



**Mucheru v Tisco Construction Ltd & another (Civil Suit E117 of 2025)  
[2025] KEHC 11260 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11260 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E117 OF 2025  
FG MUGAMBI, J  
JULY 31, 2025**

**BETWEEN**

**KEERU NGUGI MUCHERU ..... APPLICANT**

**AND**

**TISCO CONSTRUCTION LTD ..... 1<sup>ST</sup> RESPONDENT**

**SEMA HEALTH PRODUCTS LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before me is the one dated 21<sup>st</sup> February 2025. It seeks injunctive relief, restraining the 1<sup>st</sup> respondent and its agents from forcefully entering, evicting, harassing, intimidating, or otherwise interfering with the applicant’s occupation and possession of the property known as Nairobi Block 93/1248, Marcia Hotel (the suit property), pending the hearing and determination of this suit.
2. The applicant submits that he is one of the investors in the said property, owned by the 2<sup>nd</sup> respondent, having invested the amount of Kshs. 20,000,000/= to set up a business in the said premises.
3. He seeks this Court’s intervention having recently discovered that the property is in the process of being transferred from the name of the 2<sup>nd</sup> respondent to that of the 1<sup>st</sup> respondent. He contends that the 1<sup>st</sup> respondent has begun to harass and intimidate the business owners operating within the premises, including issuing threats of eviction and attempts at forceful entry. The applicant contends that he stands to suffer substantial loss and damage if any interference occurs before his investment is reimbursed.
4. The application is opposed by the 2<sup>nd</sup> respondent through a replying affidavit sworn on 24<sup>th</sup> March 2025, on several grounds. First, the respondent faults the application on the grounds that this Court



lacks jurisdiction to deal with the issue, which according to it, is conferred on the Environment and Land Court.

5. The 1<sup>st</sup> respondent discloses that the suit property was lawfully sold to it by public auction on 24<sup>th</sup> August 2021 by HFC Limited, the chargee, pursuant to its statutory power of sale. The respondent further argues that since the suit property had been charged to HFC Limited, no lawful dealings could occur without the written consent of the chargee. There is no evidence that the applicant or the 2<sup>nd</sup> respondent obtained such consent prior to entering into the alleged investment agreement. As such, any purported transaction between the applicant and the 2<sup>nd</sup> respondent is void ab initio and incapable of conferring any legal or equitable rights.
6. The 1<sup>st</sup> respondent further argues that the investment agreement was entered into on 8<sup>th</sup> December 2021, which is over four months after the auction sale, by which time the 2<sup>nd</sup> respondent no longer held any proprietary interest in the property and therefore lacked the legal capacity to transact over it. It faults the applicant for failing to conduct due diligence, verify the ownership status, or secure his investment through appropriate legal mechanisms. The 1<sup>st</sup> respondent further argues that no evidence of payment of Kshs. 20,000,000/= has been provided by the applicant.
7. It is further argued that any alleged loss or damage suffered by the applicant arises from his own commercial recklessness in advancing unsecured funds without safeguards. The respondent also disputes the applicant's claim of recent knowledge of the transfer, adding that the property had been publicly advertised for auction in widely circulated newspapers prior to the sale.
8. The respondent faults the applicant for delay in filing the application long after both the auction and the alleged investment agreement, which reveals a pattern of negligence, and indolence. It denies any acts of harassment or intimidation, instead insisting that as the lawful owner of the property, they are entitled to its possession, use, and enjoyment under Article 40 of the *Constitution*.
9. The respondent therefore prays that the application be dismissed with costs.

## **Analysis and Determination**

### **Jurisdiction:**

10. The 2<sup>nd</sup> respondent contends that this Court lacks jurisdiction to determine the present suit. It asserts that the dispute relates to land and therefore falls within the exclusive domain of the Environment and Land Court, pursuant to Article 162(2)(b) of the *Constitution* and Section 13 of the *Environment and Land Court Act*, No. 19 of 2011.
11. This jurisdictional challenge raises a preliminary issue that must be addressed as a matter of priority, given the foundational nature of jurisdiction in any judicial proceeding. As emphasized in *Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd*, [1989] KLR 1, jurisdiction is everything; without it, a court has no power to make one more step.
12. Upon consideration, I find that the cause of action in the present suit is not centered on a dispute over title to land, nor does it seek cancellation, transfer, or declaration of ownership of the suit property. Rather, the claim arises from an investment agreement executed between the applicant and the 2<sup>nd</sup> respondent, through which the applicant seeks to assert its rights to recover funds allegedly advanced for a business venture situated on the suit property.
13. It is settled law that where the primary dispute is contractual in nature, the High Court retains jurisdiction to adjudicate the matter, even if the performance or context of the contract incidentally



involves land. A matter does not automatically fall under the jurisdiction of the Environment and Land Court merely because it touches on land; the substance of the dispute must be examined.

