



**Opondoh (Suing on Behalf of the Estate of Paul Malachi Opondoh)  
v Siganda & 3 others (Environment and Land Case Civil Suit  
E013 of 2024) [2025] KEELC 5229 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5229 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E013 OF 2024**

**AE DENA, J  
JULY 10, 2025**

**BETWEEN**

**EMILY MARY OPONDOH ..... PLAINTIFF  
SUING ON BEHALF OF THE ESTATE OF PAUL MALACHI OPONDOH**

**AND**

**ROBINSON SIGANDA ..... 1<sup>ST</sup> DEFENDANT  
COUNTY GOVERNMENT OF SIAYA ..... 2<sup>ND</sup> DEFENDANT  
LAND REGISTRAR OF SIAYA ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is the subject of the application dated 4/6/2024. It seeks the following verbatim orders; -
  - i. Spent
  - ii. That upon hearing this application exparte this Honourable Court be pleased to grant a temporary orders of injunction restraining the 1<sup>st</sup> Defendants/Respondents their agents, servants and/or any other person acting for and/or through him from constructing, erecting and/or putting up any construction or structure along the access road frontage to and/or bordering plot No. 7 Kobare market pending the inter parties hearing and determination of this application.
  - iii. That this Honourable Court be pleased to grant a temporary order of injunction restraining the Defendants/Respondents his agents, servants and/or any other person acting for and/or through him from constructing, erecting and/or putting up any construction or structure



along the access road frontage to and/or bordering plot No. 7 Kobare market pending the inter parties hearing and determination of this suit.

- iv. That the officer commanding Siaya Police station do ensure compliance by the Respondents of such orders.
  - v. Any further orders as it may deem fit to issue to serve the ends of justice
2. The application is premised on the grounds on its face and the supporting affidavit of Emily Opondoh as administrator of the Estate of the late Paul Malachi Opondoh who died on the 8<sup>th</sup> day of March, 2013. A copy of the certificate of confirmation of letters of Administration is attached.
  3. It is deponed the said letters of Administration were confirmed on the 10<sup>th</sup> day of March, 2022 and further rectified on the 22/2/2024. That the properties were distributed to the beneficiaries as per the Certificate of confirmation of grant above.
  4. The applicant asserts that she was perplexed to learn the fraudulent scheme by the 2<sup>nd</sup> & 3<sup>rd</sup> defendants herein to defraud the Estate of the Deceased said piece of property Plot No. 7 Kobare Market Siaya County and ostensibly allocate it to Robison Siganda the 1<sup>st</sup> Defendant.
  5. The applicant urges that upon hearing this application ex parte this Honourable Court be and is hereby pleased to grant temporary order of injunction restraining the 1<sup>st</sup> Defendants/Respondents their agents, servants and/or any other person acting for and/or through him from constructing, erecting and/or putting up any construction or structure along the access road frontage to and/or bordering plot No. 7 Kobare market pending the inter parties hearing and determination of this application.
  6. The applicant asserts it is for the above reasons she prays for permanent injunction against the 1<sup>st</sup> Defendant as prayed for in the application.
  7. Moreover, it is stated the suit property was allocated to the applicant's late husband in the year 1954 as per the letter dated 24<sup>th</sup>/9/1980 and the response to the same dated 10/9/1980 was included as part of the Estate in Siaya Succession No. E032 OF 2022. That the applicant's late husband has been paying rates as demanded by the 2<sup>nd</sup> defendant as shown in the various receipts and rates clearance certificate which were annexed.
  8. The applicant asserts that the property is currently still registered under the name of her late husband as evidenced by the official search which is annexed.
  9. Further that both the defendants have been issued with demand letter and the requisite statutory notices. That the issue was raised as a family through letter dated 24/1/2024. The encroachment and harassment were reported to the police. Copies of the letter and the occurrence Book record are also attached.
  10. The matter came up for mention on 25/9/2024. Mr. Osala informed the court he was yet to file a replying affidavit on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The court noted there was no evidence of service upon the 2<sup>nd</sup> to 4<sup>th</sup> defendants and directed that they be served and set timelines within which they were to respond to the application once served. On 27/01/2025 Mr. Osala and Arum were present in court. Mr Osala was of the view that the matter should first be directed to the Land Registrar to determine the boundaries after which the county would be able to file a response. He indicated he was amenable to compromise the application provided that the Land Registrar visits and establish the boundary.



