



REPUBLIC OF KENYA



Gatura & 2 others v Lepalo & another (Environment and Land Case E001 of 2025) [2025] KEELC 5215 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E001 OF 2025
LC KOMINGOI, J
JULY 10, 2025**

BETWEEN

**JAMES KARANJA GATURA 1ST PLAINTIFF
SIMON KARANJA THIMBA 2ND PLAINTIFF
ROSE WAMUYU GITAU 3RD PLAINTIFF**

AND

**JOSEPH KIPINGOT LEPALO 1ST DEFENDANT
DAVID PARKITEYIA LEPALO 2ND DEFENDANT**

RULING

1. This is the Ruling in respect of Notice of Motion dated 2nd January 2025 brought under: Article 40 of *the Constitution*; Section 18, 19, 20, 24, 25 and 26 of the *Land Registration Act*; Order 40 rule 1, Order 51 rule 1 of the Civil Procedure Rules; Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of Law.
2. It seeks orders;
 - a. Spent
 - b. Spent
 - c. That the court be pleased to grant a temporary injunction restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating, evicting, attaching, transferring, selling, conveying, charging, leasing, constructing, developing or otherwise interfering or dealing with the Plaintiffs/Applicants properties being Land Title Numbers Kajiado/Kaputei-North/3914, Kajiado/Kaputei North/3913



and Kajiado/Kaputei-North/44061 belonging to the 1st, 2nd and 3rd Plaintiffs/Applicants respectively pending the hearing and determination of this suit.

- d. Spent.
 - e. That the honourable court be pleased to issue a temporary prohibitory injunction barring the Defendants/Respondents, their officials, agents and/or employees or whomsoever is acting on their behalf trespassing, harassing, evicting or attempting to take possession by demolishing, or otherwise or howsoever interfering with the Applicants' peaceful and quiet possession and occupation of land known as parcel No. Kajiado / Kaputei- North / 3914, Kajiado / Kaputei North/3913 and Kajiado/Kaputei-North/44061 pending the hearing and determination of the main suit.
 - f. The Officer Commanding Kajiado Police Station do enforce compliance of the orders above.
 - g. The court be pleased to issue any other orders expedient in the circumstances and in the interest of justice.
 - h. Costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 9. The same is supported by the Affidavit sworn by James Gatura Karanja, the 1st Applicant herein, with authority of the other Plaintiffs/Applicants.
 4. He depones that he is the owner of parcel Kajiado/Kaputei North/3914 having purchased it from P.J Dave Flowers Limited as per the sale agreement, transfer form, title deed and certificate of official search. The 2nd Applicant is the owner of parcel Kajiado/Kaputei North/3913 having purchased it from Peter Muigai Kangere as per the sale agreement, title deed and Green Card. The 3rd Applicant is the owner of parcel Kajiado/Kaputei North/44061 having purchased it from James Wachira Wakibia as per the sale agreement, title deed and Green Card.
 5. That sometime on the 27th December 2024, the Defendants/Respondents who are brothers, trespassed on these parcels, demolished existing structures, removed fences, cut down trees on the properties, initiated unauthorised occupation and are undertaking fresh demarcations and placing new beacons without the Plaintiffs' authority.
 6. It is their case that if these actions are not restrained, they will suffer irreparable loss and damage and their proprietary rights will be infringed on.
 7. The 1st Defendant/Respondent Joseph Kipingot Lepalo in his Replying Affidavit with authority of the 2nd Defendant/Respondent contested the application giving a history of the suit properties as follows. That the late Lepalo Ole Shanga, who was a member of Emboliol group ranch under the Kaputei North adjudication was issued with land parcel number Kajiado/Kaputei North/526 measuring 31.33 hectares. On or about 20th June 1989, he subdivided parcel Kajiado/Kaputei-North/526 to two parcels being Kajiado/Kaputei North/1286 and 1287 as per the mutation form on record. He then sold Kajiado/Kaputei-North/1287 and retained Kajiado/Kaputei-North/1286 measuring 23.24 hectares and this parcel was never sold or subdivided to the Applicants herein.
 8. Upon his demise, his sons recovered title for parcel Kajiado/Kaputei-North/1286 and filed succession proceedings at the Chief Magistrates court Kajiado, succession cause number E145 of 2021. Before the grant was obtained/ confirmed, they conducted an official search of the property dated 4th October 2022 showing the land still belonged to the late Lepalo Ole Shanga. The grant was confirmed on 21st December 2022. They deponed that the persons' whom he had sold a portion of the land to and the



transfer had not been effected by the time of his demise were listed as the liabilities of the Estate and were provided for, for the respective portions purchased. As such, the alleged subdivision of Kajiado/Kaputiei North/1286 and the subsequent sub-divisions by the Applicants were obtained fraudulently because the title deed for parcel 1286 was still in possession of the late Lepalo and had never been surrendered to the Ministry of Lands.

