



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Lagat & 20 others (Suing as the Registered Unit owners of Apartments at the development known as Viraj Garden Apartments) v Transeshvi Limited & 5 others (Environment & Land Case E247 of 2022) [2023] KEELC 51 (KLR) (18 January 2023) (Ruling)

Neutral citation: [2023] KEELC 51 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E247 OF 2022

JO MBOYA, J
JANUARY 18, 2023

BETWEEN

ALFRED KIPROTICH LAGAT 1ST PLAINTIFF
GIDEON MUTHAMA MUANGE 2ND PLAINTIFF
SANG HEIGHTS LIMITED 3RD PLAINTIFF
JOHN MWANGI MUCHIRI 4TH PLAINTIFF
HELLEN WANGOI MUCHIRI 5TH PLAINTIFF
HEDRICK HILDAH MUSONYE 6TH PLAINTIFF
FRANCIS GICHUGU KINYANJUI 7TH PLAINTIFF
JACKSON KIPLIMIO CHEBETT 8TH PLAINTIFF
RACHEAL GATHONI MUIRURI 9TH PLAINTIFF
MICHEAL OUMA OPIYO 10TH PLAINTIFF
JULIET AKINYI KONJE 11TH PLAINTIFF
EDWIN ARTHUR OJWANG AGUKO 12TH PLAINTIFF
DAVID NYAMAI KASUKI 13TH PLAINTIFF
HELLEN AMIDIONG OKWAKOL 14TH PLAINTIFF
JACOB RAJAB MBEYA 15TH PLAINTIFF
MARY NJOKI MBEYA 16TH PLAINTIFF
ELAM MUCHIRI MURIUKI 17TH PLAINTIFF
CAROLINE MACHAKI MUCHIRA 18TH PLAINTIFF



KELVIN YUMBYA WAMBUA 19TH PLAINTIFF
TOM MBADI OLWERO 20TH PLAINTIFF
LUCY NYAMBURA GITONGA 21ST PLAINTIFF
SUING AS THE REGISTERED UNIT OWNERS OF APARTMENTS AT THE
DEVELOPMENT KNOWN AS VIRAJ GARDEN APARTMENTS

AND

TRANSESHVI LIMITED 1ST DEFENDANT
JAYESH VIYAJ PATEL 2ND DEFENDANT
VIJAYKUMAR SHAMJI PATEL 3RD DEFENDANT
JOSEPH KIARIE 4TH DEFENDANT
MUNDRIKA PATEL 5TH DEFENDANT
THE OWNERS,SECTIONAL PROPERTY PLAN NO.145 6TH DEFENDANT

RULING

1. Vide notice of motion application dated the July 21, 2022, the plaintiffs/applicants herein have sought for the following Reliefs;
 - i. That, this application be certified as urgent and be heard ex-parte in the first instance.
 - ii. That, this Honourable Court do issue a temporary injunction restraining the defendants whether by themselves, their servants, agents, employees or in any way howsoever from charging and collecting service charge from the plaintiffs until the defendants furnish the plaintiffs with unqualified audited accounts for the financial years 2015-2021 and copies of all the service contracts and receipts for the expenses incurred in respect of services for Viraj Gardens Apartments.
 - iii. That, this honourable court do issue a temporary injunction restraining the 1st - 5th defendants whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from managing and controlling the affairs of the management corporation known as the owners sectional plan number 145.
 - iv. That, this honourable court do issue a temporary injunction restraining the 1st-5th defendants whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from interfering, disconnecting or discontinuing the services to the unit owners including electricity supply to common areas, water supply to all units and common areas, cleaning and security services.



