



**Kenya (Suing as the Legal Representative of the Estate of the Late Tito Kenya) v Sawe & 2 others  
(Environment & Land Case E008 of 2023) [2025] KEELC 4156 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 4156 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E008 OF 2023**

**CK YANO, J**

**MARCH 4, 2025**

**BETWEEN**

**GEORGE MUREMA KENYA (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF THE LATE TITO KENYA) ..... PLAINTIFF**

**AND**

**JOHN KONGWALEI SAWE ..... 1<sup>ST</sup> DEFENDANT**

**CAROLINE J. KIPTUGEN ..... 2<sup>ND</sup> DEFENDANT**

**NATHANIEL KIBET CHEPKENER ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application for determination is the Notice of Motion dated 2<sup>nd</sup> April, 2024 in which the Plaintiff/Applicant is seeking an order of injunction to issue restraining the Defendants/Respondents whether by themselves, their servants and/or agents, employees and/or officials from the Government from demarcating, sub-dividing, ploughing, planting, constructing, erecting wall, leasing, selling, offering for sale, charging, evicting the plaintiff and/or in any other way dealing with 1.35 acres of land comprised in that parcel of land known as Uasin Gishu/Kimumu/3X9 and its resultant subdivision Nos. 3XX1, 3XX8, 3XX9, 3XX0 and 3XX1 pending the hearing and determination of the suit as well as costs. The application is brought under section 1A, 1B, 3, 3A and 63e of the *Civil Procedure Act*, Cap 21 Laws of Kenya and Order 40 Rule 1 of the *Civil Procedure Rules*, 2010 together with all other enabling provisions of the Law.
2. The application is based on the grounds on the face of the motion and supported by the affidavit of George Murema Kenya, the Applicant sworn on 2<sup>nd</sup> April, 2024. Briefly, the Applicant avers that his late father, Tito Kenya Jumba (Deceased) entered into a sale agreement dated 15<sup>th</sup> March, 1983 with the late Sawe Chepkweny where he acquired 1.35 acres of land which was to be curved out of that parcel of land which was then known as U.G/Kimumu/3X9 measuring 5 acres. That the Applicant's late



- father paid the entire consideration of Kshs. 4,725/= took possession and occupation and constructed his matrimonial house on the suit land where he lived until his demise on 23<sup>rd</sup> December, 2017. That the estate of the Applicant's father lived at peace in the suit land until when the 1<sup>st</sup> Respondent caused the said land known as U.G/Kimumu/3X9 to be subdivided creating 16 new parcel numbers known as LR. Nos U.G/Kimumu Scheme 3169 – 3184 (inclusive), and transferred to himself parcel numbers 3XX1, 3XX8, 3XX9, 3XX0 and 3XX1, parcel No. U.G/Kimumu Scheme/3XX6 to the 2<sup>nd</sup> Respondent and parcel No. U.G/Kimumu Scheme/3XX5 to the 3<sup>rd</sup> Respondent.
3. The Applicant avers that his late father was never notified of the said subdivision nor was he involved in it, though the 1<sup>st</sup> Respondent knew that his father had sold 1.35 acres to the applicant's father. It is the applicant's contention that parcel Nos. U.G/Kimumu Scheme/3XX1, 3XX5, 3XX6, 3XX8, 3XX9, 3XX0, and 3XX1 form part of the 1.35 acres that the applicant's late father had purchased. That the 1<sup>st</sup> Respondent has instructed the Land Registrar to visit the said parcels of land and commence the process of demarcation and the Land Registrar to visit the said parcels of land and commence the process of demarcation and the Land Registrar has issued summons intending to undertake the exercise. The Applicant argues that the said demarcation exercise cannot be undertaken before the dispute of ownership is determined.
  4. Based on the above, the Applicant contends that he has a prima facie case with a probability of success, that damages shall not be an adequate remedy in the circumstance and that the balance of convenience tilts in favour of granting the order of injunction.
  5. The applicant has annexed copies of a Limited grant of letters of Administration Ad Litem in respect of the Estate of the late Tito Kenya Jumba granted to the Applicant on 7<sup>th</sup> June, 2023 in Eldoret CMC Ad Litem Cause No. P & A Misc 154 of 2023, a sale agreement dated 15<sup>th</sup> March, 1983, mutation form and summons by the Land Registrar dated 3.4.2024.
  6. The application is opposed by the Respondents who filed a replying affidavit dated 02.05.2024 sworn by Nathaniel Kibet Chepkener, the 3<sup>rd</sup> Respondent herein. Briefly, their response is that the Land Registrar's statutory function is to demarcate boundaries in protection of the rights of all Kenyans. That the Applicant is a trespasser on the said parcels of land. It is further deponed that the Applicant has no right to use a grant of letters of administration Ad Litem issued in 2022 to prosecute this claim. That the Land Registrar therefore has the right under the law to adjudicate on the boundary dispute, and that at this stage, this court has no jurisdiction to entertain the matter.
  7. The Respondents also contended that the parties had an earlier dispute being Eldoret ELC No. 416 of 2012 Philip Macharia & 3 others –vs- John Kongwalei Sawe & 2 others which was decided in favour of the respondents. It is also averred that the suit is barred by the Limitation of Actions Act and that the agreement is not supported by the consent of the Land Control Board.
  8. The court directed that the application be canvassed by way of written submissions which they duly filed. The Applicant filed submissions dated 14<sup>th</sup> May, 2024 while the Respondents filed theirs dated 17<sup>th</sup> May, 2024.
  9. The Applicant reiterated that he has met the required threshold for granting orders of injunction and urged the court to grant the same. The Applicant cited the provisions of Order 40 Rule 1 of the Civil Procedure Rules, 2010 and relied on the case of *Giella Cassman Brown & Co. Ltd (1973) EA 358*, *Mrao limited –vs- First American Bank, Kenya Limited (22203) eKLR* and *Nguruma Limited –vs- Jan Bonde Nielsen & 2 others (2020) eKLR*.



