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Court:	Environment and Land Court at Nairobi
Case Action:	Ruling
Judge:	Ann Jacqueline Akhalemesi Mogeni
Citation:	Ali Mohamed Sunkar v John Chege [2021] eKLR
Advocates:	Mr. Kassina for Applicant/Plaintiff
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nairobi
Docket Number:	-
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Case Outcome:	Notice of motion allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E348 OF 2021

ALI MOHAMED SUNKAR.....PLAINTIFF

VERSUS

JOHN CHEGE..... DEFENDANT

RULING

A. BACKGROUND

1. Before this Court for determination is the Applicant's Application dated 30th September 2021 filed under Order 51 Rule 10 of Civil Procedure Rules, Section 3A of Civil Procedure Act and all the other enabling provisions of the law. The Applicant is seeking for the following; -

1) Spent.

2) THAT, this Honorable Court be pleased to issue an order of temporary injunction restraining the Respondent his agents and or servants from forcefully evicting the Applicant from land title Nairobi Block/ 263/1123 formerly plot number 132 Kwa Njenga Embakasi sub county, Nairobi County pending the hearing and determination of this Application interparties.

3) THAT this Honorable Court be pleased to issue an order of temporary injunction restraining the Respondent with their agents and or servants from forcefully evicting the Applicant from land Title Nairobi Block/263/ /1123 formerly plot number 132 Kwa Njenga Embakasi sub county, Nairobi County pending the hearing and determination of the main suit herein.

4) THAT costs of this application be in the cause.

B. THE APPLICANT'S CASE

2. The grounds of the Application are stated in the supporting affidavit sworn by Ali Mohamed Sunkar on 30/09/2021 as follows; -

a. THAT the Applicant has been in occupancy of Land Title Nairobi Block/ 263 / 1123 formerly plot number 132 Kwa Njenga Embakasi Sub County, Nairobi County 263/123 for 13 years without interruption from anyone.

b. THAT on or about the 25/06/2001 he entered into a sale agreement for the purchase of the parcel of land. On purchase of the said parcel of land he avers that he proceeded to erect a four-storey building the ground floor comprising of shops and residential apartments on the 1st,2nd and 3rd floors and furthermore, the said premises is occupied by tenants who are paying monthly rent to the applicant.

c. THAT the Respondent has recently threatened the Applicant with forceful eviction from the suit land.

d. The Applicant avers that on or about 17/09/2021 the Area Assistant Chief Kwa Njenga Sub- Location issued me with a Notice to vacate from the suit premises herein. The said notice further directed that the Plaintiff removes the structure erected on the suit premises for reasons that the alleged owner one John Chege needed to carry construction works. He contends that on receipt of the said Notice he proceeded to the Office of the Assistant Commissioner Embakasi Division for assistance. Upon getting to the Office of the Assistant County Commissioner Embakasi, he was issued with a letter dated 4/08/2021 whose contents were that the Respondent had been to the office of the Assistant Commissioner Embakasi alleging that the Applicant had built on his parcel of

land.

e. It is his contention that the Assistant Commissioner scheduled a meeting of all the parties concerned for 22/9/2021 which he attended. He avers that he was intimidated by the said government officials together with the Respondent and was issued with threats of having his building brought down and compelled to accept compensation of Kshs. 20,000,000.00 in order to surrender his interest in the suit property. That he shall be paid the said sum in December 2021, which offer he declined and left the meeting in protest.

f. He adds that in furtherance of the said harassment and intimidation, the respondent together with unknown persons on the night of 17/09/2021 caused shipping containers to be placed within his erected building thereby hindering access to the shops on the ground floor and the entrance to the building. He contends that having received no assistance from the office of the Assistant Commissioner on 23/09/2021, he approached the Office of the Regional Commissioner, Nairobi region on the same date for assistance, who then wrote to the Director General of Nairobi Metropolitan Service to remove the illegally deposited shipping containers on the suit property. Attempts were made to remove the same, but the respondent once again brought back the containers on 29/9/2021.

g. THAT if the Orders herein are not granted as a matter of urgency the Applicant will be forcefully evicted from the suit land which will render the entire suit herein nugatory.

h. THAT it is fair and just that the orders applied for herein be granted in the interest of justice and expediency.

