



**Nyokabi v Kali (Environment & Land Case E252 of 2024)
[2025] KEELC 719 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E252 OF 2024
MD MWANGI, J
FEBRUARY 20, 2025**

BETWEEN

LUCY NYOKABI PLAINTIFF

AND

LEONARD KALI DEFENDANT

RULING

(In respect of the applications dated 20th June 2024 and 22nd July 2024)

Background

1. On 6th August 2024, this court made a preliminary ruling upon finding it impossible to establish the true and actual position of the ground from the contradictory affidavit evidence presented before it by the contesting parties. The court ordered the Nairobi County Surveyor to visit the Plaintiff's and the Defendant's properties in the company of the parties or their representatives, and establish the true position on the ground in regard to the dispute between them and file a comprehensive report before the court.
2. The Nairobi City County Surveyor complied with the court's directions and filed the report which is dated 3rd December 2024. The Surveyor's findings inter alia were that both parties have developed their respective properties from 'beacon to beacon' (meaning entire plots). The Plaintiff has made a provision for parking within his premises; the Defendant on the other hand has not made a provision for parking within the building.
3. The Surveyor further found that the Plaintiff who is the owner of parcel No. 6172, had erected bollards and chain-link on the road reserve thereby blocking vehicular access to parcel No. Nairobi/Block 82/6171. The Plaintiff did not provide any approvals authorizing her to erect the bollards and chain-link from the Nairobi City County Works Subsector.



Analysis and Determination

4. From the Surveyor's report, it is apparent that the Plaintiff has blocked the road reserve, which is a public utility thereby blocking vehicular access to the Defendant's premises and denying the Defendant and his tenants access to his property. The Surveyor's report contradicts the allegations in the Plaintiff's application dated 20th June 2024. It agrees with the Defendant's application.
5. Considering the principles for the grant of interlocutory injunctions, it is the Defendant who stands to stand to suffer irreparable injury as a result of denial of access to his property. The findings further demonstrates that the Defendant has a prima facie case; 'a clear and unmistakable right that needs to be protected and which is directly threatened by an act sought to be restrained.'
6. Consequently and having considered the application by the Plaintiff and the one by the Defendant, I disallow the Plaintiff's application dated 20th June 2024. I will allow the Defendant's application dated 9th July 2024 in order to allow him access to his property.
7. The Defendant's second prayer is in the nature of a mandatory injunction which is granted only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship as set out in the case of *Locabail International Finance Limited v Agro-Export (1988) 1 All ER 901*, in the following words:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.”
8. The Court of Appeal made a similar holding in the case of *Kenya Breweries Limited & Another vs. Washington O. Okeyo Civil Appeal No. 332 of 2000 [2002] 1 EA 109* stating that

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However if the case is clear and one which the Court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application...A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff.” [Emphasis added]
9. This is one such case in the court's opinion that qualifies for a temporary mandatory injunction.
10. The upshot is that the Defendant's application dated 9th July 2024 is hereby allowed in the following terms;-
 - a. Pending the hearing and determination of this suit, an order of interlocutory injunction is hereby issued restraining the Plaintiff from erecting any further or other structures heaping



construction materials on the common road frontage/reserve or in any manner whatsoever from interfering with the common road frontage of land parcel No. Nrb/Block 82/6171.

b. Pending the hearing and determination of this suit, the Plaintiff is ordered to remove metallic posts and curb-stones erected on the common road frontage/reserve and the heaps of construction materials placed on the common road frontage/reserve in front of land parcel no. Nrb/Block 82/6171.

c. The Defendant shall have the costs of both applications.

11. For the avoidance of any doubts, the Plaintiff's application dated June 20, 2024 is dismissed

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 20TH DAY OF FEBRUARY 2025

M.D. MWANGI

JUDGE

In the virtual presence of:

N/A by the Parties

Court assistant: Mpoye

M.D. MWANGI

JUDGE