10. On their part, the Respondents argued that it is not in dispute that the Land Registrar wrote a letter dated 21.03.2024 with respect to the boundary dispute relating to parcel numbers Uasin Gishu/Kimumu/3XX5, 3XX6, 3XX7 and 3XX8. It is submitted that being the case, the jurisdiction of the court is ousted by Section 18 of the [Land Registration Act](#) No. 3 of 2012. That in effect, this is a matter that is duly within the ambit of the Land Registrar. That it has not been stated what legal wrong the Land Registrar has committed as at this stage and has not even been joined to the case. That the letter having been written by the Registrar, and there being no joinder of the Registrar into these proceedings, there can be no basis to joining the Defendants together in the suit.
11. It is also the Respondent's submission that by dint of Section 7 of the [Limitation of Actions Act](#), the Applicant's claim which is premised on a sale agreement dated 15.03.1983 which is a period of 41 years since the agreement was purportedly written is time barred. Further that the agreement became null and void after six months after it was signed the transaction being sought to be enforced being a controlled transaction within the meaning of sections 6 and 7 of the [Land Control Act](#), Cap 302 Laws of Kenya. It is therefore the respondent's submission that the said agreement is void for all purposes and prayed that the application be dismissed with costs.
12. I have considered the application, the response and submissions filed. This being a Giella – v- Cassman Brown application, the applicant must show that he has a prima facie case with a probability of success; that he stands to suffer irreparable damage; and that, in the event of doubt, the balance of convenience tilts in favor of the Applicant. Further temporary injunctions that are granted by court under Order 40 Rule 1 of the [Civil Procedure Rules](#) are discretionary in nature.
13. It is not in dispute that the suit properties are registered in the names of the respondents. It has also been shown that there were previous proceedings over the suit properties in Eldoret ELC No. 416 of 2012 –Philip Macharia & 3 others –vs- John Kongwalei Sawe & 2 others. Whereas the Applicant averred that that suit was withdrawn, the respondents contended that that case was decided in their favour. The Applicant did not challenge the Respondents contention that the said suit was decided in their favour. While the Applicant's case is that his late father purchased 1.35 acres comprised on a parcel of land then known as Kimumu Parcel No. 3X9 vide an agreement dated 15. 03. 1983, the respondents have pleaded limitation and argued that section 7 of the [Limitation of Actions Act](#) bars any claim to recover land from them, which in this case is a period of about 41 years since the alleged agreement was purportedly entered into. It was further pleaded that the transaction being sought to be enforced by the Applicant is a controlled transaction within the meaning of sections 6 and 7 of the [Land Control Act](#), and therefore the agreement became null and void after 6 months of its being signed on 15.03.1983 for lack of consent from the Land Control Board.
14. The Applicant averred that the 1<sup>st</sup> Respondent has moved the Land Registrar to visit the suit parcels of land and commence the process of demarcation. The Applicant had annexed the summons marked "GMK4". I have perused the said annexure. I note that contrary to the Applicant's assertion that the Land Registrar intends to undertake a demarcation exercise, it is expressly clear that the purpose of the Land Registrar's visit was to determine the boundary between Title No. Uasin Gishu/Kimumu Scheme/3XX5 and Title Nos. Uasin Gishu/Kimumu Scheme/3XX6, 3XX7 & 3XX8. I do not see how that exercise can pose any danger to the Applicant. It is also clear that there is no evidence of any of the acts complained of by the Applicant to warrant issuance of the injunctive orders sought. The issue as to whether the Applicant is entitled to the portion measuring 1.35 acres and whether he is entitled to the reliefs sought can only be determined during the full hearing.
15. Having looked at the facts that have emerged in this case and the evidence adduced by way of affidavits, it is the view of the court that the Applicant has not established a prima facie case with a probability of



success against the respondents. As regards irreparable damage, I take the view that any damage suffered by the Applicant if any, can be quantified in damages.

16. Arising from the above reasons, I find that the notice of motion dated 2<sup>nd</sup> April, 2024 lacks merit and the same is dismissed with costs.

17. It is so ordered.

**DATED, SIGNED and DELIVERED** virtually at **ELDORET** on this **4<sup>TH</sup>** day of **MARCH, 2025**.

**HON. C. K. YANO**

**ELC, JUDGE**

In the presence of;

Court Assistant – Laban

Dr. Chebii for Defendant.

Mr. Mathai for Plaintiff.