C. THE RESPONDENTS CASE

3. The Defendant/ Respondent in response to the Plaintiffs/Applicant's application filed a replying affidavit sworn on 7/10/2021 where he avers that the Plaintiff is not the registered proprietor of the suit property and has deliberately failed and/or ignored to attach a certificate of title or search indicating his interest in L.R NO. NAIROBI/BLOCK 263/1123.

4. The respondent states that he has obtained a copy of the certificate of Title in respect to the said property which clearly indicates that the same is registered in the name of Orbit Chemical Industries Limited and not the Plaintiff. That indeed the registered proprietor Orbit Chemical Industries Limited has issued a Notice to the Plaintiff/Applicant to vacate the Land.

5. It is the Respondent's contention that Plaintiff being a stranger to the suit property has not established a prima facie case with a probability of success since a temporary injunction ought not to be granted to a person lacking proprietary interest in land.

6. He avers that the Plaintiff's assertion that he has a certificate of ownership from an amorphous unknown body called Kware-Mukuru Kwa Njenga Jua Kali Association is immaterial as such an association is merely comprised of squatters who invade public land, purports to subdivide it and use it to con members of public by printing from the cyber cafes documents purporting to be certificate of ownership.

7. It is his contention that a certificate of ownership issued by an illegal entity called Kware-Mukuru Kwa Njenga Jua Kali Association cannot override a duly issued Certificate of Lease by the Government of Kenya in favour of Orbit Chemical Industries Limited.

8. The Respondent stated that the person who purported to sell the property to the Plaintiff Simon Chacha Nyangi had no valid title to the property and could not pass any better title to the Plaintiff. The Plaintiff recourse is to seek refund of purchase price from whoever he paid. That the letters addressed to the Plaintiff to vacate the property by the Provincial Administration were validly issued since the plaintiff is a trespasser on private property. The respondent further states that he bought the adjacent property L.R. No. Nairobi/Block 263/1124 which neighbours the suit property and on which he had placed his containers and from the Plaintiff had wrongfully and illegally removed on site. He had to return them to his property.

9. He avers that he bought the said property L.R. No. Nairobi/Block 263/1123 and L.R. No. Nairobi/Block 263/1124 from Orbit Chemical Industries Limited for a valuable consideration. The Plaintiff is confusing the property that he bought which is vacant land and the adjacent land he has trespassed on which is a different land.

10. Finally, the respondent avers that the Plaintiff suit lacks merit and damages may compensate him in any event since he has no

title and may not suffer irreparable damages. That the balance of convenience tilts in protecting a registered proprietor over a squatter/grabber of private land, the Plaintiff herein. He therefore prays for the plaintiff's application to be dismissed with costs.

D. FURTHER RESPONSE

11. The Applicant filed a Further Affidavit dated 16/10/2021 and wholly relies on the same. He reiterates that he is the bona fide, beneficial owner in possession and occupation and entitled to the property. That he has been in occupation and possession of the suit premises since 3/04/2008 without any interference from and person or entity, he also would wish to state that the person who he purchased the same from was in occupation and possession for a period of seven (7) years. Therefore, cumulatively he and the previous owner have been in possession for 20 years uninterrupted.

12. He avers that no notice was or has been issued to him to vacate and the said notice is a fabrication by the Defendants' /Respondent to justify his illegal actions of intrusion. The certificate of ownership was properly issued to them and the said certificate have been in use since the date of issuance.

13. He categorically avers that state that the provincial administration has no mandate or authority to determine ownership of property, this sole responsibility lies with the Honorable Court. The applicant states that he has no interest whatsoever in the mentioned property save to state that the containers have been placed by the Respond /Defendant right in front of my property making accessibility impossible.

14. He contends that the defendant/Respondent could not have purchased the parcel of land on the 15th of March 2019, since he has been staying on the land for the last 9 years without any interference from any person whatsoever.

15. The applicant avers that on the 19/10/2021 his advocates on records wrote to the Chief Land Registrar inquiring on the ownership of NAIROBI /BLOCK 263/1123 and the response that the Chief Land Registry gave was that the said parcel of land is registered in the name of Orbital Chemical Industries limited and further that there was a presidential decree that the persons currently occupying the land ought to and should be given preference in the acquisition of the same. That from the statement of the chief land Registrar its quite evident that the Defendant /Respondent has no legal claim whatsoever of the parcel of land known as NAIROBI/BLOCK 263/1123.

