



Moso & 4 others v Bett & 16 others (Environment & Land Case E052 of 2024) [2025] KEELC 3664 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3664 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E052 OF 2024**

CK YANO, J

MAY 8, 2025

BETWEEN

**CHESUDIN ARAP MOSO 1ST PLAINTIFF
JOHN RONO (SUIING FOR AND ON BEHALF OF CHERONO
KOMEN) 2ND PLAINTIFF
KIPKORIR KIPKEMEI 3RD PLAINTIFF
PETER NJOROGE 4TH PLAINTIFF
HENRY OKEMWA OCHARO 5TH PLAINTIFF**

AND

**ABIGAEAL BETT 1ST DEFENDANT
DICKSON KIMUTAI KIPSOI 2ND DEFENDANT
IRENE CHEBON 3RD DEFENDANT
PETER NJUGUNA MWAURA 4TH DEFENDANT
KIPRONO SING'OEI 5TH DEFENDANT
JONATHAN SANG 6TH DEFENDANT
WILSON KEMBOI 7TH DEFENDANT
MARY MUNGAI 8TH DEFENDANT
NELSON TOO 9TH DEFENDANT
CAROLYNE MUTHONI MUNA 10TH DEFENDANT
KIMAIYO CHESEREK 11TH DEFENDANT
JINARO MWANGI 12TH DEFENDANT**



MWANGI KIHETHU	13 TH DEFENDANT
KENNEDY CHERUIYOT	14 TH DEFENDANT
FRANCIS YATOR	15 TH DEFENDANT
THE COUNTY LAND REGISTRAR, UASIN GISHU	16 TH DEFENDANT
HON ATTORNEY GENERAL	17 TH DEFENDANT

RULING

1. Vide a Notice of Motion dated 16th September, 2024, brought under the provisions of section 1A, 1B, 3, 3A, 63(e) of the *Civil Procedure Act*, section 13 of the *Environment and Land Court Act*, Order 40 and 51 of the Civil Procedure Rules and filed under certificate of urgency, the Plaintiffs/ Applicants sought the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That there be a permanent injunction issued against the 1st – 15th defendants/respondents, their servants, agents, representatives or any other persons whomsoever acting for them from trespassing onto, purporting to survey, sub-divide, change existing boundaries, claiming ownership, selling, offering for sale, leasing or doing any other thing in any other way affecting the respective parcels of land owned by the plaintiffs/applicants pending the hearing and determination of this suit.
 - d. Costs be provided for.
2. The application is based on the 9 grounds outlined therein and on the Supporting Affidavits sworn by the 1st applicant on even date, on her own behalf and on behalf of the co-applicants. I do however note that the 1st plaintiff/applicant has since withdrawn her claim against the defendants/respondents.
3. Pursuant to the order issued by the court on 23/10/2024, the Plaint was Amended and another Supporting Affidavit was sworn by one Chesudin Arap Moso dated 30/10/2024, on behalf of the plaintiffs/applicants.
4. He deponed that the applicants are the registered and/or beneficial owners of parcels of land known as L.R. No. Ngeria/ Kesses Block 5 (Bayete)/21, 18, 49, 5 and 56. They annexed the various title deeds which confirmed the registration details and showed the measurements.
5. It is the applicants' claim that the 1st respondent in her capacity as the Assistant County Commissioner (ACC), with no authority to deal with any registered property, mobilized and led the other respondents to enter into the applicants' suit parcels.
6. That between 22/7/2024, 23/7/2024 and 21/8/2024, the 1st respondent led the other respondents and they invaded the parcels of land belonging to the applicants claiming that they wanted to have the said parcels of land re-surveyed, sub-divided and hive off some portions to be given to other people.
7. He therefore avers that the actions by the respondents jointly amounts to trespassing onto private properties belonging to the applicants and without any proof of the alleged cancellation of the applicants' titles.



