



REPUBLIC OF KENYA



KENYA LAW
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Samoei & 2 others v Githinji & 2 others (Environment & Land Case E048 of 2024) [2025] KEELC 3369 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E048 OF 2024**

CK YANO, J

APRIL 24, 2025

BETWEEN

WILSON SAMOEI 1ST PLAINTIFF

WILLIAM KIBET KIRWA 2ND PLAINTIFF

BENJAMIN KIPRONO BETT 3RD PLAINTIFF

AND

PETER KARANJA GITHINJI 1ST DEFENDANT

SAMUEL GITHEGI KINYANJUI 2ND DEFENDANT

GEOFFREY KAMAU MUCHIRI 3RD DEFENDANT

RULING

1. Vide a Notice of Motion dated 11th December, 2024, brought pursuant to the provisions of sections 1A, 1B & 3A of the [Civil Procedure Act](#), and Order 10 Rule 11 and Order 51 Rule 1 of the Civil Procedure Rules, the Plaintiffs/ Applicants sought the following orders: -
 - a. Spent.
 - b. Spent.
 - c. THAT this Honourable Court be pleased to give an Order of temporary injunction restraining the defendants by themselves, or through their agents, employees or anyone else acting on their behalf from trespassing into, encroaching onto, alienating, subdividing, disposing off parcels of LR No. 104492 Eldoret with all its resultant plots which includes ELDORET MUNICIPALITY BLOCK 15/ 131, 159, 170, 187, 189, 190, 208, 219, 226, 227, 238, 282, 286, 312, 321, 379, 395, 398, 399, 413, 435, 448, 449, 466, 475 and 978.
 - d. THAT costs of this Application be provided for.



2. The application is based on the 8 grounds thereof and on the Supporting Affidavit sworn by William Kibet Kirwa on even date, on his own behalf and on behalf of his co-applicants. It is his claim that the plaintiffs are the lawful, regular and proper owners of all those parcels of land known as L.R. No. 104492 Eldoret with all its resultant plots which includes ELDORET MUNICIPALITY BLOCK 15/ 131, 159, 170, 187, 189, 190, 208, 219, 226, 227, 238, 282, 286, 312, 321, 379, 395, 398, 399, 413, 435, 448, 449, 466, 475 and 978 under Huruma Farm Company Limited.
3. That the subject parcel of land and the resultant subdivisions was procedurally acquired for valuable consideration from its original owners; Nathaniel Kiptalam Arap Langat, Thomas Kipkosgei Arap Yator, Noah Kimgeny Arap Chelugut, Cherwon Arap Maritim and William Kimgeny Arap Letting; collectively known as N.K. Langat and Partners.
4. He deponed that the subject land was measuring 120 Acres out of which 80 Acres was sold and the proceeds of the said sale used to offset a loan facility from the Agricultural Finance Corporation.
5. It is his claim that the remaining 40 Acres lawfully belonged to the plaintiffs/Applicants but that the same has since been illegally occupied by the respondents and their proxies, who continue to conduct illegal activities on the parcel including subdividing and disposing off the said parcels of land.
6. It is further his claim that the respondents registered an outfit named Huruma Farmers Company Limited which has a close likeness to Huruma Farm Company Limited, with an aim to defraud the public that they are the owners of the suit property.
7. It is the applicants' contention that the respondents have continued to perpetuate fraud by misrepresenting themselves as the legal owners of the above-mentioned parcels of land and further subdividing and disposing off the land to unsuspecting public. They thus maintained that it is fair and in the interest of justice that the application be allowed and the prayers sought granted.
8. The application was opposed. The Respondents filed a Replying Affidavit dated 28th January, 2025 and sworn by Samuel Githegi Kinyanjui, the 2nd Defendant/Respondent and secretary of Huruma Farmers Company Limited, on his own behalf and on behalf of his co-defendants/respondents.
9. He dismissed the application as being incurably defective and stated that the plot numbers quoted/ outlined in the application belong to their individual owners who have title deeds and reside therein, in the present day Huruma Estate in Eldoret. That the said parcels of land are therefore not under the control of the defendants.
10. It was his contention that the applicants have not proved by adducing evidence or demonstrated their claims of ownership or even provided copies of certificate of official searches in support of their claims and as a basis of the restraining orders sought.
11. It is the respondents' claim that the applicants have filed their suit after an extremely long time and without leave for enlargement of time. Further, that no nexus has been demonstrated between the plaintiffs and the subject matter.
12. They maintained that the application has been overtaken by events as the title exhibited was lawfully extinguished upon subdivision and the issuance of the new title deeds in the names of the purchasers. They thus urged the court to strike out both the suit and the application.
13. Pursuant to the directions of 13.2.2025, the Application was canvassed by way of written submissions. However, at the time of writing this ruling, neither the applicants nor the respondents had filed their written submissions within the timelines indicated. Be that as it may, I will proceed to determine the application on merit as hereunder.



