



**Konchellah (Suing as the Legal Representative of the Estate of Wilson
Sonny Letuya Konchellah) v Konchellah & another (Environment and Land
Case E124 of 2024) [2025] KEELC 5226 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E124 OF 2024
LC KOMINGOI, J
JULY 10, 2025**

BETWEEN

**BEVERLY PASIO KONCHELLAH PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WILSON
SONNY LETUYA KONCHELLAH**

AND

**LEINA KONCHELLAH 1ST DEFENDANT
GRACE NEMAYIAN KONCHELLAH 2ND DEFENDANT**

RULING

1. This Ruling is in respect of Notice of Motion dated 30th October 2024 brought under: Section 1A, 1B, 3A, and B of the [Civil Procedure Act](#); Order 40 rule 1, 2, 4, and 10, Order 51 rule 1, 4, 10, 11, 12 and 13 of the [Civil Procedure Rules](#), Section 26(1) of the [Land Registration Act](#) and all other enabling provisions of Law.
2. It seeks orders;
 - i. Spent
 - ii. That pending the hearing and determination of this application interparte, an interim order of injunction be issued restraining the respondents whether by themselves, their authorized representatives, their agents and / or servants from trespassing upon, laying claim to, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being title number Ngong/ Ngong /20185 pending the hearing and determination of this application interparte and /or further orders of this Honourable court.



- iii. 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 or otherwise interfering or dealing with the plaintiff's property being title number Ngong/Ngong/ 20185 measuring approximately 0.700Ha pending the hearing and determination of the main suit.
 - iv. That the OCS Kajiado Police Station and / or the nearby police station be and is hereby directed and/or ordered to enforce and oversee compliance of the orders issued herein.
 - v. Costs of this application be provided for.
3. The grounds are on the face of the application and in the Affidavit sworn by the Beverly Passio Konchellah, on the 30th October 2024.
 4. She avers that she is the Administrator of the Estate of her late father Wilson Sonny Konchellah having taken out Grant of letters of Administration ad litem authorizing her to sue on behalf of the Estate. She states that the her late father was the registered owner of parcel known as Ngong/Ngong/ 20185 having acquired it from his late father, John Leboi Nchirone Ole Konchellah through transmission, transfer registered and a title issued in his favour on 28th August 1997. She further avers that her late father took possession of the property and started cultivating it until his demise on 20th December 1999. No letters of administration have been taken out by his sole heir, the Plaintiff in herein and as such no distribution had been undertaken. Following her father's demise, the defendants trespassed on the suit property, erected structures and have continued to deal with the property fraudulently and without authorisation, which is an act of intermeddling and arbitrarily depriving the Plaintiff of her father's property. This act is prejudicial to her and in the interest of justice, the orders sought should be granted.
 5. The 1st Defendant/Respondent in his Replying Affidavit dated 14th January 2025 contested the certificate of Confirmation of Grant and the Title Deed which the Plaintiff/Applicant sought to rely on, on grounds that they were obtained fraudulently. He stated that the person purporting to be the Administrator of the Estate of the late John Leboi Nchiroine Ole Konchellah was not a beneficiary or one of the dependents within the meaning of Sections 26, 29, 40 and 66 of the *Law of Succession Act* (Cap 160 Laws of Kenya). The Grant which effected the distribution after confirmation, was obtained fraudulently and in the process of the distribution of their father's Estate, he was not adequately provided for because provisions of Section 40 of the *Law of Succession Act* had been ignored. He pointed that he together with other discontented beneficiaries had filed an application seeking revocation or annulment of the Grant on grounds of fraud. As such, this application/suit should not be determined until the succession issues are settled.
 6. The 2nd Defendant/Respondent in her Replying Affidavit dated 14th January 2025 also contested the application on similar grounds as the 1st Respondent adding that she was the wife of the late John Leboi Nchiroine Ole Konchellah and had not been adequately provided for in the fraudulently obtained confirmation of grant.
 7. The Plaintiff/Applicant in her Further Affidavit dated 13th March 2025 stated that the Respondents raised irrelevant issues instead of confining themselves on the issues raised in the application and supporting affidavit. The Defendants/Respondents not having denied their illegal entry and occupation of the suit property was an admission of their unlawful occupation. She further avers that the Defendants/Respondents had not demonstrated how they acquired proprietary rights over the suit property. She further avers that the allegation of fraud against the late John Leboi Nchiroine Ole Konchellah who was neither a party in this suit nor the late Wilson Konchellah whose interest in the



suit property devolved to her cannot stand. The Plaintiff/Applicant also contested the allegation of fraud saying that it had not be proved and if indeed there was fraud, the Defendants/Respondents had not demonstrated that they took any action since 1995 when the property was transferred to her father the late Wilson Konchellah. She urged that the Application be allowed.

