



Wambugu v Chief Land Registrar & 6 others; Agricultural Development Corporation (Interested Party) (Environment & Land Petition E005 of 2024) [2024] KEELC 13429 (KLR) (Environment and Land) (21 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND**

ENVIRONMENT & LAND PETITION E005 OF 2024

MC OUNDO, J

NOVEMBER 21, 2024

**IN THE MATTER OF ARTICLES 20, 21, 22, 23, 40, 47
AND 60 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF VIOLATION OF THE RIGHT TO PROPERTY
KNOWN AS LAND REFERECE NO. 20591/53, NAIVASHA**

AND

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT,
CAP 281, AND THE REGISTERED LAND ACT, CAP 300**

BETWEEN

JUDY WATURI WAMBUGU PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

DIRECTOR OF SURVEY 3RD RESPONDENT

SETTLEMENT FUND TRUSTEES 4TH RESPONDENT

HEZEKIAH MUHIA NJOROGE 5TH RESPONDENT

ANDREA WAMBUI GITAU 6TH RESPONDENT

SOLOMON WAHOME MUTEITHIA 7TH RESPONDENT

AND



AGRICULTURAL DEVELOPMENT CORPORATION INTERESTED PARTY

RULING

1. Before me for determination is a Notice of Motion Application dated 16th May, 2024 brought under the provisions of Order 40 rule 1, Order 51 of the Civil Procedure Rules and Section 68 of the Land Registration Act, 2012 and all other enabling provisions of the law wherein the Petitioner/Applicant has sought for orders of injunction restraining the Respondents by themselves, their servants, agents, proxies and/or persons exercising authority from them from interfering, occupying, trespassing or in any manner dealing with the their parcel of land comprised in Land Reference No. 20591/53, Naivasha.
2. Secondly, that the court do issue an order of inhibition stopping further dealings, registration and transactions over the parcels of land known as Naivasha/Moi Ndabi/1260, Naivasha/Moi Ndabi/1261 and Naivasha/Moi Ndabi/1262 registered in the names of the 5th, 6th and 7th Respondents. Finally the Applicants sought for costs of the Application.
3. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Judy Waturi Wambugu, the Petitioner/Applicant herein who deponed that the suit parcel of land No. LR 20591/53 (Original number 20591/11) measuring 30.42 Hectares (Suit land) had been purchased by Alice Wanja Wambugu and Diana International Limited from M/s Kanga One Limited and that as a nominee of the said purchasers, the transfer was duly effected to her on or about 28th December 2006 and a title deed issued wherein she held the land in trust for them. That the suit land was demarcated in a deed plan as No. 219968.
4. That on 26th October, 1999, the 4th Respondent purchased LR No. 20591/57 (Original No. 20591/11/21) measuring 3944 Hectares from the Interested Party herein which land was demarcated by Deed plan No. 225137.
5. She deponed that both the parcels of land amongst many others had originated from the Interested Party's land known as LR 20591/11 in the Land Survey Plan No. 222540.
6. That upon the transfer of the suit land to her, the Principals had taken possession of the same and carried out developments and agricultural activities thereon.
7. That however, on or about 15th January, 2024, upon receipt of information that there were people claiming ownership of the suit land, she had carried out investigations wherein she had established that in June, 2023, the 5th to 7th Respondents had irregularly and illegally acquired title documents over a portion of her land as follows; -
 - i. Title No. Naivasha/Moi Ndabi/1260 measuring 9 hectares registered in the name of the 5th Respondent.
 - ii. Title No. Naivasha/Moi Ndabi/1261 measuring 10 hectares registered in the name of the 6th Respondent.
 - iii. Title No. Naivasha/Moi Ndabi/1262 measuring 10 hectares registered in the name of the 7th Respondent.
8. That the alleged subdivision of the suit land had been effected through a Registry Index Map (RIM) that had been fraudulently drawn by the 3rd Respondent in the year 1995 and which had not been



