



**Maingi & another v Telposta Pension Scheme & 2 others (Environment and Land Case E056 of 2025) [2025] KEELC 5924 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5924 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E056 OF 2025**

**CG MBOGO, J  
AUGUST 14, 2025**

**BETWEEN**

**DAVID MWENDA MAINGI ..... 1<sup>ST</sup> PLAINTIFF**

**ANNE NKIROTE MWENDA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**TELPOSTA PENSION SCHEME ..... 1<sup>ST</sup> DEFENDANT**

**PHILIP KIPTANUI ..... 2<sup>ND</sup> DEFENDANT**

**BENSON ONGERI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 7<sup>th</sup> February, 2025 filed by the plaintiffs/applicants, and it is expressed to be brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules, and Sections 1A,1B and 3A of the [Civil Procedure Act](#) seeking the following orders:-
  1. Spent.
  2. That pending the hearing and determination of this application inter partes, an interim order be issued restraining the 1<sup>st</sup> defendant/ respondent, whether by itself, its agents, employees or any other person acting under their instructions from collecting, demanding or receiving any rent from the tenants occupying House No. C4/Nairobi Block 55/202/26 and House No. C5/Nairobi Block 55/202/34.
  3. Spent.
  4. That pending the hearing and determination of the suit, an order be issued directing the 1<sup>st</sup> defendant/respondent to provide a full and accurate account of all rent collected from the suit properties from 5<sup>th</sup> October 2022 to date.



5. That an order be issued restraining the 1<sup>st</sup> defendant/respondent whether by itself, its agents, employees or any other persona acting under their instructions from interfering with the plaintiffs/applicants' ownership, possession and quiet enjoyment of the suit properties known as House No. C4/Nairobi Block 55/202/26 and House No. C5/Nairobi Block 55/202/34 pending the hearing and determination of the application and suit.
  6. That costs of this application be borne by the defendants/respondents.
  7. Any other relief the court may deem fit to grant.
2. The application is premised on the grounds inter alia that the plaintiffs/applicants are the registered owners of House C4/Nairobi Block 55/202/26 and C5/Nairobi Block 55/202/34 having purchased the same from the 1<sup>st</sup> defendant/respondent and issued with title deeds.
  3. The application is supported by the joint affidavit of the plaintiffs/applicants sworn on even date. The plaintiffs/applicants deposed that on 20<sup>th</sup> February, 2008, they entered into an agreement for the sale of the suit properties with the 1<sup>st</sup> defendant/respondent, and that they fully complied with the terms of the agreement including paying the full purchase price. They deposed that the 1<sup>st</sup> defendant/respondent acknowledged receipt of the payment of the full purchase price in its letter dated 21<sup>st</sup> October, 2022. However, the 1<sup>st</sup> defendant/respondent has failed to give vacant possession and has leased the same to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents wherein they collect rent to their exclusion as the rightful owners.
  4. That as a result, they have suffered and despite several attempts to recover the rental income and obtain vacant possession, the defendants/ respondents have refused to comply.
  5. The application was opposed vide the replying affidavit of the 1<sup>st</sup> defendant/respondent sworn on 24<sup>th</sup> March, 2025 by Wilfreda Mwambao, the property officer. It was deposed that on 3<sup>rd</sup> October, 2022, the plaintiffs/applicants through their advocates wrote a letter to the 1<sup>st</sup> defendant/respondent with instructions that they should cease collection of rent from the tenants. That in a letter dated 18<sup>th</sup> October, 2022, they decided to pursue vacant possession of the two units on their own. The 1<sup>st</sup> defendant/respondent deposed that they acknowledged changes in ownership of the two units and confirmed that they shall no longer collect rent from the tenants. That as a result, it ceased any action with respect to the two units and it is not privy to any further communication between the plaintiffs/applicants and their tenants from 30<sup>th</sup> October, 2022.
  6. The 1<sup>st</sup> defendant/respondent further deposed that it sold the two units to the plaintiffs/applicants who opted to handle the matter of existing tenants on their own, and further stopped collecting rent from the two units once the balance of the purchase price was paid. It was further deposed that the plaintiffs/applicants have not established a prima facie case as it has not collected rent from the two units since the settlement of the balance of the purchase price in October 2022. Further, that it no longer enjoys possession of the two units, and it has no right to evict the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents or interfere with the suit property in any manner. Further, that the order seeking to account for the rent collected from the suit properties since 5<sup>th</sup> October, 2022 is ill fated and that it is evident that the plaintiffs/applicants do not have any cause of action against the 1<sup>st</sup> defendant/respondent.
  7. The application was canvassed by way of written submissions. The plaintiffs/applicants filed their written submissions dated 10<sup>th</sup> June, 2025 where they raised the following issues for determination: -



