



**Mugambi & another v Njeru (Environment and Land Appeal
E002 of 2024) [2025] KEELC 5612 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5612 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

BM EBOSO, J

JULY 22, 2025

BETWEEN

ROBERT NJUE MUGAMBI 1ST APPELLANT

VITALIS MIRITI KARIM 2ND APPELLANT

AND

JOSEPH MBAE NJERU RESPONDENT

(Being an Appeal arising from the Ruling of the Chief Magistrate Court at Chuka (Hon J M Gandani), delivered on 30/8/2023 in Chuka CMC E & L Case No. E050 of 2022)

JUDGMENT

Introduction

1. This appeal challenges the ruling of the Chief Magistrate Court at Chuka [Hon J M Gandani, CM] rendered on 30/8/2023 in Chuka CMC E & L Case No E050 of 2022. Through the impugned ruling, the Chief Magistrate Court allowed the respondent's interlocutory application dated 23/9/2022 in which the respondent sought an order restraining the appellants against any further erection of illegal structures on the access road leading to land parcel number, Muthambi/Igamurathi/693. One of the key issues to be determined in the appeal is whether the application dated 23/9/2022 met the criteria for grant of an interlocutory injunctive relief. Before I analyse and dispose the issues that fall for determination in the appeal, I will briefly outline a contextual background to the appeal and summarize the parties' respective submissions in the appeal.

Background

2. Vide a plaint dated 23/9/2022, the respondent sued the appellants in the lower court, seeking: [i] a declaration that the portion of land on which the appellants had constructed their structures was public land meant to serve as an access road for the public; [ii] a declaration that the structures



constructed by the appellants on the said land were illegal; [iii] an order directing the appellants to remove the said structures and, in default, the appellants to be forcefully evicted and their structures to be demolished at their cost; [iv] an order compelling the appellants to pay damages for the loss occasioned to the respondent, plus mesne profits; [v] an order authorizing the Officer Commanding Ntumu Police Station to enforce the above court orders; and [vi] an order awarding the respondent costs of the suit.

3. The case of the respondent was that, he was the registered proprietor of land parcel number Muthambi/ Igamurathi/693, measuring 0.023 hectares. The said land was served by a clear public access road that was marked on the Registry Index Map [the RIM], and the road had been ascertained by the Land Registrar. The Land Registrar had visited the suit land on 21/4/2022 to establish boundaries and had established that there existed a public access road of 30 feet wide, which had been encroached by the appellants. The respondent contended that the structures placed by the appellants on the alleged access road were erected without approvals from the relevant authorities. He was unable to access his premises due to the illegal structures that had been erected on the access road.
4. Contemporaneous with the plaint, the respondent filed a notice of motion dated 23/9/2022, seeking a total of six [6] interlocutory reliefs. At the time of disposing the application, three out of the six interlocutory reliefs were spent because the three reliefs were to abide the inter-partes hearing and determination of the application. The relevant interlocutory reliefs which fell for consideration at the point of determining the application were: [i] an order restraining the appellants from any further erection of illegal structures on the access road leading to parcel number Muthambi/Igamurathi/693, pending the hearing and final determination of the main suit; [ii] an order directing the Officer Commanding Ntumu Police Station to enforce and/or ensure compliance with the above order; and [iii] an order providing for costs of the application.
5. The 1st appellant opposed the application through a replying affidavit dated 3/11/2022 and written submissions dated 6/12/2022. His case was that he had been wrongly sued. He contended that he neither owned nor controlled the alleged illegal structures, adding that he was a stranger to the structures. He denied being in illegal occupation of land anywhere. He urged the lower court to dismiss the application.
6. The 2nd appellant opposed the application through a replying affidavit dated 4/11/2022 and written submissions dated 6/12/2022. His case was that he had been wrongly sued. He denied owning or controlling the alleged illegal structures. He, similarly, denied being in illegal occupation of land anywhere. He urged the court to dismiss the application.
7. Upon considering the application, the lower court rendered the impugned ruling in which it found that the respondent had established a prima facie case. The lower court further found that the application had merit. The lower court allowed the application.

Appeal

8. Aggrieved by the ruling of the lower court, the appellants brought this appeal through a memorandum of appeal dated 29/9/2023. The memorandum of appeal was amended on 1/12/2023. The appellants advanced the following three grounds of appeal:
 1. That the learned trial magistrate erred in law and fact in making a finding that the respondents had met the threshold for grant of orders of temporary injunction.
 2. That the learned trial magistrate erred in law and fact in issuing orders that are final in nature at the interlocutory stage.