- registered. That the 1st Respondent had also purported to convert the regime that her land had been registered in total contravention of the law and abuse of his office. That the fraud had been planned and executed by the 1st to 4th Respondents working in cohort with the 5th to 7th Respondents.
9. That in a suit filed in Nakuru ELC 60 of 2014 *Judy Waturi Wambugu vs Chief Land Registrar, Director of Surveys, Settlement Fund Trustees, Sian Enterprises Limited, Dahir Abdikadir & Trade and Development Associates*, it had been declared that she was the proprietor of parcel of land described as No. LR 20591/53 (Original No. 2059/11/17) in a certificate of title No. IR 102595 as delineated on a survey plan No. 219968. There had also been a declaration that the 4th Defendant was the proprietor of parcel of land known as Nakuru/Moi Ndabi/1259.
 10. That further, by a consent order given in Naivasha CMCC No. E048 of 2022; *Judy Waturi Wambugu v Crater Lakes Sanctuary*, the alleged owner of land parcel No. Nakuru/Moi Ndabi/1259 had relinquished its claim over the suit land.
 11. lastly in Nakuru ELC Petition No. 30 of 2013: *Arthur Kamau Kariuki v Chief Land Registrar, National Land Commission, Settlement Fund Trustees, Director of Survey, Prime Ways Company Limited, Lally Farm Limited and Agricultural Development Corporation* a declaration had been made to the effect that;
 - i. The 4th Respondent had purchased from the Interested Party all that parcel of land described as LR No. 20591/57 measuring 3944 hectares.
 - ii. That the Applicant's parcel namely LR No. 20591/53 was previously owned by the Interested Party.
 - iii. That the two parcels were comprised in the Interested Party's mother title LR No. 20591/11.
 - iv. That there was no evidence from the said mother title of the 4th Respondent having acquired any other land from the Interested Party other than the 3,944 hectares.
 - v. That the Survey Plan F/R No. 259/65 was an erroneous survey as it was neither genuine nor approved.
 - vi. That the 4th Respondent could not have title to anything beyond LR No. 20591/57.
 - vii. That the 4th Respondent could not convert the Petitioner's title from the [Registration of Titles Act](#) Chapter 281 of the Laws of Kenya to [Registered Land Act](#) chapter 300 of the Laws of Kenya.
 12. She deponed that the above holding was binding thus she had made out a case to merit the grant of the orders sought herein without which she stood to suffer irreparable loss.
 13. In response and in opposition to the Plaintiffs/Applicants' Application, the 5th Respondent vide his Replying Affidavit dated 9th July, 2024 deponed that he was the registered owner of land parcel No. Naivasha/Moi Ndabi/1260 measuring 9.0 hectares which land had been allocated to him by the 4th Respondent. That his parcel of land was clearly distinct from that of the Petitioner/Applicant both on the ground and on the area Registry Index Map hence the Applicant had no known cause of action in law against him. That the Certificate of Title marked as 'JW-3' had been manipulated by way of superimposing the name of the proprietor, parcel number and size of the land allegedly owned by the 4th Respondent with the sole intention of misleading the court so as to obtain an injunction order through the backdoor.
 14. That the instant Petition was a land dispute disguised as a constitutional Petition hence incompetent, bad in law and an abuse of the court process. That he was in possession of his land parcel and had not



