



Ongoma & 2 others (Suing as the Legal Representatives of the Estate of the Late Dr Apollo Ogambo (Deceased)) v Chesoni (Sued as the Administrator of the Estate of the Late Zacchaeus Chesoni Defendants/Zakayo Richard Chesoni (Deceased) & another (Environment & Land Case E006 of 2025) [2025] KEELC 4460 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4460 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E006 OF 2025**

CK NZILI, J

JUNE 11, 2025

BETWEEN

BEATRICE LWOSI ONGOMA 1ST PLAINTIFF

MARTHA ZENA MUHONJA ONGOMA 2ND PLAINTIFF

ERIC ONGOMA 3RD PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
DR APOLLO OGAMBO (DECEASED)**

AND

**NANCY ATSANGO CHESONI (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE ZACCHAEUS CHESONI DEFENDANTS/ZAKAYO
RICHARD CHESONI (DECEASED) 1ST DEFENDANT**

MARJORIE VOLEGE 2ND DEFENDANT

RULING

1. The ruling relates to two applications dated 21/2/2025 and 17/3/2025. In the first application the plaintiffs seek:
 - (1) ...spent
 - (2) ...spent
 - (3) A temporary injunction restraining the defendants/respondents, their agents, servants, or employees from fencing, alienating, leasing, selling, cultivating or continuing with any cultivation or construction of any structures or carrying out any development, or interfering



with 2 acres of L.R No. Trans Nzoia/South West of Kitale Town, originally L.R No. 5745, initially subdivided to create Ref. No. 4723/21 and further subdivided to create new number LR 33457/6 or any other subsequent subdivisions to create new titles or alienating the said title to a third party, pending hearing and determination of this suit.

- (4) Costs of the application.
2. The application is supported by grounds on the face of the application and in a supporting affidavit by Martha Zena Muhonja Ongoma, sworn on 21/1/2025. The 2nd applicant deposes that she is a joint legal representative of the late Dr. Apollo Oyambo Ongoma, as per grant of letters of administration intestate issued on 13/2/1992, attached as annexure MZMO-1, while the 1st applicant is a legal representative and administrator of the estate of the late Zacchaeus Chesoni alias Zakayo Richard Chesoni. The applicants depose that the respondents in December 2024, without any colour of right or legal justification, trespassed and encroached on their portion of land and have continued to illegally and unlawfully deny them and their workers access to and use of the land which they have fenced off using a chain link, a portion comprised of structures and a water well, hence interfering with their quiet occupation or utilization of the same as per the attached copies of maps marked MZMO-2(a) and (b).
 3. The applicants depose that their said Dr. Apollo Ogambo Ongoma passed on 17/12/1990 and during his lifetime, he had entered into an agreement in 1985 with Z.R. Chesoni to transfer the suit land for a valuable consideration, took vacant possession of the portion in 1985 and extensively developed the structures therein, dug a water well and embarked on cultivating the land without any interference from anyone including the respondents herein. The applicants depose that after the late Dr. A.O. Ongoma passed on, his family including them continued to occupy and utilize the land quietly and without any interference from anyone. Unfortunately, the applicants aver that the late Z.R. Chesoni passed on before transferring the portion to the later Dr. A.O. Ongoma, until December 2024 when the respondents forcefully trespassed on the land fencing it off, hence denying them access, having started to clear it off for cultivation, as per the annexed photos showing the illegal activities marked MO-3(a), (b) and (c).
 4. Again, the plaintiffs depose that the acts of the respondents have denied them their workers to access water for domestic use and that of the animals kept in the structures on the land, despite issuance of demand notice dated 7/1/2025 to cease and desist such acts of encroachment or trespass, a latter marked MO-4. Accordingly, the applicants depose that they pray for specific performance through an order that the 1st respondent transfers the portion, permanent injunction, removal of the fence and a temporary injunction.
 5. The application is opposed by the 1st respondent through a replying affidavit sworn on 17/3/2025, by Nancy Atsango Chesoni, for being defective in law and denying knowledge of the contents of paragraph 3 of the supporting affidavit as to the description of Martha Zena Muhonja Ongoma. Further, the 1st respondent denied being a legal representative of the estate of the late Z.R. Chesoni, hence was incapable of pleading on behalf of that estate. The 1st respondent deposed that the legal representative of the estate of her late father are Mary Aherwa Chesoni and Nelson Chesoni, both deceased.
 6. Further, the 1st respondent deposed that, she was aware that her late father was not at the material time the registered owner of LR No. 5745 or LR No. 4723/21 or LR No. 3345/6. She however denied fencing off or causing in any way to be fenced off a portion of the suit land, neither has she used any force in relation to the suit land nor made any preparation to plough such land. The 1st respondent denied knowledge of the alleged sale agreement, oral or written allegedly made in 1985, as alleged or