8. The 2nd Defendant/Respondent in her Further Affidavit dated 24th April 2025 stated as follows: That she was the surviving spouse of the late John Leboi Nchiroine Konchellah (herein after referred to as “Konchellah”.) She got married to him as a second wife after he had separated from his first wife, Priscillah whom he lived with on parcel Narok/Transmara Oloiborsoito/4. The said Priscillah was the mother to Wilson Sonny Letuya Konchellah. After she got married, the late Konchellah acquired property in Ngong being Ngong/Ngong/6445 (which forms part of the suit property) where they settled and raised their children. Konchellah would then acquire more land such as Narok/Transmara/Intona/1 measuring approximately 1,400 acres among others. Upon his demise in 1993, his relatives including one of his older sons from his previous marriage conspired to disinherit her and her children. When the petition for Grant of letters of administration was made, she was not involved but was forced to sign documents. She and her children were then dispossessed of the bigger portion of parcel Ngong/Ngong/6445. An application for revocation of the grant in Succession Cause No. 314 of 1994 was filed.
9. She went on to state that although there was a Certificate of Title issued in the name of Wilson Sonny Letuya he never took possession and did not have any heir. She deponed that, Applicant’s claim that she was a beneficiary was questionable and ought to be backed with evidence as per Section 118 of the [Evidence Act](#).
10. She went on to depone that having been in possession of the suit property all her life, the Plaintiff/Applicant could not claim ownership through a fraudulently acquired title and a letter from the area Chief showing that , her late father occupied the suit property while all along, he resided in Kilgoris. She prays that the application be dismissed with costs.
11. This application was canvassed by way of written submissions.

Submissions of the Plaintiff/Applicant

12. Counsel submitted on the following issues:
13. Whether the Applicant had established a prima facie case with a possibility of success:
14. Counsel submitted that an injunction was a remedial action by court to order a party to refrain from doing a particular act or thing as held in [Rent Restriction Tribunal v. Mayfair Bakeries Ltd ex parte Kirti Raval](#) and the grounds to be met had been established by [Giella v Cassman Brown & Company Ltd](#) (1973) EA 358.
15. It was submitted that the Respondents entry, occupation and use of the suit property which belonged to the Applicant’s late father without authorisation was an act of trespass and intermeddling. As such, the Applicant had a prima facie case with reference to [Mrao Ltd v. First American Bank of Kenya and 2 Others](#) and [Nguruman Limited v Jan Bonde Nielsen and 2 others](#) (2014) eKLR.
16. On whether the Applicant would suffer irreparable loss, counsel submitted that a temporary injunction was to prevent substantial loss that could not be adequately compensated by way of damages and in this case, the Applicant stood to suffer substantial loss by the Respondents occupation of the suit property. It was also argued that the applicant’s infringement of her interest in the suit property as the beneficiary could not be compensated in monetary terms with reference to [Waithaka v Industrial](#)



and Commercial Development Corporation [2001] eKLR and Joseph Siro Mosioma v H.F.C.K And 3 Others.

17. On the balance of convenience, counsel submitted that the balance swayed in favour of the Applicant whose rights were being violated. And this application should thus be allowed with costs.

