



Songok & 3 others (Suing as the Administrators of the Estate of the Late Clementina Chebet Songok – Deceased) v St. Pauls Theological College, Kapsabet & another (Environment & Land Case E003 of 2023) [2025] KEELC 170 (KLR) (27 January 2025) (Ruling)

Neutral citation: [2025] KEELC 170 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E003 OF 2023
GMA ONGONDO, J
JANUARY 27, 2025**

BETWEEN

**JOHN KEEN KIPLAGAT SONGOK 1ST PLAINTIFF
NOAH KIPKOECH LAGAT 2ND PLAINTIFF
SAMSON KIPTANUI 3RD PLAINTIFF
SHADRACK KIMURGOR 4TH PLAINTIFF
SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE
CLEMENTINA CHEBET SONGOK – DECEASED**

AND

**ST. PAULS THEOLOGICAL COLLEGE, KAPSABET 1ST DEFENDANT
AFRICAN INLAND CHURCH, KENYA REGISTERED TRUSTEES 2ND
DEFENDANT**

RULING

1. The instant ruling is in respect of an application by way of Notice of Motion dated 27th February 2024 by the 1st defendant/applicant through Tororei and Company Advocates for orders infra;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That a temporary injunction be issued restraining the proposed interested parties (currently the plaintiffs), respondents either by themselves or agents/ servants from trespassing into,



encroaching, erecting structures, alienating and to specifically cease all developments on the suit property or otherwise in any manner interfering with land parcel number Kapsabet Municipality/361 pending the hearing and determination of this suit.

- e. Costs of this application be borne by the interested parties (currently the plaintiffs).
2. The application is founded upon eleven grounds indicated on the face thereof as well as a Supporting Affidavit of seventeen paragraphs sworn by Elizabeth Jepkoech Cheruiyot on 27th February 2024. In summary, it is the lamentation of the applicant that it has been in occupation and use of the suit land and Land Parcel No. Kapsabet Municipality/362 since the 1960s. That therefore, it has acquired indefeasible interest thereto by prescription, which right is protected under Article 40 of *the Constitution* of Kenya. That the 2nd defendant and the plaintiffs have invaded the suit land and began ploughing and cutting down trees. That the instant application is merited and if allowed, the plaintiffs shall not suffer any prejudice that cannot be remedied by way of costs.
3. The 2nd defendant opposed the application vide a Replying affidavit sworn on 16th May 2024 by Bishop Rev. David Serem wherein he deponed that the 2nd defendant is the registered proprietor of land parcel known as Kapsabet Municipality/362. That the applicant had earlier on filed a suit over the said parcel of land and caused a caution to be registered against its title but failed to prosecute the same thereby occasioning its dismissal on 7th April 2015. That consequently, the caution was removed and the parcel is currently free from any encumbrance. That the applicant has never been in possession of that parcel of land thus, the issue of preservation of the same does not arise. That the instant application ought to be dismissed with costs, in the interest of justice.
4. The application was opposed by way of a Replying affidavit sworn on 6th May 2024 by Shadrack Kimurgor. He stated that he is a co-administrator of the Estate of Clementina Chebet Songok (Deceased-1), the original plaintiff herein, together with his brothers Samson Kiptanui and Noah Kipkoech Lagat. That having substituted Deceased-1, they cannot be enjoined as defendants in this suit since they are now the plaintiffs. That the suit land is registered in the name of Deceased-1. That the applicant has never been in possession thereof.
5. The applicant filed a Supplementary affidavit sworn on 20th May 2024 by its Principal, Elizabeth Jepkoech Cheruiyot. She reiterated that the applicant has been in possession of both the suit land and land parcel number Kapsabet Municipality/362. That it behoves this court to preserve the subject matter of this suit.
6. It is noteworthy that the Court referred the application to Court Annexed Mediation for a possible settlement on 20th June 2024 in line with Article 159 (2) (c) of *the Constitution* of Kenya, 2010. However, parties failed to reach a settlement.
7. Hearing of the application proceeded by way of written submissions. The 1st defendant/applicant's counsel filed submissions dated 11th November 2024 and submitted that the applicant has established a prima facie case with likelihood of success. That the applicant risks suffering irreparable harm if the orders sought herein do not issue since the suit land is at risk of being disposed of by the respondents. That the balance of convenience tilts in favour of the applicant. That the instant suit is not res judicata. Reliance was placed on various authoritative pronouncements, including *Giella vs Cassman Brown Ltd.* (1973) EA 358, *Shah vs Mbogo* (1967) EA 116 at 123B and *Mrao Ltd. vs First American Bank of Kenya Ltd. & 2 others* (2003) eKLR, to fortify the submissions.
8. The 2nd defendant's Counsel, Lucas Sawe and Company Advocates, filed submissions dated 10th June 2024. Counsel relied on Section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya and submitted that the issues raised herein had been the subject of litigation in a previous suit filed at the Environment