- in any way encroached upon the alleged land parcel belonging to the Petitioner. That he had not been a party to any fraud allegedly perpetrated by the 1st to 4th Respondents since the title to his parcel of land had been acquired by way of outright purchase from the 4th Respondent thus he was an innocent purchaser for value without notice of any alleged fraud or illegality.
15. That the orders sought in the Petition were incapable of being granted in a Constitutional Petition. That the Petitioner had failed to satisfy the conditions for granting an injunction order and therefore the instant Application and the Petition ought to be dismissed with costs.
 16. The 6th Respondent also opposed the Petitioner/Applicant's Application vide his Replying Affidavit dated 24th June, 2024 wherein he deponed that pursuant to his application letter dated 29th March 2023, he had been allotted settlement plot No. 1261 within Moi Ndabi Settlement Scheme (suit plot). That he had subsequently made paid the outright purchase price of Kshs. 123,895/= wherein he had been issued with a Title Deed No. Naivasha/Moi Ndabi/1261. On the 26th June, 2023, the Land Registrar had issued him with a Certificate of Official Search for the suit plot which had indicated that he was the registered proprietor of the suit plot. That thereafter, he had taken possession of the same.
 17. He deponed that pursuant to the directions by Government of Kenya, the Interested Party had transferred to the 4th Respondent a block of land measuring 3944 hectares, which land was generally known as Moi Ndabi Farm, to settle various landless allottees in what became known as Moi-Ndabi Settlement Scheme. That his suit plot was situated inside the said block of land.
 18. That the parcel of land delineated in the purported title held by the Applicant was physically situated inside the boundaries of the 4th Respondent's land as described in Title Number IR 81883 and outlined in Survey Plan F/R No. 360/177 and as delimited in Deed Plan No. 225137. That therefore the land delineated in the purported title held by the Applicant was illegally acquired, inside the 4th Respondent's former title block of land and was overlaid on the 4th Respondent's original block of land which had been titled 6 years before the Applicant's impugned title had been issued to Kanga One hence the said Kanga One could not transfer any good title to the Applicant.
 19. He thus deponed that the instant dispute could easily be resolved by conducting a physical actual ground survey which would establish whether the land delineated in the purported title held by the Applicant was situated inside the boundaries of the 4th Respondent's block of land whose boundaries and beacons had been outlined and defined in title No. IR 81883 and Land Survey Plan No/Deed Plan No. 225137. That further, the issues raised herein were also pending in Nakuru ELCLC No. E016 of 2024; *Andrea Wambui Gitau & 6 others v Judy Waturi Wambugu & 10 others*.
 20. That from the foregoing, the Applicant had not established a prima facie case thus he was undeserving of the injunctive reliefs sought in her Notice of Motion. He thus urged the court to dismiss the said Notice of Motion dated 16th May, 2024 with costs.
 21. In a rejoinder, the Petitioner/Applicant, vide her Supplementary Affidavit dated 3rd July, 2024 reiterated the contents of her Affidavit in Support of the Petition deponing that the 4th Respondent had acquired land parcel No. LR 20591/57 hence could pass its interest to anyone including the 6th Respondent but only be from the said land.
 22. That the allotment of the parcels of land to the 5th to 7th Respondents in the year 2023 had been fraudulent, null and void since the same ought to have been preceded by a process of conversion. She reiterated that her land and that of the 4th Respondent were distinct and separate since there existed a major road between the two parcels and therefore her land was not situated within the boundaries of the land owned by the 4th Respondent and neither did it overlap at all. That the documents that



