

KENYA / JUDGMENT

Ngulu v Mbindyo [2026] KEELC 5467 (KLR)

[2026] KEELC 5467 (KLR)**COURT**

Environment and Land Court

CASE / FILE NUMBEREnviromental and Land Originating Summons E016
of 2026

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REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT AT MAKUENI ELCLOS NO.
E016 OF 2026 CHRISTOPHER NGANGI NGULU APPLICANT -VERSUS- PIUS
NGOLOTA MBINDYO RESPONDENT

RULING

1. The Applicant filed the Notice of Motion dated 25th June, 2026 seeking the following orders:
-
 - 1) [SPENT]
 - 2) [SPENT]
 - 3) [SPENT]
 - 4) THAT pending the hearing and determination of the originating summons herein, this Honourable Court be pleased to issue a temporary injunction restraining the Respondent, whether by himself, his servants, agents, employees, family members, representatives, purchasers, assignees, proxies and/or any person claiming through him from selling, transferring, charging, leasing, subdividing, alienating, wasting, entering upon, evicting the Applicant from, interfering with or in any other manner dealing with land parcel number MBITINI/KYEMUNDU/767 particularly the Applicant's 1.33 acres.
 - 5) THAT pending the hearing and determination of the originating summons herein, this Honourable Court be pleased to issue an order of inhibition and/or restriction prohibiting the Land Registrar, ELC NO. E016 OF 2026 1 | P a g e Makueni County from registering any transfer, subdivision, mutation, charge, lease, caution removal, transmission, alienation or any other dealing whatsoever in respect of land parcel number MBITINI/KYEMUNDU/767 save for purposes authorized by this Honourable Court.
 - 6) [SPENT]

- 7) THAT the Honourable Court be pleased to direct the Land Registrar, Makueni County to immediately register the inhibition and/or restriction ordered herein against the register of land parcel number MBITINI/KYEMUNDU/767.
 - 8) THAT the Officer Commanding Station nearest to the suit land and/or the Area Chief be directed to ensure compliance with the orders of this Honourable Court and to prevent breach of peace during enforcement and/or service of the court orders.
 - 9) THAT costs of this application be provided for.
 - 10) THAT this Honourable Court be pleased to issue any other or further orders necessary for the preservation of the suit property and the ends of justice.
2. The application is premised upon the grounds appearing on its face in addition to the supporting affidavit of Christopher Ngangi Ngulu sworn on even date. The deponent averred that the Respondent is the registered proprietor of land parcel number MBITINI/KYEMUNDU/767 which measures approximately 2.718 acres. It was further averred that the Applicant's claim is for a portion measuring approximately 1.33 acres which he purchased on or about 4th June, 1988.
 3. The deponent contended that upon purchase and payment of the purchase price, he took possession of the suit property and commenced use of the land. That on ELC NO. E016 OF 2026 2 | P a g e or about 31st October, 1989, the Respondent and his late father entered into an agreement with the Applicant for the refund of the purchase monies with an express term that if the refund was not done by 15th August 1990, the land would remain sold to the Applicant.
 4. The deponent averred that the refund of the purchase price was not done and that he has remained in possession of the land peacefully for over thirty-five years. He added that previously, the land dispute between himself and the Respondent was litigated in Makueni L.D.T Case No. 43 of 2006 which ordered that the Respondent vacates the suit property and further recognized the Applicant's right to possession of the land.
 5. The Applicant averred that the Respondent has been taking steps to sell, transfer or otherwise dispose the land with the sole aim of defeating the Applicant's claim. He further averred that the Respondent shall suffer no prejudice if the orders sought are granted. That unless the orders sought are granted, the substratum of the suit may be destroyed and the Applicant's claim rendered nugatory.
 6. The sole issue for determination is whether the Applicant has met the legal threshold for issuance of the injunctive orders as well as merit in the subsequent orders as sought.
 7. The prerequisite conditions for a grant of injunctive orders under Order 40 Rule 1(a) of the Civil Procedure Rules, 2010 were determined in the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] 1 EA 358 at 360 (CAK) as follows: - "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 ELC NO. E016 OF 2026 3 | P a g e 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. (E.A. Industries

- v. Trufoods, [1972] E.A. 420.)”
8. In Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR the Court of Appeal defined a prima facie case in the following terms: - “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.”
9. The Applicant concedes under paragraph 4 that the suit property known as MBITINI/KYEMUNDU/767 is registered in the name of the Respondent. At paragraph 6 of the supporting affidavit, the Applicant contends that on or about 4th June, 1988, he purchased a portion thereof measuring 1.33 acres at a consideration of Kshs.5,000/= and has continuously utilized the land to date. 10.The law of evidence behoves the Applicant to prove the existence of the alleged facts in support of his claim to an interlocutory injunction. Under Section 107 of the Evidence Act sets out as follows:-
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. 11.The averments made in the supporting affidavit were not substantiated with documentary evidence in the form of exhibits. No sale agreement was annexed ELC NO. E016 OF 2026 4 | P a g e to show the size of land sold to the Applicant, the executing parties or the value of consideration paid. Moreover, no evidence of actual possession of the land occupied nor an actual threat of sale and/or transfer of the suit property by the Respondent was adduced. All the averments made in the supporting affidavit remain mere allegations. 12.It is therefore the finding of this court that a prima facie case has not been demonstrated. The Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR opined as follows: - “...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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong

the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration." 13. Seeing that the Applicants have not proved a prima facie case for the grant of interlocutory relief, it is not worthwhile to consider the other two limbs as per the observations of the Court of Appeal in Nguruman Limited (supra). A conclusive determination of the validity of the Applicant's claim in the originating summons can only be determined at a full hearing of the parties. ELC NO. E016 OF 2026 5 | Page 14. The upshot of the foregoing is that the application dated 25th June, 2026 is devoid of merit and is hereby to be dismissed with costs.

..... HON. E. O. OBAGA, FCI Arb JUDGE RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF SEPTEMBER, 2026. IN THE PRESENCE OF: Mr. Kasyoka for Applicant Court assistants – Kilonzo & Musyoki ELC NO. E016 OF 2026 6 | Page

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