16. Lastly, he states that as per the Chief Lands Registrar letter the title documents for Block 263/1123 was issued on 2/07/ 2018 and the Respondents' /Defendants' claims to have purchased the same on the 1/03/2019 cannot be true and cannot hold water nothing would have been much easier for him if it's true to have the title documents issued in his name.

17. In view of the above glaring issues the applicant humbly requests the Honorable Court to grant his prayer herein and allow the application.

E. SUBMISSIONS

Applicant's Submissions

18. The Applicant filed its submissions dated 28/10/2021 in support of their application for temporary injunction.

19. It is the plaintiff's submission that court has discretion to grant an injunction. To succeed an applicant must firstly show a prima facie case in the Suit with a probability of succeeding when it will come for hearing. Secondly that unless granted an injunction he is likely to suffer injury incapable of adequate redress by the award of damages. Thirdly, that in the event the court is in doubt on either or both the above matters then the court considers the balance of conveniences.

20. It is their contention that the Plaintiff /Applicant has been in occupation of the suit premises since 3/04/008 which is a period of over 13 years and he has invested heavily by putting up permanent structure and the current valuation of the property is around Kshs. 50,000,000 and thus unless granted the injunction the Plaintiff/Applicant is likely to suffer injuries incapable of adequate redress by an award of damages.

21. Lastly, the applicant is praying and urging this Honorable Court to grant the orders sought to ensure justice is done and for simple reason that the Honorable Court can protect the Applicant legally acquired investment from interference by the Respondent until hearing and find determination of this suit. They relied on the case of *Giella -Vs - Cassman Brown &Co.Ltd (1971) EA*.

Respondent's Submissions

22. The Defendant herein has filed written submissions dated 26¹⁰/2021 in opposition to the Application dated 30/09/2021. He raises 3 issues for determination. They are: -

1. Whether the plaintiff has the 'locus standi' to institute the current proceedings"
2. Whether the Plaintiff/Applicant's Application discloses a prima facie case with a probability of success.
3. Whether the Plaintiff/Applicant has satisfied the conditions for grant of temporary Injunction"

Whether the plaintiff has the 'locus standi' to institute the current proceedings"

23. They submit that it is trite law that for one to institute a suit and to be heard before a Court of law, it is mandatory for one to have locus standi. They relied on the cases of *Law Society of Kenya Vs. Commissioner of Lands & Others* and *Nakuru High Court Civil Case No.464 of 2000, Alfred Njau and Others Vs. City Council of Nairobi (1982) KAR 229*.

24. He contends that the Defendant/Respondent herein obtained a copy of the Certificate of Title in respect to the suit property which certificate of title clearly indicates that the same is registered in the name of Orbit Chemical Industries Limited and not the Plaintiff/Applicant. It is their submission that a certificate of ownership allegedly issued by an illegal entity called Kware-Mukuru Kwa Njenga Jua Kali Association cannot override a duly issued Certificate of Lease by the Government of Kenya in favour of Orbit Chemical Industries Limited.

25. It is trite law pursuant to the provisions of the Land Registration Act that the certificate of lease shall be deemed to be prima facie evidence of the contents therein. He relied on **Section 24(b) and section 30(3) of the Land Registration Act**.

26. The respondent further submits that the person who purported to sell the property to the Plaintiff, that is Simon Chacha Nyangi had no valid title to the property and could not pass any better title to the Plaintiff. The Plaintiff recourse is to seek a refund of purchase price from whoever he paid. He relied on the case of *Nelson Kazungu Chai & 9 others vs Pwani University College (Malindi) CA No. 78 of 2016 (2017) eKLR*.

27. It is his contention that in view of the fact that the Plaintiff/Applicant has not produced a certificate of title evidencing any legitimate interest that he may have over the suit property, it follows consequently that the Applicant has *no locus standi* to institute this suit and as such this Application is hopelessly misconceived, frivolous, totally devoid of merit and should be dismissed with cost to the Defendant/ Respondent.

Whether the plaintiff/applicant's application discloses a prima facie case with a probability of success.

28. He relied on the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others Court of Appeal, at Mombasa March 7, 2003 Civil Appeal No 39 of 2002* regarding the principles of a prima facie case. It is their submission that Plaintiff/Applicant has failed to establish that he has a prima facie case with a probability of success to warrant the orders sought because the Plaintiff/Applicant has no legal ownership to the suit property as the rightful owner of the suit property is Orbit Chemical Industries Limited. From the forgoing, it is evident that the Plaintiff/Applicant has no prima facie case against the Defendant/Respondent.