- she had filed before the court spoke for themselves hence she had made out a case that merits the grant of the orders sought.
23. Directions were issued that the Application dated 16th May, 2024 be canvassed by way of written submissions wherein only the Petitioner/Applicant and the 5th Respondent complied and filed their respective submissions which I shall summarize as herein under.
 24. The Petitioner/Applicant framed her issues for determination as follows; -
 - i. Whether the Applicant has demonstrated a prima facie case.
 - ii. Whether damages will be an adequate compensation.
 - iii. Whether an inhibition should issue.
 25. On the first issue for determination, reliance was placed in a combination of decisions in the case of *Nguruman Limited v Jan Bonde Neilsen & 2 Others* [2014] eKLR and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR to submit that the issuance of the new titles by the 1st Respondent without due regard to the Applicant's registered interests held in LR. No. 20591/53 had been plainly an illegal alienation of the Applicant's parcel of land which had been affected by the illegalities that had been committed by the 1st, 3rd, 4th, 5th, and 7th Respondents jointly and severally.
 26. Her reliance was hinged on the provisions of Section 23(1) of the *Registration of Titles Act* Cap 281 (Repealed) and the decided case of *Joseph N.K Ng'ok v Moiyo Ole Keiwua & 4 Others* [1997] eKLR to submit that the illegalities committed by the 1st, 2nd, 4th, 5th and 7th Respondents had been in contravention of the said provisions that guaranteed indefeasibility of title held by the Applicant. She thus urged the court to safeguard and uphold the sanctity of her title pending the hearing and determination of the suit.
 27. On the second issue for determination as to whether damages would be an adequate compensation, reliance was placed on the principles for grant of an injunction in Halsbury's Laws of England and the decided case of *Ndeffo Co. Ltd v Ndegwa & 4 Others* (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR) to submit that the suit property was unique as it was situated on the 2nd row from the shores of Lake Naivasha. That further the Applicant had been in use, ownership and possession of the same from 28th December, 2006. That however, the said right of use and ownership of the suit land was threatened by the 5th to 7th Respondents who had illegally acquired the titles and thereafter trespassed and invaded the suit land. That if the said acts of the 5th to 7th Respondents were allowed to continue, the Applicants interest as safeguarded by Article 40 of the *Constitution* would be compromised without a possibility of compensation due to the unique attributes of the suit land. Further reliance was placed in the decided case of *Panari Enterprises Limited v Lijoodi & 2 Others* [2014] eKLR.
 28. That the balance of convenience tilted in her favour having been in ownership and possession of the suit property for close to two decades. That if her right to ownership were not safeguarded from the continuous attempts by the 5th to 7th Respondents to invade the suit land, she stood to be greatly inconvenienced. She placed reliance on the decision in the case of *Byran Chebii Kipkoach v Barnabas Tuitok Bargarioria & Another* [2019] eKLR.
 29. On the third issue for determination as to whether an order of inhibition should issue, reliance was placed on the provisions of Section 68 (1) of the *Land Registration Act* as well as a combination of decisions in the case of *M'murithi & Another v Kigia* (Environment & Land Case E014 of 2022) [2023] KEELC 17760 (KLR) (7 June 2023) and *Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria* [2012] eKLR to submit that the 5th to 7th Respondents who held fraudulently acquired titles to the suit



- land Nos. Naivasha/Moi Ndabi/1260, 1261 and 1262 had the intention of disposing them off to cash out on fraudulent scheme orchestrated in cohort with the 1st, 3rd and 4th Respondent. That were the suit lands to be auctioned to unsuspecting members of the public, it would lead to a myriad of law suits.
30. That if an order of inhibition was not granted restricting any dealings in the fraudulent titles that had been procured by the Respondents, the Applicant's suit would be rendered nugatory, worthless and moot and a mere exercise in futility as the orders sought in the Petition would be vain and unenforceable. Reliance was placed in the decided cases of *Githuku v Gitichie & 3 Others (Sued in the capacity of the legal administrator of the estate of Tabitha Njoki Mwangi-Deceased)* Environment & Land Case 101 of 2023) [2024] KEELC 4486 KLR (6 June 2024) and *Samuel Kimani and Another v Dominic Kamiri Karanja* [2022] eKLR.
31. She thus urged the court to grant prayers 3 and 4 as set out in her Notice of Motion Application dated 16th May, 2024
32. The 5th Respondent via his submissions dated 23rd September, 2024 in opposition to the Applicant's Application submitted that the instant Constitutional Petition was on matters which ought to have been instituted by way of a Plaint in an ordinary case. That the Petitioner had not presented any material before the court to prove that without invoking the provisions of the *Constitution*, the reliefs sought could not be achieved in an ordinary suit since none of the reliefs sought in the Petition was of a pure Constitutional nature.
33. His reliance was hinged in the decided case of *Bamaftah & another v Cabinet Secretary, Ministry of Secretary, Ministry of Lands, Public Works and Housing and Urban Development & 7 Others* (2023) KEELC 21412 (KLR) on the doctrine of constitutional avoidance to submit that whereas the Petitioner herein had complained that the 5th to 7th Respondents' titles had been fraudulently created out of her land parcel using an unregistered 1995 survey map, the said Respondents' position had been that their land parcels were distinct from that of the Petitioner. That subsequently, the instant dispute may as well turn out to be one of on a boundary dispute which raised no constitutional issue for determination through the current Petition. It was thus his submission that the Petitioner/Applicant could not be deemed to have established a prima facie case with a probability of success neither had she established that she would suffer irreparable loss and damage that could not be atoned by way of monetary damages should the injunction orders sought herein be denied.
34. That until the 5th to 7th Respondents' titles were found to have been illegally or un-procedurally obtained, the Respondents were entitled to enjoy all the rights and privileges appurtenant to such registration pursuant to the provisions of Sections 24 and 25 of the *Land Registration Act*, 2012. That subsequently, until the Petitioner proved in a properly instituted suit that she had a better title than what the 5th to 7th Respondents held, no order of injunction ought to issue in her favour. He urged the court to dismiss the instant Application and the entire Petition in limine.

