



REPUBLIC OF KENYA



**KENYA LAW**  
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**Amal Group of Companies Limited v Mire & 3 others (Environment and Land  
Petition E022 of 2025) [2025] KEELC 5946 (KLR) (21 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5946 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT AND LAND PETITION E022 OF 2025**

**AA OMOLLO, J**

**AUGUST 21, 2025**

**IN THE MATTER OF: ARTICLES 10, 22, 23, 31, 35, 40, 42,  
46 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**AND**

**IN THE MATTER OF: VIOLATION OF THE PETITIONER'S RIGHT  
TO PROPERTY, PROTECTION OF RIGHT TO PROPERTY, RIGHT  
TO CLEAN AND HEALTHY ENVIRONMENT, ECONOMIC AND  
SOCIAL RIGHTS AND RIGHT TO FAIR ADMINISTRATIVE ACTION**

**AND**

**IN THE MATTER OF: SECTION 3(5) OF THE ENVIRONMENTAL  
MANAGEMENT AND COORDINATION ACT**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF SECTION 4 OF  
THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015**

**AND**

**IN THE MATTER OF: IN THE MATTER OF RULE 3 AND 4 OF THE  
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES,**

**AND**

**IN THE MATTER OF: IN THE MATTER OF THE ONGOING AND FURTHER INTENDED  
CONTRAVENTIONS OF SECTIONS 20(J), 56(A), 57(1), 57(3), 58(4), 61(1)(B), 62 & 72  
RULES 3 AND 4 OF THE XCVPHYSICAL AND LAND USE PLANNING ACT, 2019.**

**BETWEEN**



**AMAL GROUP OF COMPANIES LIMITED ..... PETITIONER**

**AND**

**BIRRE HUSSEIN MIRE ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL ENVIRONMENT AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL CONSTRUCTION AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

### **RULING**

1. By way of application dated 9<sup>th</sup> June 2025, the applicant is seeking to be granted the orders (e) – (i) of the application, thus:
  - a. That pending hearing and determination of the main petition, this Honourable Court be pleased to issue an injunction restraining the 1<sup>st</sup> Respondent whether by himself or through their agents, servants, employees, anyone claiming through him or deriving authority from them from encroaching, trespassing, altering the boundaries of, alienating and/or in any manner whatsoever dealing with all that parcel of land known as L.R. No. 36/VII/457.
  - b. That pending hearing and determination of the main petition, this Honourable Court be pleased to issue an injunction restraining the Respondent from any further construction, activities and all acts that would be deemed as nuisance and that would continue to pose a danger to the structural integrity of the Applicant’s property known as L.R. No. 36/VII/457.
  - c. That pending hearing and determination of the petition, this Honourable Court be pleased to issue an order to have the retaining wall, between L.R. No. 36/VII/457 and L.R. No. 36/VII/456, as well as the sewer line and any other damage over the shared area between the Applicant’s and the 1<sup>st</sup> Respondent’s property, be hereby rebuilt by the 1<sup>st</sup> Respondent at the 1<sup>st</sup> Respondent’s expense.
  - d. That the Court makes such further orders and/or directions as it deems fit and just.
  - e. That the costs of this Application be provided for.
2. The application is premised on the supporting affidavit and the grounds listed on the face of it.
  - i. That the Respondent has since caused the retaining wall to collapse and the sewage system to be damaged due to his encroachment of the Petitioner’s property.
  - ii. That there is no signboard stating who the proprietor, the architect and contractor are, nor providing for proof of approvals and licenses from NEMA, NCC and NCA as is the requirement.
  - iii. That the 1<sup>st</sup> Respondent’s construction has encroached on the Applicant’s property and that the 1<sup>st</sup> Respondent has also placed his construction waste all over the Applicant’s property.
  - iv. That if this application is not heard urgently, then the Respondent herein will proceed to damage the Petitioner’s property in addition to being a nuisance and inconvenience to the Petitioner’s tenants.