9. They also questioned the sale indicating that: the sale agreement between the deceased and James Wachira has not been signed by the vendor; and the Applicants had neither produced the transfer instrument nor consent from the Land Control Board in relation to the alleged subdivision of Kajiado/Kaputiei-North/1286. And that a Certificate of Title was not conclusive proof of ownership if questions of fraud or illegality had been raised as settled in Section 26 *Land Registration Act*.
10. As such, the orders sought should not be granted.
11. In response James Karanja Gatura filed a Supplementary Affidavit where he stated that, parcel Kajiado/Kaputiei-North/1286 was subdivided to parcels Kajiado/Kaputiei-North/3471 and 3472. Parcel Kajiado/Kaputiei-North/3471 was further subdivided to parcels Kajiado/Kaputiei-North/3912, 3913 and 3914 as per the copy of green card and letter from the Ministry of Lands dated 3rd August 2004. And the purchase of parcel 3913 from Peter Muigai Kang'ere and parcel 3914 PJ Dave Flowers Ltd was valid. That parcel Kajiado/Kaputiei-North/3912 was further subdivided to parcels Kajiado/Kaputiei-North/6127 and 6128. Parcel Kajiado/Kaputiei-North/6127 was then subdivided to parcel Kajiado/Kaputiei-North/6522, 6523, 6524 and 6525. And it was parcel Kajiado/Kaputiei-North/6525 that gave rise to parcel Kajiado/Kaputiei-North/44061 (registered in the 3rd Applicant's name having purchased it from James Wachira Wakibia) and parcel 44062.
12. The Plaintiff's contested that parcel 1286 was never subdivided indicating that the late Lepalo at the time of his demise was only left with parcel Kajiado/Kaputiei-North/107097 which had been subdivided from parcel Kajiado/Kaputiei-North/6526. Therefore since parcel 1286 was not in the Late Lepalo's name at the time of his demise meant that the Respondents fraudulently obtained letters of Administration as per the police report dated 25th February 2025.
13. This application was canvassed by way of written submissions.

Submissions of the Plaintiffs/Applicants

14. Counsel submitted that the Grant obtained by the Respondents in Kajiado Magistrates Court Succession No. E145 in the Estate of Lepalo Ole Shanga Parkeito was fraudulently obtained because the Respondents misled the Court by not disclosing the accurate status and ownership of property Kajiado/Kaputiei North/1286 which had been severally subdivided as outlined in the Affidavits. And at the time of Lepalo's demise, he only owned parcel Kajiado/Kaputiei North/107097 which was a subdivision of parcel Kajiado/Kaputiei North/6526.
15. Therefore the only issue for determination was whether the Applicants had met the threshold for grant of a temporary injunction. It was submitted that one consideration was whether the property in dispute was in danger of being wasted away as provided under Order 40(1)(a) Civil Procedure Rules and held in Robert Mugo Wa Karanja vs Ecobank (Kenya) Ltd & another [2019] eKLR, American Cyanamid Co. vs Ethicom Limited (1975) AER 504, Giella V Cassman Brown & Co. Ltd (1973) Ea 358 and Mary Aliviza & Okoth Mondoh v. Attorney General of Kenya and Secretary General of East African Community Application No. 3 of 2010 EALS.
16. It was submitted that the Applicants had proved their legal ownership of the suit properties and the Respondents had trespassed upon them without authority. This was prima facie evidence for grant



of an interlocutory injunction to stop violation of the Applicants' rights pending the hearing and determination of this suit.

17. On whether the Applicants would suffer irreparable loss, it was submitted that land has intrinsic value which cannot be quantified in monetary terms and the Respondents' actions on the suit properties would permanently alter the character of the land which would be difficult to restore if not stopped. And this could be adequately compensated by way of damages.
18. On whose favour the balance of convenience tilted, it was submitted that an injunction should be granted depending on who would suffer more inconvenience or harm if the injunction is not granted. And in this case, it tilted in favour of the Applicants as the hardship occasioned would be greater than the inconvenience to the Respondents. Reference was made to Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR which held: "... 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..."
19. As such, the injunction sought should be granted to preserve the substratum of the suit as sought.

Submissions of the Defendants/Respondents

20. Counsel submitted on the following issues as summarised hereunder.
21. On whether the application is merited, it was submitted that as per Giella vs Cassman Brown the Applicants had not established a case to warrant grant of the orders sought. This is because at the demise of Ole Shanga Parkeito he was still the owner of unsubdivided parcel Kajiado/Kaputiei North/1286 and any sale to different persons had been factored in as liabilities of the Estate in succession cause No. E145 of 2021. As such, the Applicants did not have proprietary interests over the suit property and their claim was null and void. Reference was made to Mwikaya & another vs Ngaruiya & another [2022] KEELC 2878 (KLR). It was also submitted that an unauthorised transfer of certificate of title by a person other than the owner had no legal effect as held in Mwai vs Muthaithi [2023] KEELC 22459 (KLR).
22. The Applicants had therefore not established a prima facie case as espoused in Mrao vs First American Bank of Kenya Ltd & 2 others eKLR and it would not be in the interest of justice to deny the beneficiaries of the Estate their rightful ownership. It was also argued that the Applicants had not established that they would suffer substantial loss if the injunction was not granted.
23. The application should therefore be struck out with costs.

