property as security fell within or outside the authority granted is a triable issue, especially in light of the conflicting assertions concerning the purpose and scope of the power of attorney. This raises serious legal and factual issues, including potential overreach by the donee and enforceability of obligations entered into outside the scope of authority envisaged by the Power of Attorney. These are not matters that can be summarily determined at the interlocutory stage. I am satisfied that the Applicant has demonstrated a *prima facie* case with a probability of success.
 32. The next hurdle is whether the Applicant has demonstrated that he stands to suffer irreparable harm if the injunction is not granted.



33. In *Nguruman Ltd Case* (*supra*), the Court of Appeal underscored that irreparable harm is injury that is substantial and cannot be adequately remedied by an award of damages. The Applicant has deponed, and this was not rebutted with any evidence, that the suit land is his only residence in Kenya and has been developed for that purpose. He averred that he derives no commercial benefit from it and that its sale would extinguish his only foothold in his home Country.
34. The 1st Respondent, while asserting that land is inherently enduring and replaceable, did not offer evidence to contest the nature of the Applicant's occupation or the sentimental and functional attachment to the property. It is now well recognised that loss of a dwelling place may, depending on the circumstances, amount to irreparable harm particularly where the right to shelter is concerned.
35. I find that the Applicant has demonstrated a likelihood of suffering harm that cannot be adequately compensated by a monetary award should the auction proceed and he is successful in the suit.
36. Where doubt exists as to either a *prima facie* case or irreparable harm, the Court is enjoined to decide the matter on a balance of convenience. The Court does not entertain a doubt that a *prima facie* case has been demonstrated and/or that the Applicant would not suffer irreparable harm.
37. In the present matter, the status quo is that the Applicant is in possession or otherwise enjoys co-ownership of the suit property. The risk posed by the proposed auction is that this right may be extinguished before the question of liability and more importantly, whether the act of the Donee utilizing the General Power of Attorney to execute the charge over the suit property was ultra vires what the Power of Attorney authorized.
38. On the other hand, the 1st Respondent retains the registered charge and may, should it succeed at trial, enforce its security. The harm to the Applicant, if the property is sold before trial and he succeeds, in the suit would be far more consequential as the Applicant would lose his residential home and stand deprived of his property. I find the balance of convenience is in the Applicants favour and that an order of temporary injunction is warranted to preserve the property pending the hearing of the suit.
39. I accordingly grant an order of injunction in terms of prayer (3) of the Notice of Motion dated 11th February 2025.
40. The Plaintiff will have the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 23RD DAY OF JULY 2025.

J. M. MUTUNGI

ELC -JUDGE

