



**Mugambi v Asebe & another (Environment and Land Case
E080 of 2025) [2025] KEELC 8553 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8553 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E080 OF 2025
MD MWANGI, J
DECEMBER 4, 2025**

BETWEEN

ANN MARY KAGWIRIA MUGAMBI PLAINTIFF

AND

SOLOMON PETER ASEBE 1ST DEFENDANT

LETSHEGO KENYA LIMITED 2ND DEFENDANT

RULING

(In respect of the Plaintiff's Notice of Motion application dated 12th June 2025 in which she seeks a temporary injunction pending hearing and determination of the suit pursuant to Order 40 Rule 2 of the Civil Procedure Rules)

Introduction

1. Before this court for determination is a Notice of Motion application dated 12th June 2025 brought under certificate of urgency by the Plaintiff/Applicant, a widow and resident of Gataka within Ngong area in Kajiado County. The Application principally seeks injunctive reliefs restraining the 1st and 2nd Respondents, whether by themselves, their agents, servants or persons acting on their behalf, from selling, disposing of, further advertising, transferring, leasing, developing or in any manner altering the status quo in respect of land parcel number Ngong/Ngong/90103, measuring approximately 0.10 Ha, pending the hearing and determination of the suit.
2. The Applicant further seeks orders directing the Land Registrar, Ngong, to transfer the suit property back to her name on account of alleged fraud and lack of supporting documentation in the transfer to the 1st Respondent. She additionally prays that the 1st Respondent be compelled to repay the loan allegedly obtained from the 2nd Respondent using the suit property as security. Other ancillary reliefs sought include an official valuation of the property prior to the hearing of the main suit, enforcement



orders through the OCS, OCPD and DCI – Ongata Rongai, and any further orders that the Court may deem fit in the interest of justice.

3. The Application was first placed before the Court on 28th June 2025 where initial directions were issued, and subsequently on 28th July 2025 when the Court issued interim preservatory orders maintaining the status quo pending further directions and hearing of the application.
4. The 1st Defendant/Respondent opposed the application through a Replying Affidavit sworn on 24th October 2025, in which he asserts that he is the lawful and indefeasible proprietor of land parcel Ngong/Ngong/90103, having acquired the same procedurally and for valuable consideration. He contends that it was the Applicant who voluntarily approached him with the intention to sell the property, leading to the execution of a duly attested Agreement for Sale dated 1st October 2022, upon which he avers that he fully paid the agreed purchase price of Kshs. 4,000,000/=.
5. It is the 1st Defendant's case that the transfer of the suit property was effected with the Applicant's full knowledge and participation, including the procurement of Land Control Board consent at Kajiado, execution of duly registered transfer instruments, and an affidavit sworn by the Applicant expressly confirming that she had no spouse requiring consent and that she willingly intended to transfer the property to the purchaser. Upon completion of registration on 11th November 2022, the 1st Defendant became the registered proprietor of the property and subsequently obtained a loan facility from the 2nd Defendant which he secured by a charge over the title of the suit property duly registered on 16th December 2022.
6. The 1st Defendant therefore denies the allegations of fraud, deceit or abuse of trust and maintains that the property was neither held for the Applicant nor utilized as security on her behalf. He asserts that the Applicant's plea of widowhood is intended merely to evoke sympathy, yet she voluntarily divested her entire interest in the suit land. He argues that the Application falls short of the established legal principles governing grant of injunctions, and that granting such orders would unjustly interfere with his proprietary rights while also exposing him to irreparable harm given that the loan obtained remains outstanding and under threat of enforcement should such orders issue against him.
7. The 1st Defendant thus urges the Court to find that the Applicant has not demonstrated a prima facie case and that the balance of convenience does not tilt in her favour. Further that the application is an abuse of the Court process deserving dismissal with costs.

Directions

8. The court directed that the application be canvassed by way of written submissions. I have duly considered the submissions filed by the parties in the writing of this ruling.

Analysis and Determination

9. This court finds that the primary issue that arises for determination is whether the applicant has met the criteria for the grant of the temporary injunctive reliefs as sought.
10. Where the Court is asked to exercise its discretion to grant interlocutory relief, it must first and foremost ask itself whether the applicant has met the legal threshold required for such discretionary relief. This Court is guided by the parameters set out under Order 40 of the Civil Procedure Rules. The law permits grant of temporary injunctions only in clearly circumscribed circumstances. Order 40 Rule 1 provides that:

“Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or



wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act...”