14. In the present case, the applicant does not seek to impeach the 1<sup>st</sup> respondent's title nor challenge the process of transfer per se. Rather, the core issue for determination is the applicant's alleged financial investment and whether he is entitled to relief arising therefrom. That is a question well within the jurisdiction of the High Court.
15. Accordingly, I find that the jurisdictional objection lacks merit and does not bar this Court from entertaining the application and the suit as framed.
16. That said, the application before the Court seeks interlocutory injunctive relief. The guiding principles for the grant of such relief are well settled in the locus classicus case of *Giella V Cassman Brown & Co Ltd*, [1973] EA 358, where the Court held that an applicant must establish the following:
  - a. A prima facie case with a probability of success;
  - b. That the applicant stands to suffer irreparable harm which cannot be adequately compensated by an award of damages; and
  - c. If in doubt, the court will determine the matter on a balance of convenience.
17. These principles have been affirmed in numerous decisions, including *Nguruman Limited V Jan Bonde Nielsen & 2 Others*, [2014] eKLR, where the Court of Appeal emphasized that these requirements are sequential and must each be satisfied.

**Prima Facie Case:**

18. A prima facie case is defined in *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others*, [2003] eKLR as:

“... 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.”
19. In the present case, the applicant bases his claim on an investment agreement dated 8<sup>th</sup> December 2021 entered into with the 2<sup>nd</sup> respondent. Under the agreement, he advanced KES 20,000,000 to the 2<sup>nd</sup> respondent by way of a loan, to be repaid with interest over 67 months in monthly instalments of KES 325,000/=. He claims that this investment was used to establish a business on the suit property. A signed copy of the said investment agreement has been availed to the Court, and its authenticity or validity has not been challenged by either respondent.
20. On the other hand, while the 1<sup>st</sup> respondent claims to be the lawful purchaser of the suit property following a statutory sale conducted by HFC Limited, no documentary evidence has been furnished to substantiate these averments. Although reference is made to particular documents, none of these have been annexed to the replying affidavit. That said, I am alive to the principle that at this interlocutory stage, the Court is not required to determine or make conclusive findings on the substantive merits of the dispute. The Court's inquiry is limited to whether there exists a prima facie case warranting preservation or interim relief.
21. On the face of the material placed before the Court, I am satisfied that there exists a valid investment agreement between the applicant and the 2<sup>nd</sup> respondent, which creates binding contractual obligations. The 2<sup>nd</sup> respondent has not denied executing the agreement or receiving the stated



investment sum. The agreement remains uncontroverted in substance and form, and no competing version or affidavit has been filed by the 2<sup>nd</sup> respondent to rebut its contents or contest its enforceability.

22. In those circumstances, the existence of the agreement and the applicant's alleged financial contribution to a business operated on the suit property are sufficient, at this stage, to raise a prima facie case of contractual entitlement, the merits of which will be fully examined at trial.

**Irreparable Harm:**

23. While Nguruman Ltd Case, (supra) restates the principle that irreparable harm refers to injury that cannot be adequately compensated by damages, I am persuaded that in the particular circumstances of this case, the applicant has demonstrated the risk of substantial and irreparable harm.
24. This arises from the nature of his involvement, which is not merely contractual but also operational, having actively invested in a going concern situated on the property. Eviction, without an opportunity to recover or secure the value of that investment, would likely result in not just financial loss, but disruption to the viability of the business and potential loss of enterprise value, none of which may be easily quantifiable.

**Balance of Convenience:**

25. The balance of convenience in this case favours preserving the suit property pending the full hearing and determination of the main suit. Granting interim relief will safeguard both the applicant's alleged investment and the 1<sup>st</sup> respondent's claimed interest, without causing irreversible harm to either party. It will also ensure that the Court is not confronted with a fait accompli, particularly where substantive questions regarding ownership, investment, and accountability remain unresolved.

**Disposition**

26. Accordingly, the Notice of Motion dated 21<sup>st</sup> February 2025 is allowed. The applicant shall have the costs of the application. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**F. MUGAMBI**

**JUDGE**

