



Saint Nicholas Junior Academy Ltd & another v Mwathe & 2 others (Environment & Land Case E494 of 2024) [2025] KEELC 3129 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E494 OF 2024**

**TW MURIGI, J
MARCH 28, 2025**

BETWEEN

SAINT NICHOLUS JUNIOR ACADEMY LTD 1ST PLAINTIFF

MARY OLUBAYI 2ND PLAINTIFF

AND

JULIUS MUSILI MWATHE 1ST DEFENDANT

THE HON ATTORNEY GENERAL 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

1. Before me for determination is the Notice of Motion application dated 21st November, 2024 brought under Section 1, 1A, 1B, 3A and 63 (e) of the Civil Procedure Act in addition to Orders 50 & 40 Rules 1, 2 & 4 of the Civil Procedure Rules in which the Applicants seek the following orders:-
 - i. Spent.
 - ii. Spent.
 - iii. Spent
 - iv. That temporary injunction does issue in the first instance for 14 days or as the court may direct against the Defendants' from preventing the Plaintiff access into, evicting the Plaintiffs, trespassing into, alienating, damaging and/or destroying the Plaintiff's school developments upon Plot known as Title No. IR 174226 situated in Embakasi and/or otherwise from threatening to harm the 2nd Plaintiff in any way whatsoever pending the determination of this suit.



- v. That the OCPD Embakasi Police Station, District County Commissioner Embakasi South does assist in effecting the interim order.
 - vi. That the costs hereof be to the Applicants.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Mary Olubayi sworn on even date.

The Applicant's Case

3. The deponent averred that the 1st Defendant has been threatening to demolish the 1st Plaintiff's school on the grounds that the school is sitting on public land. She further averred that the 1st Defendant has threatened to harm her if she continues to operate the school. The Applicants contended that unless the 1st Respondent is restrained by this court, he will continue trespassing on the suit property and demolish the same.
4. Though duly served, the Respondents did not file any response to the application.
5. The Applicant opted to rely on the affidavit in support of the application.

Analysis And Determination.

6. Having considered the application and the affidavit in support thereof, the only issue that arises for determination is whether the Applicants are entitled to the orders sought.
7. The principles for the grant of an injunction were laid down in the celebrated case of *Giella v Cassman Brown & Co Ltd* 1973 EA 358 as follows:-
 - i. First the Applicant must show a prima facie case with a probability of success.
 - ii. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - iii. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
8. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
9. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR the Court of Appeal defined a prima facie case 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.”
10. The 1st Applicant contends that it is the registered proprietor of the suit property. The record shows that the Plaintiffs filed a list of documents containing the certificate of title amongst other documents. The certificate of title shows that the 1st Plaintiff is the registered proprietor of the suit property.
11. The Applicants alleged that the 1st Respondent has threatened to demolish the school on the grounds that it is sitting on private land. At paragraph 14 of the Plaint, the Applicants averred that the school has a population of 1000 students, 50 contracted teachers and other support workers.



12. The issue of ownership of the suit property needs to be canvassed in a full trial by calling evidence and interrogating it through cross- examination. At this stage the court is not required to determine the issues which will be canvassed at the trial. The court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters that are in controversy.
13. In the case of *Mbuthia v Jimba Credit Corporation Ltd* [1988]KLR the Court held that:-

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”
14. Similarly, in the case of *Edwin Kamau Muniu –vs- Barclays Bank of Kenya Ltd*, NBI HCCC No.1118 of 2002, the Court held that:-

“In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”
15. In the matter at hand, it is crystal clear that the 1st Applicant is the registered proprietor of the suit property. On the basis of the material that is on record, I find that the Plaintiffs/Applicants have established a prima facie case with a probability of success.
16. As regards the issue whether the Applicants will suffer irreparable harm which cannot be adequately compensated by an award of damages, the Applicants must demonstrate that it is a harm that cannot be quantified in monetary terms or cannot be cured.
17. In *Nguruman Limited v Bonde Nielsen & 2 Others* [2014] eKLR the Court of Appeal held that: -

“On the second factor, the Applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot adequately be compensated by an award of damages. An injury is irreparable where there is no stand by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation of whatever amount, will never be adequate remedy.”
18. The Applicant alleged that the 1st Respondent is threatening to demolish the school on the grounds that it sits on public land. At Paragraph 14 of the *Plaint*, the Applicants contended that the school has a population of 1,000 students and workers in the school. The Plaintiffs list of documents contains photographs showing the school, the student population amongst other photographs. This court is convinced that the Applicants will suffer irreparable harm that cannot be compensated by way of damages if the suit property is demolished.
19. On balance of convenience, the court has to weigh the hardship to be borne by the Applicants by refusing to grant the injunction, against the hardship to be borne by the Respondent’s by granting the injunction.



20. In the case of Virginia Edith Wambui v Joash Ochieng Ougo, Civil Appeal No. 3 of 1987 eKLR, the Court of Appeal held that:-

“The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial.”

21. Looking at the evidence presented by the Applicants herein, I find that if the suit property is not preserved, it may be wasted away. It is the finding of this court that the balance of convenience tilts in favour of maintaining status quo pending the hearing and determination of this suit.

22. In light of the foregoing, I find that the Applicants have met the threshold for the grant of a temporary injunction.

23. The upshot of the foregoing is that the application dated 21st November, 2024 is hereby allowed in the following terms:-

a. A temporary injunction do and is hereby issued restraining the Defendants from preventing the Plaintiff access into the school, evicting, trespassing, damaging/destroying the school developments on Plot No I.R 174226 situated in Embakasi or threatening to harm the Plaintiff pending the hearing and determination of this suit.

b. The Applicants are awarded the costs of the application.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF MARCH 2025.

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T. MURIGI JUDGE

IN THE PRESENCE OF:

Isaac Aloo for the Plaintiffs/Applicants

Hilda – Court assistant