- v. That the Applicants will suffer serious and immense losses if this court does not intervene with utmost urgency to stop the continued illegal and unlawful encroachment.
  - vi. That it is in the interest of justice that this court grants interim injunctive orders to the Applicants to protect the petition property.
3. The Petitioner deposes that the 1<sup>st</sup> Respondent's construction has damaged their property. As they routinely encroach on the Applicant's property. That the Petitioner went ahead and surveyed to determine the boundary, which confirmed that the Defendant's property had encroached on the Petitioner's property.
  4. That Petitioner/Applicant has on numerous occasions communicated to the Defendant to remove the offending wall and desist from encroachment to no avail. The Petitioner Applicant had also written to the Respondent through their advocates, to no response. They contend that the 2nd, 3rd, and 4th Respondents have not stopped the construction, even though the 1st Respondent has failed to respect the conditions attached to any development permission, contrary to the law and statutory requirements.
  5. That further, the encroachment and trespass of the 1st Respondent and his representatives, agents, servants and/or employees has put the Petitioner's property's structure at constant threat of damage. 19. THAT unless this Honourable Court intervenes and issues the orders sought, Petitioner Applicant stand to suffer irreparable damage and loss of property.
  6. In opposing the grant of the orders, the 1<sup>st</sup> Respondent filed a replying affidavit sworn by Birre Hussein Mire on 16<sup>th</sup> June 2025. He deposed that before the filing of this petition, no joint survey had been undertaken to determine the boundary between the two plots.
  7. That they commenced construction of Garat Shopping Mall strictly within their property L.R. No. 36/VII/456, having obtained all the requisite approvals, licences, permits, compliances, etc. from Nairobi City County, NEMA, National Construction Authority as per documents annexed to his affidavit.
  8. He deposes that the construction of the Garat Shopping Mall on our property L.R. No. 36/VII/456, has progressed up to Floor No. 3 and it is my apprehension that the Petitioner Petition and Application are all intended to strategically, connivingly and through abuse of the sacred court process prevent completion and construction of our modern Garat Shopping Mall by obtaining an injunction orders from this Honourable Court. In doing so, the Petitioner shall have succeeded in effectively stifling business competition, especially noting that the Petitioner has constructed Amal Shopping Mall on his property, namely L.R. No. 36/VII/457, and we are also constructing a modern mall, Garat Shopping Mall, on our property, which shall offer competition.
  9. The 1<sup>st</sup> Respondent asserts that there is a signboard erected on the site and has denied trespassing on the Petitioner's property. They also deny that the ongoing construction on the said property has caused structural damage to the Petitioner's property, which has led to the falling of the retaining wall. We have been storing waste materials on their property and as effectively denied the Petitioner quiet and peaceful possession of the property, namely L.R. No. 36/VII/457.
  10. The 1<sup>st</sup> Respondent denied that the application meets the threshold to grant an injunction and urged this court to dismiss it with costs.



## Analysis and Determination:

11. It is established in law on the three principles an Applicant seeking injunctive relief ought to demonstrate to merit the issuance of the orders. The first is whether a prima facie case has been established, and in this case, I find there is one demonstrated. This is so premised on the evidence of survey reports annexed to the record. The survey report by the Applicant talks of an encroachment of approximately 0.11 meters and recommends that the two neighbours discuss to resolve the matter amicably. The joint report filed later talks of no encroachment with the impugned construction, leaving a setback of 0.02 from the Petitioner's wall.
12. Secondly, the Applicant avers that the 1<sup>st</sup> Respondent's construction has caused structural damage to his wall, building materials deposited on his land deny him peaceful enjoyment of his land, et al. The Petitioner also questions the approvals granted to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. These allegations have been vehemently denied, thus creating a disagreement between the parties which can only be resolved through a hearing.
13. The next issue to consider is whether the Applicant will suffer irreparable loss unless the orders of a temporary injunction are granted. The nature of the damages complained of is damage to their wall, dumping of waste materials causing nuisance, damage to the sewer line and the encroachment by approximately 0.11 meters on the Applicant's property L.R 36/VII/457. The Applicant produced photographic evidence to show the extent of the damage.
14. I have reviewed these complaints vis-à-vis the responses made by the 1<sup>st</sup> Respondent and hold that the damages complained of are not irreparable in the event the petitioner was successful. The damaged wall, if any, can be rebuilt, the sewer system repaired and an order for removal of waste materials deposited on the applicant's land, if at all. Further, the 1<sup>st</sup> Respondent can be ordered to remove any offending structure encroaching on the Applicant's land and or pay damages for the trespass.
15. Lastly, on the heading of balance of convenience, I note that the pictures annexed by the Applicant corroborate the assertion of the 1<sup>st</sup> Respondent that the impugned construction had progressed. The development was being undertaken on land not claimed by the Applicant save for the encroachment. Thus, the balance of convenience tilts in favour of the 1<sup>st</sup> Respondent.
16. In light of my foregoing analysis, I decline to confirm the orders of injunction earlier issued because the application fails the test of the second and third principles which in the circumstances of this case was the swing vote for or against the granting of the orders pending determination of the petition. This is the proposition in the case of Kenya Commercial Finance Co. Ltd versus Afraha Education Society [2001] Vol. 1 EA 86.

“If the applicant establishes a prima facie case that alone is not a 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 are 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.”
17. Consequently, I find the application is partially merited (for demonstrating there is a prima facie case). However, I make an order that the temporary orders of injunction are granted for a limited period of 30 days, within which time the 1<sup>st</sup> Respondent shall clear any debris or construction waste from the Petitioner's land. They shall also, within the said timeline, repair any damage to the sewerage system



that serves the Petitioner. However, the order is not subject to the determination of whether or not there is encroachment on the Petitioner's property.

18. Once they comply and a report is filed in court by the 3<sup>rd</sup> Respondent to that effect, the orders granted shall lapse, allowing the 1<sup>st</sup> Respondent to continue with their construction. The costs of the application to abide the outcome of the petition.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF AUGUST, 2025**

**A. OMOLLO**

**JUDGE**