at all between the two deceased persons to transfer any parcel of land or portion of LR No. 5745 or LR No. 4623/21 or LR No. 33457/6.

7. Similarly, the 1st respondent deposed that she has done nothing to deny the applicants access to any water source or animals kept in any farm as alleged or at all nor had she trespassed or caused trespass into the applicants, hence the contents of the demand letter are false. Further, the 1st respondent deposed that she is not legally mandated to deal or transact on behalf of the estate of her late father, as she is not the legal representative. Moreover, the 1st respondent insisted that she has not seen any agreement purportedly entered into by her late father containing any legal obligation which could form the basis for an order of specific performance. She thus, averred that the applicants in the circumstances do not deserve the reliefs sought, more so when she lacks locus standi to be sued or to plead on behalf of the estate of the late Z.R. Chesoni.
8. The 2nd respondent opposes the application through a replying affidavit sworn on 8/4/2025. She averred that she bought approximately 3 acres from the suit land and an additional 2 acres from Jon Chesoni and paid Kshs.6,000,000/= and Ksh.4,000,000/= and took possession, through a sale agreement dated 15/4/2024 and an addendum. Further, she averred that the suit land was demarcated and she paid survey fees, erected a fence without any objections. Copies of the sale agreement, the addendum, payment receipts and photographs as MIV-1-4. The 2nd respondent averred that the applicants have no locus standi to bring the suit and the court lacks jurisdiction to entertain this suit. The 2nd respondent also filed written submission dated 11/4/2025, which this court has considered.
9. A party seeking temporary order of injunction has to demonstrate or show that he has a prima facie case with a probability of success at the hearing, that he stands to suffer irreparable loss and damage in absence of a temporary injunction and lastly, that the balance of convenience tilts in favour of granting such orders. See *Giella v Cassman Brown & Co. Ltd* [1973] E.A. In *Nguruman Ltd v Jan Bonde Nielsen & Others* [2014] KECA 606 [KLR], the court said that the three pillars as the foundation of an order of injunction must be applied as separate, distinct and logical hurdles, that an applicant has to surmount sequentially.
10. A prima facie case in *Mrao Ltd v First American Bank Ltd* [2002] eKLR, was fined as established if on the material presented to court a right exists which has apparently been infringed or breached by the opposite party to call for an explanation or rebuttal from the opposite side, irreparable damage refers to one which is actual, real, apparent and demonstrable, to an extent that it cannot be quantified monetarily and be adequately remedied in the absence of an injunction.
11. As regard to balance of convenience, the court in *Paul Kipchirchir Kogo v Frank Kimeli Tenai* [2015] KEELC 2424 [KLR], defined the same as where the inconvenience caused to the defendant if an injunction is granted and the suit ultimately dismissed being less than what the plaintiff would suffer if the injunction is not granted and the suit ultimately determined in his favour. In *Jennifer Akinyi Osodo v Boniface Okumu Osodo & Others* [2021] KECA 465 [KLR], the court observed that the purpose of an injunction is to preserve the property otherwise likely to be dealt with adversely before the matter is heard and determined on merits.
12. The burden rests with the plaintiffs to show that there is a clear and unmistakable right to be protected which is directly threatened by the defendants' act sought to be restrained. In *Nguruman Ltd*, (supra), the court noted that the invasion of the right has to be material, substantive, and there must be an urgent necessity to prevent the irreparable damage that may result from such an invasion. Further, the court said that the person applying need not establish titles, the court does not conduct a mini-trial but the applicant has to show that he has a fair and bona fide question to raise as to the existence of the right which he alleges.