- v. That, this honourable court do issue an order directing the defendants to immediately reconnect the plaintiffs to the water supply at the defendants' expense.
 - vi. That, pending the hearing and determination of this suit, a mandatory injunctive order do issue directing the 1st-3rd defendants to convene an annual general meeting within seven (7) days of the orders of the court and to circulate with the notice, an agenda for the annual general meeting called to include as the main agenda the formation of a proper board of management in accordance to with section 26 of the *sectional Properties Act* with all unit owners being notified of their right to vote.
 - vii. That, this honourable court do issue an order granting leave to the plaintiffs to pay and deposit the service charge for the maintenance of the common areas in an escrow account opened by four representatives of the unit owners for all costs to be incurred until accounts are taken or further orders of this honourable court.
 - viii. That, this honourable court do issue directing for the expeditious hearing and determination of the main suit.
 - ix. That, the costs of this suit be borne by the defendants.
2. It is important to point out that the instant application is premised and anchored on various albeit numerous grounds, totaling 31 in number, which have been enumerated at the foot of the application.
 3. On the other hand, the application is supported by the affidavits of Juliet Akinyi Konje and David Nyamae Kasuki, sworn on the July 21, 2022, respectively.
 4. Further and in addition, the plaintiffs/ applicants have also filed and relied on the supplementary affidavit sworn by David Nyamae Kasuki and which was sworn on the September 22, 2022.
 5. Upon being served with the subject application, the defendants/respondents filed various replying affidavits. for clarity, the 1st, 2nd and 6th defendants/respondents have relied on the replying affidavit of Jayesh Patel sworn on the September 20, 2022.
 6. On the other hand, the 4th defendant/respondent has sworn a Replying affidavit sworn on the September 20, 2022.
 7. On behalf of the 3rd defendant, a rreplying affidavit sworn on the September 20, 2022 has been filed, whilst the 5th defendant relies on the replying affidavit sworn by one Mundikra Patel. For clarity, the replying affidavit is also sworn on the September 20, 2022.
 8. Be that as it may, when the subject application was filed, same was duly certified as urgent and the court proceeded to and issued various Interim orders. In this regard, it suffices to point out that the interim orders were issued on the July 25, 2022.
 9. Furthermore, when the instant application herein came up for hearing, the parties agreed to canvass and dispose of the application by way of written submissions. In this regard, the court proceeded to and circumscribed the timeline within which the Parties were expected to file and exchange written submissions.



10. For coherence, it is imperative to note that indeed both parties duly complied and filed their respective submissions. Suffice it to state that the plaintiffs filed written submissions dated the October 21, 2022 whilst the defendants filed written submissions dated the December 5, 2022.

Submissions by the parties:

a. plaintiffs'/applicants' Submissions:

11. Vide written submissions dated the October 21, 2022, the plaintiffs/applicants have highlighted a total of four issues for consideration and determination.
12. First and foremost, counsel for the plaintiffs/applicants has submitted that the plaintiffs/applicants are unit owners, who bought various apartments, in the premises otherwise known as Viraj Gardens Apartment, within the City of Nairobi.
13. Further, counsel for the plaintiffs/applicants has contended that by virtue of being unit owners in the named premises, the plaintiffs/applicants herein are entitled to participate in the affairs and management of the duly incorporated management Corporation/ Company, tasked to run and manage the affairs of the said apartments.
14. Nevertheless, counsel has added that despite the fact that the plaintiffs/applicants are unit owners of various apartments and thus entitled to participate in the management and affairs of the management corporation/ Company, the defendants/respondents have barred the said plaintiffs/applicants from the affairs and the management of the Corporation, albeit without any lawful cause or basis.
15. Additionally, learned counsel for the plaintiffs/applicants has also submitted that the 3rd defendant herein by virtue of being a developer of the suit premises, was obliged and obligated to comply with and or abide by the provisions of section 27 of the *Sectionals Properties Act, 2020*.
16. However, it has been contended that the 3rd defendant has failed to abide by or comply with the said provisions and as a result of such failure, the plaintiffs/applicants, who are unit owners within the suit premises, have been unduly prejudiced.
17. Secondly, counsel has submitted that despite not being represented in the management corporation/ Company which was operationalized by the 1st, 2nd and 3rd defendants/respondents, the plaintiffs/applicants have been forced to pay various service charges to and in favor of the 6th defendant/respondent.
18. Nevertheless, counsel for the plaintiffs/applicants has added that despite the plaintiffs/applicants being made to pay the service charges/levies, the defendants/respondents herein have also failed to provide and avail accounts pertaining to the manner in which the various levies collected, are used/utilized.
19. In this respect, the plaintiffs/ applicants have contended that the failure and neglect has subsisted for a period of more than Six years and hence, the extent of prejudice.
20. Thirdly, counsel has submitted that despite paying the levies, the defendants/respondents ordered and directed that the plaintiffs/applicants be disconnected from various services and in particular electricity and water, not only to the plaintiffs/ applicants premises, but also to various common areas.
21. In this regard, counsel has added that the impugned disconnection were not only irregular but oppressive in nature. In any event, it has been added that the disconnections were meant to intimidate the plaintiffs/ applicants.



