Kipchilat v Lepeyo & 11 others (Environment and Land Appeal E005 of 2025) [2025] KEELC 6062 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6062 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND APPEAL E005 OF 2025

MAO ODENY, J

SEPTEMBER 18, 2025

BETWEEN

RICHARD KIPKORIR KIPCHILAT ..... APPELLANT

AND

FREDRICK LEPEYO ..... 1ST RESPONDENT

ERICK KIMANI ..... 2ND RESPONDENT

JAMES MBUGUA ..... 3RD RESPONDENT

DENNIS MITEI ..... 4TH RESPONDENT

JOHN MITEI ..... 5TH RESPONDENT

PETER CHIRCHIR ..... 6TH RESPONDENT

WESLEY K TANUI AKA CHIRCHIR ..... 7TH RESPONDENT

BERNARD NDERITU THOMBE ..... 8TH RESPONDENT

DANIEL MUNGA REUBEN BOWEN ..... 9TH RESPONDENT

STANLEY CHIRCHIR ..... 10TH RESPONDENT

ISAAC KIBET BOWEN ..... 11TH RESPONDENT

ELIUD KIPKEMOI BOWEN ..... 12TH RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion application by the Applicant/Appellant dated 30th May 2025 which seeks the following orders:

    a. Spent

b. Spent

c. THAT pending the hearing and final determination of the Appeal filed herein, this Honourable court be pleased to grant an interim injunctive order, directing upon the Respondent; by themselves, their servants and/or agents, restraining them from trespassing on, purporting to create further roads, cultivating, planting crops, further making contours, further sub-dividing, disposing off and/or in any other manner prejudicial to the Appellant's Rights; dealing with the parcel of land known as L.R NO 10978/2 Title No. I.r No 68681 the property of the Appellant. (sic)

d. THAT the Respondents be condemned to pay costs of this application.

2. The application is supported by the annexed affidavit of Richard Kipkorir Kipchilat, sworn on 30th May 2025, in which he deponed that he has an arguable appeal because he is the registered proprietor of the suit land. It was his deposition that the delay in filing this application was due to the fact that he had filed a similar application in the trial court, which was dismissed on 20th May 2025.

3. The Applicant further deponed that on 22nd April, 2022, the Defendants trespassed onto the suit property prompting him to file a suit in the lower court on 30th September, 2021, which proceeded ex-parte and the trial court in its judgment dated 11th February, 2025, dismissed the said suit with no orders as to costs.

4. He further deponed that he filed an appeal on 18th February, 2025, and if the orders sought in the application are not granted, the appeal shall be rendered nugatory, and that the Respondents will not suffer any prejudice.

5. The Respondents filed Grounds of Opposition dated 18th June, 2025 and stated that the application is incompetent for failing to meet the mandatory threshold for grant of an injunction pending appeal as set out under Order 42 Rule 6 (6) of the Civil Procedure Rules.

6. James Mbugua filed a Replying Affidavit sworn on 18th June, 2025, and deponed that he has the Respondents authority to swear the affidavit on their behalf. He further deponed that the application is an abuse of the court process, as the Appellant has not demonstrated what irreparable loss he stands to suffer.

7. It was his deposition that granting an injunction at this stage would amount to granting final orders before the appeal is heard and determined, and further that the balance of convenience tilts in favour of the Respondents who stand to suffer possible eviction from land they have lawfully occupied. He therefore urged the court to dismiss the application and the Memorandum of Appeal with costs.

Applicant/appellant's Submissions

8. Counsel for the Applicant/Appellant filed submissions dated 23rd June 2025, and submitted that this court has jurisdiction to grant an injunction pending appeal and relied on the case of Itewa vs Baraka Credit Limited & Another (Civil Appeal E084 of 2023) (2024) KEHC 3181 (KLR).

9. Mr. Olonyi submitted that from the Application and evidence on record, it is apparent that the Appellant/Applicant is in actual possession of the suit premises. Counsel urged the court to allow the instant application to preserve the subject matter of the appeal pending the hearing and determination thereof.

Respondents' Submissions

10. The 3rd Respondent filed submissions dated 23rd June, 2025, and submitted that the Appellant has not met the legal threshold for the grant of an injunction pending appeal. He submitted the dispute concerns public land, and the lower court judgment correctly upheld the Respondent's case.

11. The 3rd Respondent submitted that the Appellant has neither demonstrated an arguable appeal, nor irreparable harm, nor possession. He submitted that the balance of convenience lies in preserving the status quo and upholding the trial court's judgment.

12. The 3rd Respondent relied on the cases of Giella vs Cassman Brown [1973] EA 358, Butt vs Rent Restriction Tribunal [1982] KLR 417, Itewa vs Baraka Credit Ltd & Another (Civil Appeal E084 of 2023) (2024) KEHC 3181 (KLR) and Nguruman Ltd vs Jan Bonde Nielsen & 2 others [2014] eKLR, and urged the court to dismiss the application with costs.

Analysis And Determination

13. The issue for determination is whether the Applicant has met the threshold for the grant of a temporary injunction pending the hearing and determination of the Appeal. The court has the power to grant temporary injunctions pending appeal if a party meets the conditions set out for the grant of such orders.

14. In the case of Siahi & another v Muhindi [2025] KEELC 5530 (KLR), the court pronounced as follows at paragraph 16:

> "On the other hand, where an applicant demonstrates that they have complied with the procedures of filing an appeal, as well as satisfy the conditions for grant of temporary injunction, the court may grant orders of temporary injunction pending appeal. The conditions for grant of temporary injunction are well settled. An applicant must demonstrate an arguable case; that if the injunction is not granted they will suffer irreparable injury and the balance of convenience should tilt in favour of the applicant. (See Giella v Cassman Brown (1973) EA 358)"

15. The affidavit supporting the Application contains a Memorandum of Appeal dated 13th February, 2025 which has nine grounds of appeal. It is the Applicant's contention that if the orders sought are not granted and his appeal is successful, the same shall be rendered nugatory in the event the Defendants sell the whole or portions of the property.

16. The annexed title to the supporting affidavit shows that the Applicant is the registered owner of the suit land, which is prima facie that he has an arguable appeal, which will be rendered nugatory if the orders sought are not granted. The purpose of an injunction pending appeal is to preserve the substratum of the case. If such orders are not granted, and the Appellant is successful, it might be difficult or impossible to be compensated by way of damages.

17. The 3rd Respondent in his Replying Affidavit sworn on 18th June, 2025 admits to the trespass as the land does not belong to them. From the judgment, the court did not adjudicate on the issue at hand, hence, the Appellant has an arguable appeal

18. I have considered the Application, the submission by counsel and the respondent and find that the Application has merit. I therefore issue the following specific orders :

a. An order of Injunction is hereby issued restraining the Respondents by themselves, their servants and/or agents, from trespassing on, purporting to create further roads, cultivating, planting crops, making contours, sub-dividing, disposing off and/or in any other manner prejudicial to the Appellant's Rights; dealing with the parcel of land known as L.R NO 10978/2 TITLE NO. I.R NO 68681 pending the hearing and determination of this Appeal.

b. The Appellant shall file and serve the Record of Appeal within 45 days and fast track the hearing of the Appeal.

c. Costs shall abide by the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF SEPTEMBER 2025.

M. A. ODENY

JUDGE