13. The applicants claim that there was a sale agreement between the late Dr. Apollo Ogambo Ongoma and the late Z.R. Chesoni made on 14/6/1989, to sell and transfer 2 acres from the LR No. 5745, or LR No. 4723/21 or LR No. 33457/6, but the two passed on before any transfer could be effected. The applicants blame the respondents for breach of the sale agreement, failure to transfer and now trespass or encroachment and commission of acts of destruction on the suit land. The 1st respondent has denied that her late father was the owner of the initial land or the estate in the first instance, and secondly, denies any knowledge of the sale agreement, its terms and conditions and or breach of the same by the deceased father. More importantly, the 1st respondent says that she lacks locus standi to be sued or to represent the estate of her deceased father, or having trespassed or caused the alleged destruction of property and denial of the applicants, of their alleged right to access, use or occupy the suit land. The applicants have not filed any documents to deny that the 1st respondent lacks capacity to represent the estate of the late Z.R. Chesoni.
14. Locus standi refers to a right to bring an action or to be heard in a given forum. In *Alfred Njau & Others v City Council of Nairobi* [1982] KAR 229, the term was defined as the right to appear in a court. Locus standi is cardinal in civil proceedings. Without it a party cannot institute or maintain a suit. It shows the directness or sufficiency of the person's interest in the litigation. Section 2 of the *Civil Procedure Act*, defines a legal representative as a person who in law represents the estate of a deceased person. It states that a legal representative is a party who sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued. Section 82 of the *Law of Succession Act* (Cap 160) gives the personal representative of a deceased estate, the power to enforce by suit or otherwise all causes of action, which by virtue of any law survives the deceased or arise out of his death. Such an appointment can only be by way of obtaining a full grant or a grant limited for purposes of instituting or defending a suit.
15. Decided cases are in agreement that where a suit is filed relating to a deceased's estate without a grant of representation, the proceedings are null and void for want of locus standi. See *Virginia E. Wambui v Joash Ochieng Ougo & Another* 1982-88 IKAR and *Trouistik Union International & another v Jane Mbeyu & another* [1993] KECA 89 (KLR)
16. The 1st respondent says that she is wrongly sued for her late father did not own the alleged suit land, there was no alleged sale agreement or title to land comprising the applicant's rights or interests on the land and that she is a stranger to the cause of action.
17. Trespass is defined as unjustified intrusion by one person upon land in possession of the other. It is an injury to the possessory right. In *Charles Ogejo Ochieng v Geoffrey Okumu* [1995] eKLR, the court said that the proper plaintiff in an action of trespass to land is the person who has title to it or a person who be deemed to have been in possession at the time of the trespass. The onus is on the applicants to show that the estate of the late Z.R. Chesoni now devolves on the 1st respondent and that it owns the suit land in question which is under a legal duty to transfer as per the sale agreement. There is no official search certificate, copy of the grant showing the 1st applicant as the legal representative of the estate.
18. The nexus between the cause of action and the 1st respondent is lacking. I therefore find, no basis to sustain the suit against the 1st respondent in the capacity she has been sued. The suit against her is struck out with costs.
19. As to whether a prima facie case is established, still the applicants have not brought a copy of the sale agreement, or the official search certificate to the suit land. Further, the nature of developments or occupation on the land alleged to be threatened with breach or infringement have not been pleaded, and material brought to demonstrate the alleged irreparable loss or damage. The photographs attached



do not comply with the law of an electronic evidence. The upshot is I find the application for temporary injunction lacking merits.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Ambutsi for 2nd Defendant present

Obok for 1st Defendant present

Onsango for Plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE.