Similarly, Rule 2(1) stipulates:

“In any suit for restraining the defendant from committing a breach of contract or other injury of any kind... the plaintiff may... apply to the court for a temporary injunction...”

11. The operative legal test for grant of a temporary injunction remains that prescribed in the landmark decision of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where it was held that:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

12. The *Giella* test is sequential, requiring the applicant to first establish a prima facie case with a probability of success (*Nguruman Ltd v Jan Bonde Nielsen & Another* [2014] eKLR). Failure to meet this threshold ends the inquiry, and the Court will not proceed to consider irreparable harm or the balance of convenience.

13. The Applicant alleges that the transfer of Ngong/Ngong/90103 was fraudulent and without her consent. Conversely, the 1st Defendant has exhibited the complete transactional chain: a written sale agreement, payment of Kshs. 4,000,000, Land Control Board Consent, executed and attested transfer documents, Affidavit of the Applicant declaring absence of spousal interest, and ultimately, a title lawfully registered in his name on 11th November 2022. The 1st Defendant thereafter charged the land to the 2nd Defendant. These documents establish a prima facie legally valid acquisition of the suit property supported by statutory protections of title.

14. The Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 Others* (Petition 8 (E010) of 2021) [2023] KESC 31 (KLR), affirmed that:

“A registered proprietor holds an indefeasible title... unless it is shown that the title was obtained through fraud or misrepresentation to which the person is proved to have been a party.”

15. In the present application, fraud has only been alleged, not particularized nor prima facie demonstrated at the interlocutory stage to the level necessary to impeach the registered title. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, emphasized that:

“A prima facie case is not one that must succeed but one that discloses a right that has been infringed and calls for an answer.”

16. Here, the Applicant has not tendered demonstrable proof that her proprietary rights subsist after she voluntarily executed the transfer and discharged all spousal claims by her affidavit. Whether she was misled or did not receive consideration are disputed matters requiring oral evidence, forensic



scrutiny, and cross-examination. As the House of Lords stressed in *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396, the Court must refrain from resolving complex factual controversies at the interlocutory stage.

17. On irreparable harm, while loss of land is undoubtedly significant, the 1st Defendant is presently the registered owner who has encumbered the property through a charge. Interfering with a registered charge exposes the 2nd Defendant to financial risk and jeopardizes a security it lawfully relied upon. The Court of Appeal in the *Nguruman Case* (*Supra*) reiterated that:

“If damages recoverable in law are an adequate remedy and the respondent is capable of paying, no injunction should issue however strong the applicant’s claim.”

18. No evidence has been tendered to show that damages would be inadequate if the Applicant ultimately succeeds in her case. Indeed, it is the 1st Defendant who demonstrates potential irreparable injury since loan enforcement is imminent should an injunction issue and his development plans will be endangered.

19. Finally, the balance of convenience favors maintaining the status quo of registered ownership and the charge in place, rather than disrupting vested and registered proprietary interests. As *Ringera J* (as he then was) stated in *Airland Tours & Travel Ltd v National Industrial Credit Bank* [2002] eKLR:

“Where the legal right of a party is in doubt... the court should consider the balance of convenience.”

20. It would be procedurally unjust to grant a relief that in effect reverses a registered disposition at an interlocutory stage awaiting trial.

21. In sum, the Applicant has not satisfied any of the sequential requirements set out in *Giella v Cassman Brown* case. Her allegations of fraud, must be subjected to full trial where evidence can be tested. To grant the interim injunction at this stage would amount to prejudging the core dispute and unjustly limiting proprietary interests protected by law.

22. The Plaintiff/Applicant also sought a variety of other orders. These are orders that cannot be granted at the interlocutory stage before the case is heard and evidence adduced and tested. The same are disallowed in their entirety.

23. Accordingly, the Notice of Motion dated 12th June 2025 is dismissed for want of merit with costs to the Defendants. For avoidance of doubt, the interim orders previously granted are hereby vacated.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF DECEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Mong’are for the Plaintiff/Applicant

N/A by the Defendants/Respondents

Court Assistant: Mpoye

M.D. MWANGI



JUDGE