Determination.

35. I have considered the Applicants' application, its opposition, the submissions by parties, the law as well as the authorities therein cited. Despite the 1st, 2nd, 4th, and 7th Respondents as well as the Interested Party having entered appearance, they did not file any response, while the 3rd Respondent on the other hand did not enter an appearance.
36. Subsequently, the court has been moved under Certificate of Urgency, by the Applicant, to issue a temporary injunction against Respondents by themselves, their servants, agents, proxies and/or



persons exercising authority from them from interfering, occupying, trespassing or in any manner dealing with the their parcel of land comprised in Land Reference No. 20591/53, Naivasha.

37. Secondly, that the court do issue an order of inhibition stopping further dealings, registration and transactions over the parcels of land known as Naivasha/Moi Ndabi/1260, Naivasha/Moi Ndabi/1261 and Naivasha/Moi Ndabi/1262 registered in the names of the 5th, 6th and 7th Respondents.
38. At this stage, the Court is only required to determine whether the Applicants are deserving of the orders sought. The Court is not required to determine the merit of the case.
39. Accordingly, the issue that arises for determination herein is whether an interim order of injunction and inhibition should issue.
40. The celebrated case of *Giella vs Cassman Brown* (1973) EA 358 sets out conditions for the grant of an interlocutory injunction as follows: -
 - i. Is there a serious issue to be tried (prima facie case)?
 - ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
 - iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").
41. On the first issue as to whether the Plaintiffs/Applicants in the instant matter have made out a prima facie case with a probability of success, I am guided by the case of *Mrao vs First American Bank of Kenya Limited & 2 Others* (2003) KLR 125, where a prima facie case was described 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 apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
42. In her application dated 16th May, 2024, the Applicant herein sought for injunctive orders against the Respondents restraining it from dealing with their parcel of land comprised in Land Reference No. 20591/53, Naivasha. She also sought for inhibition orders stopping further dealings, registration and transactions over the parcels of land known as Naivasha/Moi Ndabi/1260, Naivasha/Moi Ndabi/1261 and Naivasha/Moi Ndabi/1262 registered in the names of the 5th, 6th and 7th Respondents.
43. That the registered proprietor of suit parcel of land No. LR 20591/53 (Original number 20591/11) measuring 30.42 Hectares (Suit land) had been purchased by Alice Wanja Wambugu and Diana International Limited from M/s Kanga One Limited and that as a nominee of the said purchasers, the transfer was duly effected to her on or about 28th December 2006 and a title deed issued wherein she held the land in trust for them. That the suit land was demarcated in a deed plan as No. 219968. That upon the transfer of the suit land to her, the Principals had taken possession of the same and carried out developments and agricultural activities thereon.
44. That however, in June, 2023, the 5th to 7th Respondents had irregularly and illegally acquired title documents over a portion of her land as follows; -
 - iv. Title No. Naivasha/Moi Ndabi/1260 measuring 9 hectares registered in the name of the 5th Respondent.
 - v. Title No. Naivasha/Moi Ndabi/1261 measuring 10 hectares registered in the name of the 6th Respondent.