3. That the learned magistrate erred in law in failing to find that the appellants' averments of fact in response to the respondent's application were not controverted.
9. The appellants sought an order setting aside the order issued by the lower court on 30/8/2023. They further sought an order awarding them costs of the appeal.

Appellants' Submissions

10. The appeal was canvassed through written submissions dated 11/2/2025, filed by M/s Basilio Gitonga, Murithi & Associates. Counsel for the appellants submitted that the respondent did not expressly seek an order of temporary injunction, adding that the trial court proceeded as if a temporary injunction had been sought. Citing the criteria outlined in *Giella v Cassman Brown* [1973] EA 358 on grant of temporary injunction, counsel submitted that the dispute had highly contested issues of fact, particularly on the party who was impeding the respondent's access to his land. Counsel argued that the respondent was obligated to lay before court further particulars relating to the alleged encroachment. In sum, counsel submitted that the respondent failed to establish a prima facie case.
11. Counsel argued that the respondent having failed to satisfy the first requirement in *Giella v Cassman Brown* [Supra], there was no need to consider the second limb, adding that the respondent did not demonstrate injury that would not be assuaged by an award of damages. On the third limb, counsel argued that the orders issued by the lower court had the undesired effect of determining a substantial portion of the suit with finality.
12. Citing the decision in *Daniel Kipkemoi Siale v Kapsasian Primary School & 2 others* [2016] eKLR, counsel for the appellants argued that the orders issued by the lower court will inevitably hamstring the lower court at the hearing of the main suit. Lastly, counsel argued that the respondent having failed to dispute the facts contained in the appellants' responses, the court ought to have found so and proceeded on that premise. Counsel urged the court to allow the appeal.

Respondent's Submissions

13. The respondent opposed the appeal through written submissions dated 23/4/2025, filed through M/s Waklaw Advocates. Counsel for the respondent submitted that in granting the interlocutory reliefs, the trial court properly laid out the jurisprudential criteria and remained alive to the denials by the appellants, and to the findings of the Land Registrar and the Surveyor. Counsel argued that the appellants did not deny blocking the respondent's access road and therefore the trial court properly granted the orders sought.
14. Citing the Court of Appeal decision in *Jay Super Power Cash & Carry Limited v Nairobi City Council & 2 others* Civil Appeal No 111 of 2002, counsel submitted that grant of interlocutory orders was an exercise of discretionary power which can only be disturbed upon a finding that the power was abused. Counsel added that the lower court having found that the structures erected on the public access road were impeding the respondent's access to his property, for the purpose of construction, there would be no proper reason to warrant interference with the orders of the lower court.

Analysis and Determination

15. The court has considered the original record of the trial court, the record filed in this appeal, the grounds of appeal and the parties' respective submissions. The court has also considered the relevant legal frameworks and the jurisprudence relevant to the key issues in this appeal. The two key issues that



fall for determination in the appeal are: [i] Whether the orders issued by the lower court as interlocutory reliefs were final in nature; and [ii] Whether the application dated 23/9/2022 met the criteria for grant of an interlocutory injunctive relief. I will dispose the two issues sequentially in the above order. Before I do that, I will briefly outline the principle which guides this court when exercising appellate jurisdiction. I will also outline the principle which guides an appellate whenever it is invited to review the discretionary decision of a lower court.

16. The task of a first appellate court was summarized by the Court of Appeal in the case of *Susan Munyi v Keshar Shiani* [2013] eKLR as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”

17. The principle was similarly outlined in *Abok James Odera t/a A J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

18. The other key guiding principle which this court ought to remain alive to is that, in an appeal challenging a lower court’s exercise of discretion, the appellate court does not interfere with the lower court’s exercise of discretion unless it is demonstrated that there was a misdirection resulting in a wrong decision or unless it is manifest from the case as a whole that the lower court was clearly wrong in the exercise of its discretion and the error had resulted in a miscarriage of justice. The above principle was outlined in *Mbogo & Another v Shah* [1968] EA 98 in the following words:

“A court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

19. The last guiding principle is that when disposing an interlocutory appeal relating to a plea for an interlocutory injunctive relief, the appellate court should not make conclusive or definitive pronouncements on the key issues in contest in the suit in the lower court. Conclusive or definitive pronouncements should be reserved for determination by the trial court at the stage of final disposal of the suit by the trial court.

20. Were the interlocutory orders issued by the lower court final in nature? The appellants contend that the orders issued by the lower court were final in nature and have the undesired effect of determining a substantial portion of the suit with finality. The court has considered the above contention by the appellants.



21. The appellants did not extract a concise formal order out of the impugned ruling. They relied on the signed ruling. The verbatim disposal orders in the impugned ruling read as follows:

“In light of the foregoing, therefore, this court finds that the applicant has established a prima facie case. The application is meritorious and is hereby allowed. Costs shall follow the course.”