29. Furthermore, he submits that since it is not a fact in contention that the Plaintiff/Applicant does not have legal ownership of the suit property, the said Plaintiff/Applicant has therefore been in illegal occupation of the suit property and is in turn barred from claiming any breach of law and should therefore not use this Honourable Court to derive benefit from an illegality.

30. He avers that it is evident that the Plaintiff/Applicant does not have a prima facie case with a likelihood of success as the case is

wanting in merit. As such, this Application should therefore be dismissed for it is an abuse of the Court process.

Whether the plaintiff/applicant has satisfied the conditions for the grant of temporary injunction"

31. The Defendant/Respondent's submission is that the Plaintiff/Applicant's Application for temporary injunction should not be granted and the Defendant/Respondent's wholly relies on the celebrated case of *Giella V. Cassman Brown (1973) supra*

32. With regards to whether the Plaintiff/Applicant will suffer imminent irreparable harm should the injunction not be granted, it is the Defendant/Respondent's submission that Plaintiff/Applicant will not suffer any irreparable loss that cannot be remedied by damages in the event that an injunction is not issued by the Honourable court. The respondent relied on the case of *Paul Gitonga Wanjau -vs- Gathuthi Tea Farmers HCC/NO. 28 OF 2015 eKLR*. The Defendant/Respondent denies that the Plaintiff/Applicant is entitled to any of the reliefs sought.

33. Lastly, it is his submission that the balance of convenience tilts in favour of the Defendant/Respondent since he has established the fact that the Plaintiff/Applicant has trespassed the suit property and it is not legitimate to issue an Order in favour of a trespasser, or anyone who approaches the Courts with unclean hands. The Defendant/Respondent avers that has clearly established that the Plaintiff/Applicant is an illegal occupant of the suit property and hence has no right to the prayers sought.

34. In conclusion, the respondent submits that the Plaintiff/Applicant Application dated 30th September 2021 is fatally incompetent and incurably defective and the Orders devoid of merit. First and foremost, the Plaintiff/Applicant is not the rightful owner of the Suit property and as such the Application is incurably defective, hopelessly misadvised and ought to be dismissed by this Honourable Court.

35. He submits that the Application is an abuse of precious judicial time and it is in the interests of justice and fairness that the instant applications be dismissed with costs to the Defendant/Respondent.

F. ISSUES FOR DETERMINATION

36. Having considered the Application, the Supporting Affidavit thereof, the Respondent's Replying Affidavit dated 7th October 2021 and the Submissions filed by the parties' counsels, the following arise as the issues for determination before this court.

a. Whether the Applicant has *locus standi*.

b. Whether the applicant has met the conditions necessary to warrant the grant of an interlocutory injunction pending full hearing by demonstrating to court existence of a prima facie case on the disputed property.

c. Whether the property is at risk of being wasted by the Respondent in the event that this court does not grant the orders being sought.

G. ANALYSIS

Whether the Applicant has *locus standi*.

37. The Applicant alleges that he is a bona fide, beneficial owner in possession and occupation and entitled to land title Nairobi Block/ 263/1123 formerly plot number 132 Kwa Njenga Embakasi sub county, Nairobi County having acquired the same vide purchase on or before 25/06/2001 from one Simon Chacha Nyangi. However, the Applicant has only attached an Ownership Certificate No. 100 indicating the same.

38. Additionally, it is the applicant's contention that he has been in vacant possession of the suit property since 3/04/2008 which is a period of over 13 years, and he has invested heavily by putting up permanent structure. Notably, a notice to vacate was only issued on 05/01/2019 by Orbit Chemical Industries Limited.

39. The court in the case of *Jared Nyauma Ondieki & 6 others v Football Kenya Federation [2019] eKLR* stated that: "The issue

of locus standi has been discussed widely within the Kenyan jurisdiction. The Court in the matter of *Michael Osundwa SaKwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] eKLR while referring to the matter of *Ms. Priscilla Nyokabi Kanyua vs. Attorney General & Interim Independent Electoral Commission Nairobi HCCP No. 1 of 2010* asserted that;

“...In Kenya the Court has emphatically stated that what gives locus standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population.”