- vi. Title No. Naivasha/Moi Ndabi/1262 measuring 10 hectares registered in the name of the 7th Respondent.
45. That the alleged subdivision of the suit land had been effected through a fraudulent Registry Index Map (RIM) that had been drawn by the 3rd Respondent in the year 1995 and which RIM had not been registered.
46. That she had established a prima facie case that the 1st, 2nd, 4th, 5th and 7th Respondents had committed illegalities in contravention of Section 23(1) of the Registration of Titles Act Cap 281 (Repealed) that guaranteed indefeasibility of her title.
47. That the suit property being unique as it was situated on the 2nd row from the shores of Lake Naivasha, wherein she had been in use, ownership and possession of the same from 28th December, 2006, that were the acts of trespass thereon by the 5th to 7th Respondents allowed to continue, her interest as safeguarded by Article 40 of the Constitution would be compromised without a possibility of compensation due to the unique attributes of the suit land. That the balance of convenience thus tilted in her favour having been in ownership and possession of the suit property for close to two decades.
48. That an order of inhibition should issue, since the 5th to 7th Respondents held fraudulently acquired titles to the suit land Nos. Naivasha/Moi Ndabi/1260, 1261 and 1262 wherein their intention was to dispose them off to unsuspecting members of the public which would lead to a myriad of law suits. That were an order of inhibition not granted restricting any dealings in the fraudulent titles, the Applicant's suit would be rendered nugatory, worthless and moot and a mere exercise in futility as the orders sought in the Petition would be vain and unenforceable.
49. The Application was opposed by both the 5th Respondent who argued that the Applicant had not made out a prima facie case. That he was the registered owner of land parcel No. Naivasha/Moi Ndabi/1260 measuring 9.0 hectares which land had been allocated to him by the 4th Respondent. That his parcel of land was clearly distinct from that of the Petitioner/Applicant both on the ground and on the area Registry Index Map. That the Petition was a land dispute disguised as a constitutional Petition hence incompetent, bad in law and an abuse of the court process. That he was in possession of his land parcel and had not in any way encroached upon the alleged land parcel belonging to the Petitioner. That the orders sought in the Petition were incapable of being granted in a Constitutional Petition and thus the Applicant had failed to satisfy the conditions for granting an injunction order and therefore the instant Application ought to be dismissed with costs.
50. The 6th Respondent on the other hand also argued that he had been allotted settlement plot No. 1261 within Moi Ndabi Settlement Scheme (suit plot) and subsequently issued with a Title Deed No. Naivasha/Moi Ndabi/1261 upon payment of the outright purchase price. That he had been registered as proprietor of the said parcel of land to which he had taken possession.
51. That the parcel of land delineated in the purported title held by the Applicant was physically situated inside the boundaries of the 4th Respondent's land as described in Title Number IR 81883 and outlined in Survey Plan F/R No. 360/177 and as delimited in Deed Plan No. 225137 and therefore the said title held by the Applicant was illegally acquired.
52. That the 4th Respondent's original block of land which had been titled 6 years before the Applicant's impugned title had been issued to Kanga One hence the said Kanga One could not transfer any good title to the Applicant.
53. There is no dispute that both the 5th and 6th Respondents hold titles to their respective suit properties herein being No. Naivasha/Moi Ndabi/1260 and No. Naivasha/Moi Ndabi/1261 which parcels of



land the Applicant claims to have been part of her portion of land being Land Reference No. 20591/53, Naivasha.