and Land Court in Eldoret, to wit, Civil Suit No. 256 of 2012, which was dismissed by the court on 7th April 2015, for inordinate delay in prosecution. That therefore, this suit is res judicata and ought to be dismissed with costs. Counsel relied on the case of Barnabah Maritim v Manywele Korgoren & another [2015] KEELC 402 (KLR), among others, to buttress the submissions.

9. Notably, the Plaintiff's counsel did not file any submissions herein.
10. I have duly considered the application, the response thereto and the parties' respective submissions. The principal issues for determination boil down to:
 - a. Whether the applicant has met the threshold for grant of an injunction order?
 - b. Who should bear the costs of this application?
11. On the first issue, an injunction is an equitable and discretionary remedy; see Order 40 of the Civil Procedure Rules 2010 and National Bank of Kenya Limited -vs- Shimmers Plaza Limited [2009] eKLR.
12. The principles of injunctions were enunciated in the Giella case (supra) and as was reiterated in the case of Nguruman Limited vs Jan Bonde Nielsen and 2 others (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application, the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

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 states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

13. Further in the case of Hutchings Biemer Ltd v Barclays Bank of Kenya Ltd & 2 others [2006] eKLR, the Court of Appeal observed in part that:

“...In our view, injunctive orders are meant to preserve property and maintain the status quo...”

14. So, is the instant application meritorious?
15. On one hand, the applicant averred that it has acquired indefeasible interest on the suit land and land parcel number Kapsabet Municipality/362 by prescription, which right is protected under Article 40 of *the Constitution* of Kenya, 2010. That the 2nd defendant and the plaintiffs have invaded the suit land and began ploughing and cutting down trees. That the orders sought herein are necessary to preserve the substratum of this suit.
16. On the other hand, the plaintiffs stated that the suit land is registered in the name of Deceased-1 and the applicant has never been in possession thereof. The 2nd defendant asserted that the issues raised herein had been the subject of litigation in Environment and Land Court at Eldoret Civil Suit No. 256 of 2012, which suit was dismissed by the court on 7th April 2015 for inordinate delay. That therefore this suit is res judicata and ought to be dismissed with costs.



17. Taking into account the application, the response thereto as well as the annexures and the rival submissions, it is my considered view that the applicant has demonstrated that the suit land risks getting destroyed and/or disposed of, thereby altering its character and compromising the instant suit.
18. In the circumstances, it is my considered view that the threshold for an interim preservation order under Section 13 of the Environment and Land Court, 2015 (2011), has been met. Undoubtedly, status quo order is envisaged under the said statutory provision.
19. It is trite law that status quo order is meant to preserve the property in question pending the outcome or termination of the case; see *Ogada-vs-Mollin* (2009) KLR 620.
20. Regarding the issue of res judicata, Section 7 of the *Civil Procedure Act* Chapter 21 Laws of Kenya provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”
21. In the present case, it is noteworthy that Civil Suit No. 256 of 2012 at Environment and Land Court in Eldoret was dismissed by the court on 7th April 2015 for delay in prosecution. Clearly, the same was not heard and determined on merits as envisaged under Section 7 (supra). Therefore, I am of the considered view that the issue of res judicata does not arise herein.
22. In the premises, the instant application is hereby allowed in terms of interim order of status quo, in lieu of injunction sought, to prevail over the suit land. In particular, the respondents, their agents, servants and employees shall not trespass into, encroach on and/or alienate the suit land and are prohibited from erecting permanent developments thereon, pending the hearing and determination of the main suit.
23. Costs to be in the cause.
24. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 27TH DAY OF JANUARY 2025.

G. M. A ONG'ONDO

JUDGE

Present;

Mr. Tororei, Learned Counsel for the 1st defendant/applicant

Walter, Court Assistant