Analysis and Determination;

14. I have carefully considered the application, the supporting affidavit together with the annexures thereto and the replying affidavit in totality. Consequently, it is my considered view that the only issue arising for determination is whether the Applicants have met the requirements for the grant of a temporary order of injunction as sought.
15. The law governing injunctions is found under Order 40 (1) (2) of the Civil Procedure Rules which provides as follows: -
 - “ 1. 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;
 - (b),
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.”
16. Further, section 13 (7) (a) of the *Environment and Land Court Act*, 2015 also empowers this court to grant interim preservation orders; including an interim order of injunction in the nature sought herein.
17. The principles guiding the grant of injunctions are well settled and I do not wish to re-invent the wheel. An applicant seeking orders of injunction must satisfy the 3-limb test set out in *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360 where the court held as follows: -
 - “a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;
 - b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;
 - c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.”
18. It has also been held that all the 3 tests indicated above are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. The existence of one pillar alone does not automatically entitle an applicant to an order of injunction without considering the other hurdles. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.
19. The first hurdle to be demonstrated is whether the applicants have established a Prima Facie case which raises arguable and triable issues with a probability of success. The Court of Appeal in *Mrao Ltd vs.*



First American Bank of Kenya and 2 Others (2003) KLR 125 explained what amounts to a prima facie case and stated as follows:

“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.”

20. The applicants contend that they are the lawful, regular and proper owners of all those parcels of land known as L.R. No. 104492 Eldoret and all the 26 resultant subdivisions therefrom. They annexed copies of LCB Consent and an Agreement for sale dated 1/10/1975 as WKK4 and 5 respectively as the basis of their ownership claims. They also annexed a copy of the minutes of the Huruma Farmers Company Limited in support of their allegations on fraud on the part of the respondents.
21. The respondents on the other hand, did not directly dispute the basis relied upon by the applicants of the previous original owners or the subsequent sale supported by WKK5 produced by the applicants. They however maintained that the applicants did not provide any evidentiary proof to support their ownership claims either in the form of a title deed or a certificate of official search of the parcels of land in question. Further, that no nexus between the applicants and the subject land had been sufficiently demonstrated.
22. The respondents in their replying affidavit also stated that the parcels of land in question are occupied by third parties who hold respective valid titles thereto and that the same are no longer under the control of the respondents. This fact was not controverted and/or rebutted by the applicants.
23. I have critically looked at the applicants’ Supporting Affidavit and the annexures thereto. It is important to note that annexure WKK5 dated 1/10/1975 was between N. K. Lagat & Partners and Huruma Farm Limited over a portion measuring approx. 120 Acres. As part of the terms and conditions therein, it was stated that Huruma Farm Limited would subdivide the 120 Acres and allocate to members who had deposited money with R.L. Aggarwal Advocates at the rate of Kshs. 1,500/= per quarter Acre. The members of N.K. Lagat & Partners and Huruma Farm Limited were all listed.
24. Annexure WKK6, which is a copy of the minutes of the Huruma Farmers Company Limited outlines its members and from a cursory look at the said list of members, the members of Huruma Farmers Company Limited and Huruma Farm Limited members are significantly different.
25. I must, however, point out that no ownership document was adduced by the applicants or any evidentiary proof to show the effect that the agreement dated 1/10/1975 was duly complied with. It is also clear from the supporting affidavit and replying affidavit that the suit parcels are occupied by third parties who are not subject to the instant suit and this court should therefore take caution against issuing orders against persons who are not parties to this suit thereby condemning them unheard.
26. The law is clear that he who alleges must prove. Without any form of proof to support the averments by the applicants, this court is unable to find in favor of the applicants.
27. Thus, based on the material presented before me, it is the finding of this court that the applicants have failed to satisfactorily establish a prima facie case against the respondents for purposes of injunction.
28. The second limb is that the applicants must demonstrate that they will suffer irreparable harm which cannot be adequately compensated by an award of damages unless an Order of Injunction is granted. The burden lies with the applicants to demonstrate the nature and extent of the substantial injury they are likely to suffer.