22. Fourthly, counsel for the plaintiffs/applicants have submitted that the impugned activities that are complained of by the plaintiffs/applicants are bound to subject the plaintiffs/applicants to irreparable loss, which shall not be compensable in monetary terms.
23. Further and in addition, counsel for the plaintiffs has further added that the action and/or activities complained of are calculated to embarrass and humiliate the plaintiffs/applicants.
24. In view of the foregoing submissions, counsel for the plaintiffs/applicants has therefore submitted that the plaintiffs/applicants have not only established and proved the existence of a prima facie case, but same have also proved that unless the orders sought are granted same are disposed to suffer irreparable loss.
25. On the other hand, counsel has also submitted that given the failure by the 1st, 2nd and 3rd defendants to comply with the provisions of the *sectional Properties Act*, 2020, the balance of convenience tilts in favor of the plaintiffs/applicants.
26. In support of the foregoing submissions, counsel for the plaintiffs/applicants has cited and relied on various decisions, *inter-alia* *Giella versus Cassman Brown & Co Ltd* [1973]EA 358, *Mrao Ltd versus First American Bank Ltd* [2003]eKLR, *Nguruman Ltd v Jan Bode Nielsen & 2 others* [2014]eKLR, *Nation Media Group & 2 others v John Harun Mwanu* [2014]eKLR and *Generous Wanjau Wanderi & 7 Others v Kirui Investments co Ltd* [2019]eKLR.

b. defendants/respondents Submissions

27. On behalf of the defendants/respondents, written submissions dated the December 5, 2022 have been duly filed. For clarity, counsel for the defendants/respondents has amplified and highlighted five issues for due consideration.
28. Firstly, counsel for the defendants/respondents has submitted that the orders sought to bar the defendants/respondents from collecting service charge, pending the provisions of audited financial accounts, would culminate and create absurdity and undesirable effects/ consequences.
29. In any event, counsel for the defendants/respondents has added that it is the service charge, collected by the defendants/respondents herein which is used to run and manage the affairs of the suit premises as well as to pay for various services. In the premises, it has been submitted that such an order would be inappropriate to and hence ought not to issue.
30. Secondly, counsel for the defendants/respondent has also submitted that the prayer seeking to restrain the defendants/respondents from managing the suit premises ought not to issue insofar as there is currently a management corporation/ Company, which was duly incorporated and thus authorized to run and manage the affairs of the suit premises.
31. In any event, counsel has further submitted that the said management corporation held an annual general meeting on the July 8, 2021, whereupon Board members were duly elected and constituted.
32. In the premises, it has been contended that an order to restrain the defendants from managing the affairs of the suit premises would be tantamount to invalidating the resolutions of the annual general meeting, albeit at an interlocutory stage.
33. Simply put, counsel for the defendant/respondent has contended that the grant of an order to stop and bar the defendants/respondents from running and managing the affairs of the suit premises would be tantamount to granting summary determination of the suit, albeit before and prior to a plenary hearing.