11. In reply Mr. Arum for the applicant took the position that the 1<sup>st</sup> defendant is in the suit premises and has constructed temporary structures and it was not a boundary dispute though he was amenable to the proposal for determination of the boundary.
12. The court then proposed to counsel to explore an agreement for status quo to be maintained. However, Mr. Osala insisted there were no structures on the ground. On the other hand Mr. Arum reiterated the position and urged that the 1<sup>st</sup> defendant must remove the structures. In view of the position taken by Mr. Arum I directed that the application should proceed for hearing and granted Mr. Osala 7 days to respond to the suit and the application. The matter was scheduled on 24/3/2025 for directions on disposal of the application but none of the parties attended court.
13. It was confirmed that there was no response that had been filed since the Memorandum of appearance by the 2<sup>nd</sup> defendant. I extended time for the response and issued directions that the application be disposed by way of written submissions. The directions were duly served upon counsels on 24/2/2025.
14. As at the time of preparing this ruling there was no response from the respondents.
15. Mr Arum invited the court to allow the application based on the documents on record. I declined as I took the view that even in the absence of a reply to the application it must still undergo a merit review.
16. It is important to note that after the forgoing the applicant filed a further affidavit sworn on 15/5/2025 without leave, which I later admitted on the application of counsel.
17. The applicant denied the dispute was a boundary dispute which she termed as an outright lie as the defendant had encroached and occupied and constructed and/or erected structures on the Parcel Plot No. 7 Kobare Market as shown in the pictures attached and marked ads bundle “EMO1”. Further that the suit property is situated in a market place and it is the applicant’s intention to construct and make improvements and developments on the same and the defendant has refused to remove his structures.
18. Further that the property represents a life time investment and attempts to come to an amicable solution with the 1<sup>st</sup> defendant were unfruitful as he has been shifting goals after every discussion and/or agreement.

### **Analysis And Determination**

19. The application is brought under the provisions of Section 1A, 2B and 3A of the [Civil Procedure Act](#), order 40 Rules 1,2,3 and 4 of the Civil Procedure Rules.
20. The application seeks for orders of temporary injunction against the 1<sup>st</sup> defendant and his agents. The pertinent issue is whether the application meets the threshold for granting of the temporary orders of injunction.
21. The law governing the granting of interlocutory injunction is set out under order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides that: -

“Where in any suit it is proved by affidavit or otherwise—

- a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or [Rev. 2012] Civil Procedure CAP. 21 [Subsidiary] C17 – 165;
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed



against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further."

22. The test for granting of an interlocutory injunction was considered in the case of *American Cyanamid Co. v Ethicom Limited* [1975] A AER 504 where three elements were noted to be of great importance. There must be a serious/fair issue to be tried, damages are not an adequate remedy and the balance of convenience lies in favour of granting or refusing the application. These echo the principles in *Giella Versus Cassman Brown & Co Ltd* 1793 EA 358.

23. On whether the applicant herein has established a prima facie case, it trite that the court must not go into the merits of the case for this is the preserve of the trial judge and not even title is required. This is best illustrated in Civil Appeal No. 77 of 2012, *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR wherein the court delivered itself as hereunder; -

"We reiterate that in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the Court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title, it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."

24. Applying the above to the present case, it is the plaintiffs case that she is the administrator of the estate of Paul Malachi her deceased spouse. The property forms part of the deceased estate which has since been distributed to her in whole pursuant to a grant which was later rectified. A copy of the rectified grant was attached and lists the suit property herein as part of the estate that was distributed. I have also seen receipts for payment of rates to the council in the name of the deceased as recent as the year 2024 when this suit was commenced.

25. Based on the foregoing I find that the plaintiff has established a prima facie case.

26. But is the above enough? No. All the three conditions enunciated in *Giella v Casman Brown* (supra) must be satisfied. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR further opined that:

"...these are the three pillars on which rest 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... if the Applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be



granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration."

27. I must therefore consider the 2<sup>nd</sup> requirement, whether the applicant will suffer irreparable harm if the injunction is not granted. But what is irreparable harm? The judicial decision of Pius Kipchirchir Kogo Vs Frank Kimeli Tenai (2018) eKLR provides an explanation on what is meant by irreparable injury thus;

"Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury."

28. The applicant depones in the further affidavit herein states that the property represents a life time investment. Further that it was her intention to develop the same but I have not been led to any evidence in this regard. Furthermore her own prayers seek that the temporary injunction be granted against 'construction or structure along the access road frontage to and/or bordering plot No. 7 Kobare market.' A party is bound by its pleading. Clearly it is not construction within the suit property. At some point the structures are said to be temporary and which is apparent from the photos produced, meaning that these are compensable by way of damages. Consequently, have not seen any demonstration that the applicant will suffer irreparable loss were the orders of injunction not to be granted.

29. The above test having failed then I see no need to discuss the other requirements.

30. The application dated 4/6/2024 must fail and it is hereby dismissed. I will make no orders as to costs.

**DELIVERED AND DATED AT SIAYA THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**HON. LADY JUSTICE A.E. DENA.**

**JUDGE**

**10/07/2025**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

No appearance for the plaintiffs

No appearance for the Defendants

Court Assistant: Ishmael Orwa