Analysis and determination

24. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the application for grant of temporary injunction is merited.
 - ii. What orders should issue?
 - iii. Who should bear the costs of the application?



25. The Plaintiffs/Applicants have sought grant of an interlocutory injunction against that Respondents on grounds that they are the lawful owners of the properties in question having legally acquired them.
26. The Defendants/Respondents however contested this claim stating that by the time their late father passed away, he was still the legal owner of parcel Kajiado/Kaputiei North/1286 which had neither subdivided nor transferred to anyone. And the persons who had purchased it during their father's lifetime had been duly factored in the Grant.
27. As such, has the Applicant satisfied the threshold for grant of an interim injunction?
28. The principles governing the grant of an interim injunction are well settled, having been first articulated in *Giella v Cassman Brown & Co. Ltd* [1973] E.A. 358. These principles were later reaffirmed by the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn* (also known as *Hermannus Phillipus Steyn*) & *Hedda Steyn* [2014] KECA 606 (KLR), where the Court reiterated that:
- “In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
- (a) establish his case only at a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) allay 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 stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”
29. The first issue for determination is whether the Applicant has demonstrated a prima facie case with a probability of success. In considering this, reference is made to the Court of Appeal's decision in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where the Court defined a prima facie case as follows:
- “...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...”
30. As held in the aforementioned *Mrao* case, at this juncture it is not for the Court to determine the veracity of the individual parties' claims but to determine whether there exists a right which has been infringed.
31. The Plaintiffs/Applicants claim to be the legal owners of the properties in question and have produced evidence in support of their claim. The Respondents have also staked claim on the same property with evidence. It therefore means, that there is possible infringement of rights which calls for an explanation or rebuttal.
32. The Plaintiffs/Applicants have therefore established a prima facie case on the face value.



33. On whether there will be irreparable loss which cannot be adequately compensated, the Plaintiffs/Applicants argued that the Defendants/Respondents' actions would tamper with the intrinsic value of the properties which cannot be quantified in monetary value.
34. The grant of temporary injunctions serves as a critical safeguard in preserving the status quo and preventing irreparable harm before the rights of the parties are fully adjudicated. Land, unlike other forms of property, is unique and irreplaceable; once altered, damaged, or transferred, its original condition cannot easily be restored. Interim injunctions therefore play a vital role in ensuring that the subject matter of the dispute is protected from actions that could render the final judgment nugatory. By restraining parties from engaging in potentially unlawful or prejudicial activities, such as construction, eviction, or alienation, courts uphold the integrity of the judicial process and promote orderly resolution of land disputes.
35. I therefore find that based on the rival claims, the suit property is one which is deserving of such protection.
36. Finally, on the balance of convenience, the court assesses which party is likely to suffer greater harm if the injunction is either granted or denied, pending the final determination of the suit. This principle is particularly relevant where the rights of the parties are not immediately clear, and where both parties claim a legitimate interest in the disputed property. The court weighs the potential prejudice that each party may suffer and seeks to minimize the risk of injustice.
37. The Plaintiffs/Applicants claim that they have been in possession of the properties and have developed them. And the Respondents' had started destroying the structures thereon and altering the boundary markings. A plain reading of this claim shows that there is potential risk loss of possession, destruction of property, or violation of proprietary rights. The Plaintiffs/Applicants who are currently in possession stand to suffer more substantial and irreversible loss than that which the Defendants/Respondents would endure from a temporary restriction.
38. I therefore find that the balance of convenience tilts in favour of granting the injunction to preserve the subject matter of the dispute.
39. I find the Application merited and I grant the following orders;
 - i. That a temporary injunction is hereby issued restraining the respondents whether by themselves, their agents and/or servants from trespassing on, wasting, constructing on, alienating, evicting or attempting to take possession by demolishing, attaching, transferring, selling, conveying, charging, leasing, constructing, developing or otherwise interfering or dealing with the Plaintiffs/Applicants properties being Land Title Numbers Kajiado/Kaputei-North/3914, Kajiado/Kaputei North/3913 and Kajiado/Kaputei-North/44061 belonging to the 1st, 2nd and 3rd Plaintiffs/Applicants pending the hearing and determination of this suit.
 - ii. That an order is hereby issued to the Officer Commanding Kajiado Police Station to enforce and ensure compliance of the orders.
 - iii. That costs of this application shall abide outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH DAY OF JULY 2025.

L. KOMINGOI

JUDGE.

In The Presence Of;



Mr. Ouma Odhoche for the Plaintiffs/Applicants.

Ms. Achola for Mr. Nyasimi for the Defendants/Respondents.

Court Assistant – Mateli.