8. He further dismissed the allegations by the respondents that the title deeds held by the applicants and the members of the Bayete parcels of land were revoked vide Kenya Gazette Notice V.L. CXIX No. 97 of 17/7/2017 as false and maintained that the National Land Commission in their report indicated that L.R. No. 11130 was revoked and whose owners were the Wendani Farmers' Co-Operative Society Limited.
9. He gave a brief history and/or background of the subject land from its original No. 11130 measuring 655 acres and which was subsequently sub-divided into 2 between Bayete F.C.S. Limited with 335 acres and Wendani F.C.S. Limited getting 320 acres. That the new parcel number issued to Bayete was L.R. No. 11130/1 while the original Certificate of Title No. 11130 remained in the name of Wendani F.C.S. Limited.
10. He also outlined the various cases between individuals and maintained that the respondents are acting illegally by interfering with private parcels of land without any valid court order. He urged the court to allow the application and grant the orders sought.
11. The application was opposed. The 4th – 7th and 9th – 14 respondents filed a Grounds of Opposition dated 27th September, 2024 and a replying affidavit sworn by the 4th respondent on his own behalf and on behalf of the co-respondents.
12. In the grounds of opposition, they dismissed the application as being misconceived, frivolous, vexatious and an abuse of the court process and that the same does not satisfy the prerequisites for the grant of the orders of temporary injunction as sought.
13. It was their contention that the prayers sought in the application are vague, ambiguous and lack clarity as to what parcels of land are to be preserved and to whom they belong or to whom the orders are directed and thus contend that orders of injunction cannot issue in vain.
14. Further, that the application and the suit offend the provisions of the Government Proceedings Act and therefore urged the court to dismiss the application.
15. In their replying affidavit, the 4th respondent deponed that he is the beneficial owner of plot No. 38 L.R. No. Pioneer Ngeria/ Block 5 (Bayete)/ 38, which was a creation of L.R. 11130/1 which was hived off from L.R. No. 11130 that was co-owned between Wendani/ Bayete Farmers' Co-operative.
16. It was his contention that when Bayete Farmers' Co-operative Society Limited subdivided their plots into subtitles and issued them to its members sometimes in the 1990's, they realized there were no access roads to some plots. That there were variations between what was stated in the title deeds and the actual measurement on the ground and further that some members of the Wendani Farmers' Co-operative Society Limited were found to have settled on the Bayete side of the farm.
17. It was also his contention that the requisite legal procedure was not complied with, that the mutilation of L.R. No. 11130 into two portions was omitted and thus the true membership and classification of members was not fully done.
18. It is therefore their contention that the said problems constituted a boundary dispute and they consequently formed a committee and enlisted the 4th – 7th respondents to assist. That several meetings were held with a view of resolving the issue and which culminated on a report on the dispute resolution dated 18.6.2024 duly signed by the attendees.
19. That with the resolution report, he admitted that the committee commenced the harmonization of boundaries and replanning of the farm to resolve the issues highlighted and was interrupted by the filing of the instant suit. They urged the court to find that the orders sought cannot be granted.



20. When the matter came up on 4/2/2025, Ms. Odeyo counsel for the 16th and 17th Respondents informed the court that they would not be participating in the instant application.
21. The Application was canvassed by way of written submissions. The applicants filed their submissions and authorities dated 7th March, 2025 while the respondents filed their submissions together with authorities dated 18th March, 2025, which I have read and considered.

Applicants' Submissions:

22. They gave a brief background of the acquisition of the subject land. That the parcels of land giving rise to the title numbers L.R. No. NGERIA/ KESSES BLOCK 5 (BAYETE) was originally known as L.R. No. 11130 measuring 655 acres. That the said land was bought by two Societies; Bayete Farmers' Co-operative Society Limited and Wendani Farmers' Co-operative Society Limited and Bayete Co-Operative Society Limited was given 335 acres while Wendani Farmers' Co-Operative Society was given 320 acres.
23. That the land L.R. No. 11130 was subsequently subdivided into 2 portions. That L.R. No. 11130/1 gave rise to the Bayete F.C.S Limited titles while the remaining portion measuring 320 acres belonging to the Wendani F.C.S. Limited remained bare and has not yet been shared out among its members.
24. They relied on the Gazette Notice of 17/7/2017 and maintained that the referenced land therein was the remaining portion belonging to the Wendani Farmers Limited and the report by the National Land Commission of 13/3/2018 as a demonstration of their prima facie case.
25. On irreparable loss and damage, it was their submission that they risk suffering irreparable loss if parts of their parcels are cut off by the respondents and they demarcate in total disregard of the existing titles.