54. As it stands, the 5th and 6th Respondents are the registered proprietors of the said suit properties wherein they were conferred with all rights, privileges and appurtenances thereto, free from all other interests and claims, which rights, privileges and appurtenances are not liable to be defeated except as provided in the Act.
55. The rights of a proprietor are set out in Sections 25 and 26 of the [Land Registration Act](#). The Applicant has argued and asserted that the 5th, 6th and 7th Respondent's titles was illegally and unlawfully procured and therefore cannot be deserving of protection under the law. However both the [Land Registration Act](#) at Section 26 (1) that provides for the indefeasibility of title, and Article 40(6) of the [Constitution](#) envisage that where a registered title is impugned on the grounds set out in the provisions, that due process would be followed to have such title revoked, cancelled and/or annulled. The courts have in a series of cases in the recent past held that due process has to be followed before a registered title can be revoked on the grounds of having been fraudulently or irregularly issued.
56. The 5th and 6th Respondents having demonstrated that they were the registered owners of their respective suit properties wherein they had been issued with titles, prima facie their titles were indefeasible and the burden shifts to the Applicant to show or demonstrate that the titles were challengeable within the provisions of the law.
57. Quite clearly it is not possible to make a final determination at this interlocutory stage on the validity of the 5th and 6th Respondents' title but the mere proof that they hold duly registered certificates of title which on the face of it were properly acquired, is sufficient to lead the court to hold that the Applicant has not established a prima facie case.
58. I therefore need not consider the other two conditions for the grant of temporary injunction as established in the *Giella -vs- cassman Brown Ltd case (supra)* as the conditions are sequential such that when the first condition fails then there is no basis upon which the court can give an injunction unless the court was entertaining a doubt as to whether or not a prima facie case had been established. The Court of Appeal in the case of *Kenya Commercial Finance Co. Ltd -vs- Afraba Education Society* (2001) IEA 86 cited by Gitumbi, J with approval in the case of [Joseph Wambua Mulusya -vs- David Kitu & Another](#) (2014) eKLR observed as follows:-
- “The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied”.
59. Secondly it has also not been disputed that the 5th and 6th Respondents herein are in possession and occupation of their respective portions of land and therefore by granting orders of injunction so sought in such a situation, could lead to an eviction which at this interlocutory stage would be premature.
60. Since at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties cases as observed by Lord Diplock in *American Cyanamid Co. vs Ethicon Limited* (1975) 1 ALL ER 504; (1975) A.C. 396 HL at 510 where he stated as follows:
- “It is no part of the Court's function at this stage of the litigation to try and resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.”



61. I find that the balance of convenience tilts in favour of granting an order of status quo as in land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugab -v- Kunga* [1988] KLR 748, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 5178/2014 Practice direction No. 28(k) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.
62. The purpose of a temporary injunction is to conserve the suit land pending the determination of the case in which the suit property is in dispute (See *Hannab Wangui Mathenge & 2 Others vs. Rose Muthoni Mathenge* (2017) eKLR.)
63. The Applicant has sought for an order of inhibition stopping further dealings, registration and transactions over the parcels of land known as Naivasha/Moi Ndabi/1260, Naivasha/Moi Ndabi/1261 and Naivasha/Moi Ndabi/1262 registered in the names of the 5th, 6th and 7th Respondents, on apprehension that they may subdivide, charge, alienate or transfer the said suit properties. However there was no evidence brought forth of any intention by the Respondents to deal adversely with the said parcels of land for which the Court issuing such an order must be satisfied that the Applicant has good grounds to warrant the issuance of such an order which seeks to preserve the property in dispute pending the trial.
64. To this effect, I would therefore interfere in a limited manner by clearly defining the status quo maintained herein to the effect that:
- i. The order of status quo to be maintained by all with the understanding that the 5th and 6th Respondents are in possession and occupation of the suit property Title No. Naivasha/Moi Ndabi/1260 and Naivasha/Moi Ndabi/1261.
 - ii. Such status quo is to be maintained by all parties until the matter is finally heard and determined.
 - iii. An inhibition order is issued to the 5th, 6th and 7th Respondents not subdivide, charge, alienate, transfer or deal with the land parcels No. Naivasha/Moi Ndabi/1260, Naivasha/Moi Ndabi/1261 and Naivasha/Moi Ndabi/1262 adversely, pending the hearing and determination of the Petition.
 - iv. The costs of the application shall be in the cause.
 - v. Parties to comply with the provisions of Order 11 of the Civil Procedure Rules within the next 21 days for the hearing of the main Petition herein.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 21ST DAY OF NOVEMBER 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