- a. Whether the applicants are entitled to an interim order restraining the defendant from collecting any rent from the suit properties.
  - b. Whether the applicants are entitled to an order compelling the defendant to account for all rent collected since 5<sup>th</sup> October 2022.
  - c. Whether the applicants are entitled to an order protecting their possession and quiet enjoyment of the suit properties pending determination.
8. On the first issue, the plaintiffs applicants submitted that on the material before this court of the title deeds, payment receipts and continuing rent collection by the defendants, this court must conclude that their legal interests are being invaded which satisfies the definition of a prima facie case. That since 5<sup>th</sup> October, 2022, the 1<sup>st</sup> defendant/respondent has diverted Kshs.20,000 per month per unit to its own coffers. They submitted that the balance of convenience lies in imposing an injunction against further collection of rent and interference with possession of the suit property. Reliance was placed in the cases of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, *First American Bank of Kenya & 2 Others* [2003] eKLR and *Joseph Kipkorir Biwott v Kenya Railways Corporation* [2021] eKLR.
  9. On the second issue, the plaintiffs/applicants submitted that under Order 21 Rule 17 of the Civil Procedure Rules, the court may require any party to furnish accounts, and that without such disclosure, the court risks delivering a final judgment that is speculative as to quantum or that is incapable of enforcement thus defeating justice.
  10. On the third issue, the plaintiffs/applicants submitted that interlocutory intervention is warranted to secure their fundamental right to possess and enjoy their land.
  11. The 1<sup>st</sup> defendant/respondent filed its written submissions dated 3<sup>rd</sup> July, 2025 where it raised one issue for determination which is whether the plaintiffs/applicants are entitled to the orders sought. While relying on the cases of *Giella v Cassman Brown* [1973] EA 358, *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR and *Mrao v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, the 1<sup>st</sup> defendant/respondent submitted that they have demonstrated that upon receipt of the balance of the purchase price, they expunged the suit properties from its list of properties and ceased further collection. It was submitted that when the 1<sup>st</sup> defendant/respondent's team visited the suit properties, they were informed by the tenants that they have been in contact with the plaintiffs/applicant and that they have been paying rent to them.
  12. The 1<sup>st</sup> defendant/ respondent submitted that an order seeking to restrain it from collecting rent is misplaced and unnecessary. With regard to the order seeking to account the rent collected, the 1<sup>st</sup> defendant/respondent submitted that it is in its nature a mandatory injunction, and that the plaintiffs/applicants have not established the existence of special circumstances to warrant the issuance of the mandatory injunction sought. To buttress on this issue, the 1<sup>st</sup> defendant/respondent relied on the cases of *Kenya Breweries Ltd v Washington Okeyo* (2002) EA, *Jubiland Ingrevia Limited v Gantrade Uganda Limited* (Commercial Case E017 of 2023) KEHC 23048 (KLR) (8 September 2023) (Ruling) and *Kimani & 2 others v Karoki; Kariiyi & another* (Interested Parties) (Environment & Land Case 690 of 2012) [2024] KEELC 4728 (KLR).
  13. I have considered the application, the replying affidavit and the written submissions filed by the plaintiffs/applicants and the 1<sup>st</sup> defendant/respondent. The issue for determination is whether the application has merit.
  14. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of *Giella versus Cassman Brown* (1973) EA 358. This position has been reiterated in numerous



decisions from our courts and more particularly in the case of Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”

15. In determining whether the plaintiffs/applicants have met the ingredients espoused in the case of Giella v Cassman Brown (supra), it is not disputed that the plaintiffs/applicants are the registered owners of the suit properties. From the pleadings, the dispute appears to have began when the plaintiffs/applicants paid the balance of the purchase price and were subsequently issued with their titles. Prior to that, the suit properties were in possession of the 1<sup>st</sup> defendant/respondent who had rented out the same and was collecting rent. However, and based on the correspondences attached to the application, and the replying affidavit, the issue of rent collection from October 2022 is unclear. The plaintiffs/applicants demand an account of rent collection from October, 2022 as well as injunction orders, and on the other hand the 1<sup>st</sup> defendant/respondent maintains that since receipt of the balance of the purchase price, it expunged from its records the suit properties and has not collected rent since.
16. The onus to prove any rent collection resides with the one claiming. In this case, the plaintiffs/applicants claim that the 1<sup>st</sup> defendant/respondent has been collecting the rent, as well as another party who is not authorized. There is no evidence to back this claim. How will the court ascertain that indeed the 1<sup>st</sup> defendant/respondent has been collecting rent since October, 2022. Equally, and in my view, it would have been easier for the plaintiffs/applicants to demand evidence of payments from the tenants to ascertain where the rent amounts were deposited.
17. From my analysis, the plaintiffs/applicants have failed to discharge the burden of proof to warrant this court’s intervention. On the other hand, the 1<sup>st</sup> defendant/respondent acknowledged receipt of the balance of the purchase price and discharged itself from any interests in the suit properties. Its averments have not been refuted. From the above, it is my finding that the plaintiffs/applicants have not established a prima facie case to warrant the grant of the orders sought. The notice of motion dated 7<sup>th</sup> February, 2025 lacks merit and the same is hereby dismissed with costs to the 1<sup>st</sup> defendant/respondent.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 14<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**14/08/2025.**

In the presence of:

Mr. Benson Agung - Court assistant

Mr. Gakaria for the Plaintiffs/Applicants

Mr. Muuo for the 1<sup>st</sup> Defendant /Respondent

