



REPUBLIC OF KENYA



Ethics and Anti-Corruption Commission v Muia & another (Environment & Land Case E090 of 2024) [2025] KEELC 2877 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2877 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E090 OF 2024**

**NA MATHEKA, J
MARCH 27, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

KIMANTHI BEN MUIA 1ST DEFENDANT

WILSON GACANJA 2ND DEFENDANT

RULING

1. The application is dated 24th October 2024 and is brought under Section 1A, 1B, 3A; Order 40(1), 51(1) of the [Civil Procedure Act](#) and Rules seeking the following orders;
 1. The Application be certified as urgent and service thereof upon the Defendants/Respondents be dispensed with in the first instance.
 2. That pending inter partes hearing and determination of this Application, the 1st Defendant/ Respondent himself, his agents, assigns, servants and/or employees, persons acting at his behest or any other person whatsoever acting be restrained from alienating, selling, charging, leasing, further leasing, transferring, wasting, disposing or in any other manner whatsoever dealing with. parcel of land known as Machakos Municipality Block 1/583.
 3. That pending the hearing and determination of this suit, the 1st Defendant/ Respondent himself, his agents, assigns, servants and/or employees, persons acting at his behest or any other person whatsoever acting be restrained from alienating, selling, charging, leasing, further leasing, transferring, wasting, disposing or in any other manner whatsoever dealing with parcel of land known as Machakos Municipality Block 1/583.
 4. The costs of this Application be provided for.



2. It is premised on the Affidavit of SALAD WATO BORU on the following grounds that the Plaintiff/Applicant (Commission) is mandated under Section 11(1) (j) of the EACC Act to institute and conduct proceedings in court for the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures. Pursuant to Section 11(1)(d) and 13(2)(c) of the EACC Act, the Commission commenced investigations into allegations that Machakos Municipality Block 1/32 (Formerly LR 909/563) also known as 'Ngei-Estate' which was set aside for public purpose was fraudulently, illegally and or otherwise sub-divided and unlawfully and/ or irregularly allocated to private persons. Investigations carried out by the Commission have established that by a Part Development Plan (Approved Development Plan No. 39) of Department Reference 56/67/3, approved on 9th November 1967 by the then Commissioner of Land, a parcel of land was designated for development of Staff Rental Housing Scheme.
3. In 1968, survey on the above stated parcel was carried out resulting into the creation of parcel of land known as L.R No. 909/563 measuring 4.08 acres. The Commissioner of Lands was accordingly informed of the approval of the Survey by the Director of Survey vide a letter dated 22nd October 1968. On 22nd November 1973, the parcel known as L.R No. 909/563 was converted to Machakos Municipality Block 1/32. In 1970s the National Housing Corporation built Twenty Four (24) staff housing on Machakos Municipality Block 1/32 (Formerly L.R No. 909/563) and the said housing units remains to date on the said parcel of land. On or around 1st August 2021, the National Housing Corporation handed over the management of the Twenty Four (24) staff housing units in Ngei Estate back to the County Government of Machakos. That Machakos Municipality Block 1/32 (Formerly L.R No. 909/563) and also known as 'Ngei Estate' is duly alienated public land and specifically reserved for public purpose namely, the construction of civil servants rental housing scheme and therefore the same was not available for alienation to any private individual or any other person.
4. That despite not obtaining title, the said Peter Kanyi purported to transfer a non-existent interest in the land described as UNS. B.C.R. 3 – Machakos to the 1st Defendant. On 5th July, 1995, the 1st Defendant was issued with a Certificate of Lease for parcel of land known as Machakos Municipality Block 1/583 measuring 0.0465 Hectares for a term of 99 years commencing on 1st November, 1993 at an annual rent of Kshs. 2,800 (revisable). The Commission has filed civil proceedings against the Defendants for the recovery of the suit property subject matter of this Application. The Commission has a prima facie case against the Defendants with a probability of success. That unless the orders sought are granted, the public shall suffer irreparable injury which would not adequately be compensated by an award of damages.
5. The Respondent opposed the application stating that the application is frivolous and without merit. That it is a reaction to the Respondent's application No. 30 of 2024 as one year had passed since the registration of a restriction and no action was taking place.
6. This court has considered the application and submissions therein. The prayer for temporary injunction is well discussed in the celebrated case of *Giella vs Cassman Brown* (1973) EA 358. In *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [*CA No.77 of 2012*](#) (2014) eKLR 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”.

7. On the first pillar, the 1st Defendant states that he is the legally registered owners of all that land described as Machakos Municipality Block 1/583. Section 26 of the [Land Registration Act](#) states as follows;

- “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

8. On the 2nd pillar of temporary injunctions, the Applicant is required to show irreparable injury and I am guided by Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR where court held;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

9. The Applicant states that after investigations they have established that Machakos Municipality Block 1/32 (Formerly L.R No. 909/563) was illegally subdivided into several parcels of land and illegally allocated to third parties. Machakos Municipality Block 1/583 was among the parcels of land that was illegally, unlawfully and/or irregularly created following the illegal subdivision of Machakos Municipality Block 1/32 (Formerly L.R No. 909/563). Investigations established that on 8th December, 1993, in total disregard of the existing alienation and public user, one Peter Kanyi was illegally and irregularly issued with a Letter of Allotment, Ref. No. 21658/X/97 over land described as UNS. B.C.R.3 - Machakos by Machakos County Council. The said Letter of Allotment was accompanied with a Part Development Plan No. MKS. 56/92/4. Investigations by the Commission have established that Part Development Plan No. MKS. 56/92/4 did not have an Approved Development Plan Number and does not exist as per the records held at the Physical Planning Department. Investigations reveal that the said Peter Kanyi purportedly accepted the offer in the Letter of Allotment long after the offer had lapsed and there was nothing to accept and as such anything done pursuant thereto was null and void and incapable of conferring any interest or title.



10. The 3rd pillar which is the balance of convenience. In Pius Kipchirchir Kogo case (Supra) the court held;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.

In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting”.

11. The Applicant argues that the suit properties being public property set aside for civil servants rental housing scheme, the balance of convenience tilts in favour of granting the orders sought by the Commission. Unless this application is certified urgent, the Commission is reasonably apprehensive that the 1st Defendant, his agents, assigns, servants, employees and assigns may dispose of, charge or any other manner alienate the suit properties in order to frustrate any decree or order that may be passed against them. It is therefore just, fit and in the public interest to prohibit the 1st Defendant, his agents, and/or servants from interfering with, alienating, wasting, transferring, charging or in any other way dealing with the suit property pending the hearing and determination of this Application and the main suit to obviate dissipation of the suit property and/or rendering these proceedings nugatory altogether. I find the balance of convenience falls in the favour of the Applicants. I find that the Applicant has established a prima facie case. I find this application is merited and I grant the following orders;

1. That pending the hearing and determination of this suit, the 1st Defendant/ Respondent himself, his agents, assigns, servants and/or employees, persons acting at his behest or any other person whosoever acting be restrained from alienating, selling, charging, leasing, further leasing, transferring, wasting, disposing or in any other manner whatsoever dealing with parcel of land known as Machakos Municipality Block 1/583.
2. The costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 27TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