22. To understand the nature of the orders which the lower court issued, one would have to look at the reliefs that were sought in the application dated 23/9/2022 which the lower court allowed. The verbatim reliefs sought in the said application were as follows:

1. That the application be certified as urgent deserving to be heard on priority basis for the exparte orders, and that service be dispensed with in the first instance.
2. That pending the hearing and determination interpartes of the instant application, this honourable court be pleased to direct the respondents to provide a reasonable road of access of thirty [30] feet to enable the applicant access his parcel of land number Muthambi/Igamurathi/693.
3. That pending the hearing and determination interpartes of the instant application, this honourable court be pleased to direct the respondents to cease and/or desist from any further blocking, trespass and/or encroachment on the access road to the parcel of land number Muthambi/ Igamurathi/693 the premises of the applicant.
4. That pending the hearing and final determination of the main suit, the respondents be restrained from any further erection of illegal structures on the access road leading to the applicant’s parcel of land number Muthambi/Igamurathi/693.
5. An order of this court do issue directing the Officer Commanding Ntumu Police Station to enforce and/or ensure compliance with the orders granted hereby.
6. That the costs of this application be provided for.

23. It is clear from a plain reading of the above reliefs that prayer 1 was a plea for certification of the said application as urgent. Prayers 2 and 3 sought interim orders that were to abide the interpartes hearing and determination of the application. The interim orders were to last only up to the point of determining the application. Consequently, as at the time of determining the application, prayers 1, 2 and 3 were spent. It therefore follows that the substantive interlocutory reliefs which the lower court granted were in terms of prayers 4 and 5. Prayer 6 related to the award of costs of the application.

24. Prayer 4 was an interlocutory plea for an order restraining the appellants from further erection of illegal structures on the alleged access road. Prayer 5 was a plea for an order directing the Officer Commanding Ntumu Police Station to enforce and/or ensure compliance with the order of the court. These are the two interlocutory reliefs which the lower court granted.

25. I do not see any element of finality in the above two interlocutory reliefs. I do not also see how the two interlocutory reliefs will have the undesired effect of determining a substantial portion of the suit with finality or how they will inevitably hamstring the trial court at the hearing of the main suit. Clearly, the appellants have misinterpreted the orders which were issued by the trial court. Consequently, my finding on the first issue is that the interlocutory orders issued by the lower court were not final in nature.



26. Did the application dated 23/9/2022 meet the criteria for grant of an interlocutory injunctive relief? The criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive reliefs was outlined by the Court of Appeal for East Africa in *Giella v Cassman Brown* [Supra]. First, the applicant is required to demonstrate a prima facie case with a probability of success. Secondly, the applicant is required to demonstrate that if the interlocutory injunctive relief is not granted, he will stand to suffer irreparable injury which will not be adequately compensated by an award of damages. Lastly, if the court has doubt on either of the above limbs or on both limbs, the application is to be decided based on the balance of convenience.
27. Did the respondent demonstrate a prima facie case with a probability of success? The Court of Appeal defined a prima facie case in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 126 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 been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
28. In the application before the lower court, the respondent demonstrated that he was the registered proprietor of parcel number Muthambi/Igamurathi/693 which is served by a public access road. He contended that the appellants had erected unapproved structures on the public access road and the structures were impeding his access to his land. In their response to the application, the appellants disowned the alleged illegal structures, contending that they did not own them. On considering the parties’ respective positions, the trial court found that a prima facie case had been established.
29. Taking into account the fact that the Land Registrar had observed that there was no encroachment by the neighbour’s parcel and that what existed was the erection of structures on the public road that serves the respondent’s land, the lower court properly barred further erection of any structure on the public access road. The lower court was entitled to issue the injunctive reliefs on the basis of the balance of convenience, which favoured preserving what the Land Registrar had indicated was a public road serving the respondent’s land. The fact that the interlocutory relief was issued on the basis of prima facie case as opposed to the balance of convenience does not change the fact that the relief was deserved. Consequently, the view I take is that, on the balance of convenience, the granted orders were merited.
30. For the above reason, this court is satisfied that the application dated 23/9/2022 met the criteria for grant of an interlocutory injunctive relief in terms of the specific orders which the lower court granted.
31. In light of the above findings, I do not find merit in this appeal. The appeal is rejected and dismissed for lack of merit. In tandem with the principle in Section 27 of the *Civil Procedure Act*, the appellants shall bear costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 22ND DAY OF JULY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mr. Muriithi for the Appellants

Ms. Bett for the Respondent

Court Assistant – Mr. Mwangi