29. This court has a duty to prevent grave and irreparable injury where it is demonstrated that the same is likely to be suffered by an Applicant. An injury is irreparable where there is no standard by which an amount can be measured with reasonable precision and accuracy or is in such a nature that monetary compensation, of whatever amount, will never be an adequate remedy.

30. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, while defining what amounts to an irreparable injury as the second limb for the grant of a temporary injunction held as follows;

“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.”

31. The applicants claim is that the respondents have illegally occupied a portion of land measuring 40 Acres which belonged to them and that they continue to conduct illegal activities including subdividing and disposing off the said parcels of land. Further, that the respondents have registered a company with the intention to perpetuate fraud.

32. Save for stating that they are the lawful and proper owners of the subject land, the applicants neither produced any ownership documents nor demonstrated the irreparable loss that they are likely to suffer as a result of the actions by the respondents. The Transfer of Lease document annexed as “WKK1”, is an incomplete copy which only shows that the said Jacobus Hendrik was the registered owner at the time and the vendor.

33. There is no material before this court to support the ownership claims or support the subdivision claims and any subsequent registration in the names of third parties as alleged. This court is therefore unable to verify the allegations made by both parties with regards to the ownership of the subject land. It is however undisputed, from paragraph 4 of the supporting affidavit and paragraph 3 of the replying affidavit, that the land is presently occupied by persons who may not be parties to the present suit.

34. Consequently, it is my considered opinion that the Applicants have not sufficiently demonstrated the irreparable loss that they are likely to suffer unless the orders sought are granted, to the required standard.

35. The final element that must be established is on the balance of convenience. The court needs to be satisfied that the inconvenience likely to be caused to the Applicants by declining the injunction is greater than that which is likely to be caused to the Respondents. The court is called upon to balance the inconveniences of both parties and possible injuries to them and their properties.

(See *Charter House Investment Limited vs Simon K. Sang and 3 Others* [2010] eKLR.



36. I am further guided by the decision in the case of Pius Kipchirchir Kogo vs. Frank Kimeli Tenai [2018] eKLR where it was held as follows:

“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.”

37. As held hereinabove, it is not in dispute that the subject parcels of land are occupied by third parties, who are not parties to the present suit. No ownership document was adduced in support of the ownership claims and/or to prove the registration status of the parcels of land in question.

38. In the premises, it is the finding of this court that the balance of convenience does not lie in favor of the applicants or in granting the orders of temporary injunction as sought.

Costs:

39. The general rule is that costs follow the event.

40. Having held that the applicants herein have not proved their claim for orders of temporary injunction to the required standard, I find that the respondents are entitled to the costs of the suit.

CONCLUSION

41. In view of the foregoing, I find that the Notice of Motion Application dated 11th December, 2024 is not merited and is hereby dismissed with costs to the Respondents.

42. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 24TH day of APRIL, 2025.

HON. C. K. YANO

JUDGE

Ruling delivered in the presence of: -

No appearance for the Plaintiffs/Applicants

No appearance for the Defendants/Respondents

Court Assistant – Laban