Respondents' Submissions:

26. Counsel submitted on the 3 principles to be proved when seeking interlocutory injunction as outlined in the leading case of *Giella vs Cassman Brown & Co. Ltd* [1973] KLR. On prima facie case, he relied on the definition by the Court of Appeal on what amounts to a prima facie case in the case of *Mrao Ltd vs First American Bank of Kenya & 2 Others* [2003] eKLR 125.
27. It was counsel's submission that the applicants contend that the 1st respondent led the other respondents and invaded their parcels of land. It is however their claim that the 1st and 16th defendants are officers of the government within the meaning of the *Government Proceedings Act* section 13A which outlines the procedure of instituting actions against government officers.
28. They contend that there was no notice of 30 days issued as strictly provided by the Act and which they maintained is fatal to the suit and application.
29. Further, he submitted that section 16 of the *Government Proceedings Act* precludes courts from issuing injunctions against government officers.
30. On whether the applicants would suffer any irreparable loss, it was their submission that the plaintiffs/ applicants had not defined the extent of the alleged trespass or the loss they stand to suffer should the dispute proceed to its logical conclusion.
31. It was his contention that the subject matter of the suit is land whose value can be ascertained from a valuation, thus no irreparable loss had been demonstrated.



32. On the last condition of balance of convenience, counsel submitted that the subject land is occupied by the plaintiffs and some of the defendants through their membership of Wendani Farmers' Co-operative Society Limited and Bayete Farmers' Co-operative Society Limited.
33. Further, that section 18(2) of the Land Registration Act precludes the courts from entertaining boundary disputes before exhausting a hearing before the Land Registrar or issuing a mandatory notice to the government.
34. In conclusion, he maintained that the application is premised on a defective suit and does not meet the threshold for the grant of the orders sought and should therefore be dismissed.

Analysis and Determination:

35. This court has carefully considered the grounds in the application, the supporting affidavit together with the annexures thereto, the replying affidavit and the grounds of opposition by the respondents and the rival submissions in totality. Consequently, it is my considered view that the issues arising for determination are: -
 - i. Whether the orders sought are tenable at this stage
 - ii. Whether the Applicants have satisfactorily proved the essential elements for the grant of a temporary order of injunction as sought.

Whether the orders sought are tenable at this stage;

36. Before delving into the merits of this application, I seek to address prayer No. 3 in the Notice of motion and which I will reproduce for convenience as hereunder;

“That there be a permanent injunction issued against the 1st – 15th defendants/respondents, their servants, agents, representatives or any other persons whomsoever acting for them from trespassing onto, purporting to survey, sub-divide, change existing boundaries, claiming ownership, selling, offering for sale, leasing or doing any other thing in any other way affecting the respective parcels of land owned by the plaintiffs/applicants pending the hearing and determination of this suit.”
37. The question that therefore follows is whether such orders in the manner sought can be issued by the court at this interlocutory stage before the final determination of the case on merit. Is this omission fatal or does the same qualify as a procedural technicality that can be cured by Article 159 of the Constitution and the emphasis on substantive justice?
38. It is a well settled legal principle that parties are bound by their pleadings and that pleadings are the bedrock upon which all proceedings derive from. Even though the applicants submitted on interlocutory injunction, what is sought in the application and which this court has been called upon to consider and determine is the grant of a permanent injunction pending the hearing and determination of the suit.
39. An order of Permanent Injunction is an order of a final nature, which can only be granted upon hearing the evidence of the parties and after due evaluation of the merits or otherwise of the evidence tendered in support of the rival positions by the parties. Indeed, an order of permanent injunction is one of the reliefs sought by the Plaintiffs in their amended plaint.
40. It is therefore my considered view that an order of Permanent injunction should neither be sought nor obtained in an interlocutory application, as sought by the applicants herein.



41. This court is further guided by the decision in the case of Kenya Power & Lighting Co Limited ... Versus... Sheriff Molana Habib [2018] eKLR where the Court held as follows:-

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/ interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

42. In view of the foregoing, it is the finding of this court that prayer No. 3 in the instant application seeking an order of permanent injunction is bad in law and legally untenable at this interlocutory stage. Further, the same cannot be cured by application of Article 159 of *the Constitution*.

43. Having held that the order No. 3 is legally untenable, this court finds no need to proceed to the merits of the application in determining whether the requisite principles for the grant of the injunctions have been satisfactorily proved or whether the issue of grant of notice before instituting the instant suit against the Government Officers is necessary since the same will amount to an academic exercise.

44. The upshot of the above is that the Notice of Motion Application dated September 16, 2024 is hereby struck- out with costs to the Respondents.

45. It is so ordered.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 8TH DAY OF MAY, 2025.

HON. C. K. YANO

JUDGE, ELC

Ruling delivered virtually in the presence of: -

Mr. Ngigi Mbugua for 4th – 7th, 9th – 14th for the Defendants.

Mr. Miyianda for Plaintiffs.

No appearance for other Defendants.

Court Assistant – Laban