40. Similarly, the Court in the matter of *Khelef Khalifa El-Busaidy v Commissioner of Lands & 2 others* [2002] eKLR while canvassing the issue of Locus Standi stated thus: “...for an individual to have a locus standi, he must have an interest either vested or contingent in the subject matter before the court, which interest must be a legal one. Such interest must be above that of other members of the public in general.”

41. From the foregoing, the court finds that the Applicant has shown that he has a claim against the suit property herein and therefore the Court finds that the Applicant has the right to bring this action.

Whether the applicant has met the conditions necessary to warrant the grant of an interlocutory injunction.

42. The substantive law on this matter is **Order 40 Rule 1 of the Civil Procedure Rules 2010** which provides: “Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decreethat 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, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

43. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: *whether the Applicants have established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicants stood to suffer irreparable loss that the Respondents would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who’s favour the balance of convenience tilted.* These principles were established in *Giella vs. Cassman Brown & Co. Ltd supra*.

44. In *The Siskina (Owners of the Cargo Lately On Board) vs Distos Compania Naviera SA: HL 1979 [1979] AC 210*, Lord Diplock said: “A right to obtain an interlocutory judgment is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment of the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction.”

45. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in *Nguruman Ltd v. Jan Bonde Nielsen & 2 Others*, [2014] eKLR observed that:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

(a) establish his case only at a prima facie level,

(b) demonstrate irreparable injury if a temporary injunction is not granted, and

(c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

46. These are the three pillars on which rests 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. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society Civil Appeal No. 142 OF 1999 (Nakuru) reported in [2001] EA*. The court was clear that “...the existence of a prima facie case does not permit “leap-

frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

47. Drawing positive inspiration from *the Nguruman v Jan Bonde Neilsen & 2 others [2019] supra*, the Court of Appeal in *Total Kenya Limited v David Njane t/a Argwings Twin Service Station & 2 others [2018] eKLR* restated the requirement that the three conditions for granting an injunction ought to be considered sequentially. In essence, the Court reasoned that the conditions for irreparable damage and balance of convenience ought not to be considered if a prima facie case had not been established.

48. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Applicants have established a prima facie case. A prima facie case was defined in *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others [2003] supra*, where Bosire, JA stated as follows: *“So what is a prima facie case” I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter.”*

49. The Court of Appeal deliberating what amounted to a prima facie case in *Nguruman (Supra)* made the following comments: *“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.”*

50. It is settled principle that a title document is the prima facie evidence of ownership of land. See *Section 26 (1) of the Land Registration Act 2012*. However, I must state that I cannot make determination on the ownership without hearing the case substantively on merit.

Whether the property is at risk of being wasted by the Respondent in the event that this court does not grant the orders being sought.

51. On the second consideration, the Applicant must establish that he might otherwise suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction.

52. Irreparable injury was defined in *Nguruman Limited v Jan Bonde Nielsen & 2 others (Supra)* as: *“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.”*

53. Can forceful eviction be tantamount to irreparable loss" The Applicant pleaded and submitted that he will suffer irreparable loss if he is evicted from the suit property that he has been in occupation for 13 years. It is the court’s view that before exposing a party to an eventuality of an eviction, it is only fair and justiciable that he be accorded an opportunity to exhaust all options provided in law to defend himself. I am therefore satisfied that the Applicant has demonstrated that he is likely to suffer substantial loss unless the temporary order of injunction is granted.

54. As regards irreparable damage, I take the view that should the injunction not be granted the substratum of this case will be destroyed and the plaintiff will suffer irreparable loss which may not be quantified in damages.

Balance of Convenience"

55. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR*, the court in defining balance of convenience stated thus; *“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor 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 would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who*

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

56. In my considered view, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the case, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.

57. The balance of convenience if I had doubt, would tilt in favor of the applicant in order to safeguard the current status quo of the subject matter of the suit pending hearing and determination.

58. Arising from all the above, I find merit in the application. Accordingly, I allow the Notice of Motion dated 30th September 2021 in terms of prayer 2, 3 and 4. Additionally, I order that the defendant moves the containers in so far as it is not hindering access to the shops on the ground floor and the entrance to the building erected by the applicant.

59. Costs of the application shall abide the outcome of the main suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2021.

.....

MOGENI J.

JUDGE

In the presence of:

Mr. Kassinafor Applicant/Plaintiff

.....Defendant/Respondent

Mr Vincent Owuor.....Court Assistant

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