34. The third issue that has been raised and amplified by counsel for the defendants relates to the fact that the plaintiffs herein failed, declined and neglected to pay the requisite charges, towards and in respect of various services and as a result of their failure, the 2nd, 4th, 5th and 6th defendant were justified in disconnecting various services to the plaintiffs/applicants.
35. Be that as it may, counsel has further submitted that the 6th defendant/respondent is ready and willing to re-connect water supply to the plaintiffs provided that the plaintiffs pay the outstanding bills as well as various bills, as and when same arise.
36. Fourthly, counsel for the defendants/respondents has submitted that the plaintiffs have neither established nor proved the circumstances/conditions to warrant the grant of the orders of Mandatory injunction, either in the manner sought or at all.
37. In this regard, learned counsel has added that an order of mandatory injunction can only issue and be granted where there exists special circumstances and not otherwise. For coherence, the counsel has added that in respect of the subject matter, no special circumstances, have been established/ proved.
38. To amplify the submissions that an order of mandatory injunction can only issue and be granted in exceptional and special circumstances, counsel for the defendants/respondents has cited and relied on the decision in the case of *Lucy Wangui Ng'ang'a v Minudi Okemba Lore*, Civil Appeal No 4 of 2015.
39. Moving on, counsel for the defendants/respondents has also submitted that there is in existence civil suit No CMCELC E260 of 2022 filed by the 6th defendant against Laikipia Park Limited and which suit is pending hearing and determination.
40. Further, counsel has added that the defendant in respect of the said suit, namely Laikipia Park Limited, is a company associated with the plaintiffs herein who are the shareholders and whereas some of them, are directors.
41. To the extent that there is the said suit, learned counsel for the defendants/respondents has therefore submitted that the current suit therefore ought to be stayed pending the hearing and determination of the said suit, which is currently before the chief magistrate's court.
42. In a nutshell, counsel for the defendants/respondents has therefore invited the court to find and hold that this is a suitable case which ought to be stayed in line with the provisions of section 6 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya.
43. Other the foregoing, counsel has pointed out that the plaintiffs/applicants herein have neither established nor proved the existence of a *prima facie* case, to warrant the grant of the orders sought. Consequently, counsel has invited the court to dismiss the subject application with costs.

Issues For Determination:

44. Having reviewed the application dated the July 21, 2022, the supporting and supplementary affidavit as well as the Replying affidavits filed on behalf of the defendants/respondents; and having similarly considered the written submissions filed by the parties herein, the following issues do arise and are thus pertinent and worthy of determination;
 - i. Whether this Honourable court ought to stay the subject suit pending the hearing and determination of (sic) Milimani CMCELC E260 of 2022 or otherwise.



- ii. Whether the plaintiffs/applicants have established a prima facie case with overwhelming chances of success at the trial.
- iii. Whether the plaintiffs/applicants are disposed to suffer Irreparable loss unless the orders sought are granted.

Analysis and determination

Issue Number 1

Whether this Honourable court ought to stay the subject suit pending the hearing and determination of Milimani CMCELC E260 of 2022 or otherwise.

45. Counsel for the defendants/respondents have submitted and contended that there is a pending suit namely Milimani CMCELC No E260 of 2022, which is pending hearing and determination before the chief magistrate's court.
46. Furthermore, counsel for the defendants has pointed out that the said suit is between the current 6th defendant, as the plaintiff v Laikipia park limited, who is said to be the defendant therein.
47. Additionally, counsel for the defendant/respondent has contended that the defendant in the suit before the Chief magistrate's court, is a company in which the plaintiffs herein are shareholders, whilst some of the plaintiffs are directors therein.
48. Based and premised on the foregoing contention, learned counsel for the defendants has therefore submitted that this honourable court ought to proceed and stay the subject proceedings, pending the hearing and determination of the said suit.
49. Suffice it to point out that where there is a previous suit, touching on and concerning the same subject dispute and between the same parties, then the honourable court would be obliged to order and grant an order of stay of proceedings.
50. In this regard, it is imperative to take cognizance of the provisions of section 6 of the [Civil Procedure Act](#), Chapter 21 Laws of Kenya. For coherence the provision of section 6 (supra) are reproduced as hereunder;

6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. Explanation - The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

51. Be that as it may, it is important to state and underscore that the import, tenor and scope of the provisions of section 6 of the [Civil procedure Act](#) and essentially the doctrine of *Res-sub judice*, has hitherto received judicial pronouncement.
52. In this regard, it is appropriate to restate and reiterate the succinct and elaborate holding of the Supreme Court of Kenya in the case of [Kenya National Commission on Human Rights v Attorney](#)



General; Independent Electoral and Boundaries Commission & 16 Others [2020] eKLR, where the Supreme Court of Kenya observed as hereunder:

- (67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.
53. Having taken cognizance of the provisions of section 6 (supra) and being duly guided by the holding of the supreme court of Kenya, in the decision cited in the preceding paragraph, it is now appropriate to discern whether indeed the parties in respect of the two suits are the same to warrant the application of section 6.
54. Firstly, it has been conceded by counsel for the defendants/respondents that indeed the named suits is between the current 6th defendant and Laikipia Park Limited. For clarity, none of the plaintiffs/applicants herein are Parties to the named suit.
55. Secondly, counsel for the defendants/respondents has contended that even though the plaintiffs/applicants are not directly parties to the named suit, same are however shareholders in, whilst others are Directors of the said defendant company.
56. Whether or not the contention by counsel for the defendants/respondents is correct, it is common knowledge and an elementary principle of Company Law that a Company is separate and distinct from her shareholders and directors.
57. In this regard, it cannot be contended that where a company has been sued then it is deemed that (sic) the shareholders and directors of the said company, if at all, are Parties to the said suit.
58. In my humble view, such proposition which informs and colors the submissions by counsel for the defendants/respondents, is not only misconceived, but is contrary to elementary principles of company law.
59. To this end, it is important to reiterate the holding of the court in the case of Omondi v National Bank of Kenya Ltd [2001]eKLR, where the court stated and observed as hereunder;

“It is a basic principle of company law that the company has a distinct and separate personality from its shareholders and directors even when the directors happen to be the sole shareholders (see *Salmon v a Salmon & Co Ltd* [1897] AC 22). The property of the company is distinct from that of its shareholders and the shareholders have no proprietary rights to the company’s property apart from the shares they own. From that basic consequence of incorporation flows another principle: only the company has capacity to take action to enforce its legal rights. The contention by counsel for the plaintiff that the investment in LVF is by the plaintiffs and they are accordingly the proper plaintiffs in this action is manifestly without legal foundation.



60. In view of the foregoing considerations, it is my finding and holding that the previous suit, namely, Milimani CMCELC E260 of 2022, which has been alluded to by the defendants/respondents, does not involve the same Parties as the suit herein.
61. Additionally, it is also important to point out that the issue which have been adverted to and which are the subject of the dispute before the Chief magistrate's court are not the same as the ones beforehand.
62. In a nutshell, the defendants/respondents have neither met nor satisfied the requisite ingredients stipulated vide section 6 of the Civil Procedure Act, to warrant the order of stay.

Issue Number 2

Whether the plaintiffs/applicants have established a Prima facie case with overwhelming chances of success at the trial.

63. The plaintiffs/applicants herein have raised a plethora of issues and complaints against the defendants/respondents.
64. Some of the complaints and grievances that have been raised by the plaintiffs/applicants, relate to the fact that despite being unit owners within the suit premises, and thus entitled to participate in the management and affairs of the management corporation/ Company, the defendants/respondents have precluded and prevented same from participating in such affairs.
65. On the other hand, the plaintiffs/applicants have also contended that having been precluded and or barred from participating from the affairs of the managing company, same are therefore disadvantaged and prejudiced.
66. Furthermore, the plaintiffs have similarly complained that even though same have been barred and prohibited from participating in the affairs of the management corporation, the defendants have nevertheless demanded and extracted service charge from the plaintiffs/applicants.
67. At any rate, the plaintiffs have also contended that the manner in which the defendants are running the affairs of the management corporation/ Company is contrary to and in contravention of the provisions of the sectional Property Act, (1987) (now repealed) and replaced by sectional Properties Act, 2020.
68. In the premises, the plaintiffs/applicants herein have therefore contended that the raft of issues, some of which have been highlighted in the preceding paragraphs, establish and exhibit the existence of a prima facie case with overwhelming chances of success at the trial.
69. It is imperative to state and underscore that a prima facie case arises where an applicant has shown that same has a right or cause, which has been infringed upon or violated by the adverse Party and thus deserving of interrogation and ultimate protection by a court of law.
70. Respectfully, the meaning, import and tenor of what constitutes a prima facie case was defined in Mrao Ltd v first American Bank Ltd [2003] eKLR, where the Court of Appeal stated and observed as hereunder:

“In civil cases, a prima facie case is a case in 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 to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”



71. In any event, towards and in an endeavor, to prove the existence of a prima facie case, the applicant must not venture to show that there exists certainty of success. For clarity, what is required of an applicant is to establish that there is probability or reasonable chances of success at the trial.
72. To underscore the foregoing observation, it is appropriate to adopt the holding and enunciation of the Court of appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, where the court stated and observed as hereunder;

We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.

73. In my humble view, the issues that have been adverted to and enumerated in the body of the supporting affidavits by and on behalf of the plaintiffs/applicants, have met the threshold of what constitutes a prima facie case with reasonable chances of success.
74. Consequently and in the premises, I find and hold that the plaintiffs/applicants have established and proved that same have a prima facie case as against the defendants/respondents.