Submissions of the Defendants/Respondents

18. Counsel submitted on the following issues as summarised hereunder.
19. On the issue of the succession process leading to the issuance of the Certificate of title for the suit property, it was submitted that the proceedings for the said grant were defective and the grant was obtained fraudulently. This is on the grounds that the late Konchellah's spouses were alive, but the letters of administration were taken out by a cousin who did not qualify as a petitioner under Section 29 of the Law of Succession Act. The grant obtained also led to unequal distribution of the late Konchellah's estate.
20. On whether Wilson Konchellah took possession of the suit property, it was submitted that he never occupied the suit property and the 1st defendant has been living on it since birth and had greatly developed the property. Counsel also argued that the legitimacy of the Plaintiff's claim as the late Wilson's child could not be verified and therefore she was not entitled to the reliefs sought.
21. On whether the defendant had trespassed on the suit property, counsel submitted that the 2nd defendant had been in possession of the suit property since she got married to the late Konchellah and continued residing thereon even after the fraudulent succession was undertaken and the late Wilson never asked for its handover. As such, the Plaintiff had not met the set threshold for grant of interlocutory injunction as set out in Giella v Cassman Brown & Co. Ltd (1973) EA 35, Nguruman Ltd v Jan Bonde Nielsen & 2 others (2014) eKLR and Mrao v First American Bank of Kenya Ltd & 20 others (2003) KLR 125. The application should be dismissed with costs and status quo be maintained.

Analysis and determination

22. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions, the authorities cited and 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?
23. The Plaintiff/Applicant has approached this court seeking an injunctive relief against the Defendants/ Respondents on the grounds that they are trespassers on the suit property which belonged to her late father Wilson Konchellah. That the property was transferred to the late Wilson Konchellah by his father the late John Leboi Konchellah sometime in 1997.
24. The Defendants/Respondents did not contest the fact that they are in possession of the suit property indicating that they have been in its possession way before the same was illegally distributed to the late Wilson Konchellah among others.
25. The principles guiding the grant of an interim injunction are firmly established in Kenyan jurisprudence. They were first laid down in Giella v Cassman Brown & Co. Ltd [1973] E.A. 358 and have since been consistently applied by the courts. The Court of Appeal reaffirmed these principles in Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn (also known as Hermannus Phillipus



Steyn) & Hedda Steyn [2014] KECA 606 (KLR), where it emphasized that the three conditions for the grant of an interlocutory injunction are sequential and not alternative. The applicant must demonstrate:

- (i) the existence of a prima facie case with a probability of success;
- (ii) that they stand to suffer irreparable harm which cannot be adequately compensated by an award of damages; and
- (iii) if the court is in doubt, the application should be decided on a balance of convenience.

26. The Court further held that the burden lies with the applicant to satisfy all three limbs, and that failure to establish even one of them is fatal to the application. This Court therefore begins by determining whether the Applicant established that she has a prima facie case?
27. The Plaintiff/Applicant alleges that the Defendants'/Respondents' acts of trespass commenced in 1999, shortly after the demise of the late Wilson Konchellah. It is not in dispute that since that time, the Defendants/Respondents have remained in occupation of the suit property, an uninterrupted possession that spans close to three decades. This undisputed fact raises a critical question as to the Applicant's inaction over such a protracted period.
28. Despite alleging trespass and seeking injunctive relief, the Plaintiff/Applicant has failed to provide a plausible explanation for the prolonged delay in asserting her rights. This delay casts doubt on the urgency and immediacy of the alleged harm. The Court is constrained to ask: if the Defendants/Respondents have been in peaceful and uninterrupted possession for such an extended period, what imminent and irreparable harm does the Applicant now face? The absence of any material change in the status of the property over the years substantially undermines the claim of urgency and irreparability of loss.
29. Having weighed the circumstances, the Court finds that the Plaintiff/Applicant has not demonstrated any imminent threat of harm that would justify the grant of injunctive relief at this stage. The alleged loss, if any, is not shown to be of such a nature as to be incapable of being remedied by an award of damages. Accordingly, the Court is not persuaded that it should grant the orders sought.
30. Since the conditions must be addressed sequentially and the first two have not been met, the third condition automatically fails.
31. In light of the foregoing, the application lacks merit and the interim reliefs sought are hereby declined.
32. Nevertheless, and in the interest of preserving the subject matter of the suit, the Court hereby directs that the prevailing status quo be maintained pending the hearing and determination of the main suit.
33. Costs of the 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:

Ms. Pepela for Ms. Nyongesa for the Plaintiff/Applicant.

Mr. Kibet for the 1st, 2nd Defendants/Respondents.

Court Assistant – Mateli.