Issue Number 3

Whether the plaintiffs/applicants are disposed to suffer Irreparable Loss unless the orders sought are granted.

75. Other than the contention that the plaintiffs/applicants, who are unit owners within the suit premises, have been excluded from the affairs and management of the management corporation, it has also been contended that the defendants/respondents have disconnected the plaintiffs from various utilities and supply.
76. In this respect, the plaintiffs/applicants averred that the defendants proceeded to and disconnected electricity and water supply and as a result of such actions the plaintiffs Right to Housing and reasonable sanitation, with its attendant postulates, have therefore been infringed upon.
77. In response to the plaintiffs complaints, the defendants have acknowledged and admitted that indeed same proceeded to disconnect essential services, inter-alia electricity and water, (sic) because the plaintiffs/applicants had refused to pay for such services.
78. Whereas the plaintiffs/applicants contend that same have been paying the requisite service charge, but no Accounts are being offered, the defendants contend to the contrary.
79. Be that as it may, the point which is worthy of consideration is the attendant consequence arising from the disconnection of the plaintiffs/applicants from such essential commodities and services.
80. There is no gainsaying, that for the plaintiffs to fully appropriate and enjoy their Right to Housing, in accordance with the provisions of article 43 of the *Constitution 2010* such services including electricity and water are not only essential, but paramount. See the provisions of *International Covenant on Economic, Social & Cultural Rights* (ICESCR), which has been duly adopted and ratified by Kenya.



81. In my humble view, the activities and omissions which have been complained of by the plaintiffs/ applicants, are certainly bound to occasion and visit upon the plaintiffs Irreparable loss.
82. To be able to appreciate the meaning and import of what constitutes Irreparable loss, it is imperative to take cognizance of the holding of the case of *Vivo Energy Kenya Limited versus Maloba Petrol Station Limited & 3 others* [2015] eKLR, where the court stated and observed as hereunder;

“The second limb of the principles upon which an injunctive remedy is granted in our jurisdiction as set out in

Giella v Cassman Brown & Co Ltd(supra) stipulates that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others*(supra), this Court stated as follows on irreparable injury or damage:

“On the second factor, that 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 face, 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 standard 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.”

83. To my mind, the plaintiffs/applicants have shown and established that same shall be disposed to suffer Irreparable loss, unless the orders sought are granted.

Final Disposition:

84. In conclusion and having analyzed the various issues that were outlined in the Ruling herein, it is evident and apparent that the plaintiffs/applicant have indeed met and satisfied the requisite threshold for the grant of various reliefs sought at the foot of the application dated the July 21, 2022.
85. Consequently and in the premises, I am minded to and do hereby allow the application in the following terms;
- i. An order temporary injunction be and is hereby granted restraining the 1st-5th defendants whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from interfering, disconnecting or discontinuing the services to the unit owners including electricity supply to common areas, water supply to all units and common areas, cleaning and security services.
 - ii. An order of mandatory injunction be and is hereby granted directing the defendants/respondents either by themselves, agents, employees and/or any other person acting on their behalf to immediately reconnect the plaintiffs to the water supply at the defendants' expense.



- iii. The plaintiffs/applicants herein shall however be obliged and obligated to pay the requisite monthly service charge to the 6th defendant/respondent pending the convention and holding the AGM.
- iv. A mandatory injunction be and is hereby granted directing the 1st-3rd defendants/respondents, to convene an annual general meeting within seven (14) days of the orders of the court and to circulate with the notice, an agenda for the annual general meeting called to include as the main agenda the formation of a proper board of management in accordance to with section 26 of the [sectional Properties Act](#) with all unit owners being notified of their right to vote.
- v. The reliefs not expressly granted are hereby declined.
- vi. Cost of the application shall abide the outcome of the main suit.

86. For coherence, the 1st to 3rd defendants/respondents shall convene the intended annual general meeting of the management corporation/ company, in accordance with section 26 of the [sectional Property Act, 2020](#) and in any event same to be convened within a period of 14 days from the date hereon.

87. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JANUARY 2023.

OGUTTU MBOYA,

JUDGE

In the Presence of;

Benson - Court Assistant.

Mr. Edward Mungai h/b for Issa Mansur for the plaintiffs/applicants

Mr. John Ochwo for the defendants/respondents

