



REPUBLIC OF KENYA



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**Marindich v Cheriro (Environment and Land Case Civil Suit E023 & E025 of 2025  
(Consolidated)) [2025] KEELC 6100 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6100 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE CIVIL SUIT E023 & E025 OF 2025 (CONSOLIDATED)  
CK YANO, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**JONAH KIPROP MARINDICH ..... PLAINTIFF**

**AND**

**JOSHUA SOI CHERIRO ..... DEFENDANT**

**RULING**

1. There are two applications for determination by this court, being the Notice of Motion dated 21<sup>st</sup> March, 2025 filed by the Plaintiff in ELC No. E023 of 2025 (the lead file), and the Notice of Motion dated 25<sup>th</sup> March, 2025 filed by the Plaintiff in ELC No. E025 of 2025.

**Notice of Motion Dated 21<sup>st</sup> March, 2025 in ELC No. E023 of 2025;**

2. In the Notice of Motion dated 21<sup>st</sup> March, 2025, the Plaintiff in ELC Suit No. E023 of 2025, Jonah Kiprop Marindich, seeks the following orders:-
  - a. Spent
  - b. Spent
  - c. This Honourable Court be pleased to issue a temporary injunction order restraining the Respondent either by himself or his agents from trespassing onto and taking possession of the land parcel known as Moi's Bridge/Moi's Bridge Block 12 (Ex-Culien)/364 pending the hearing and determination of this suit.
  - d. Spent
  - e. This Honourable Court be pleased to issue a temporary injunction order restraining the Respondent either by himself or his agents from selling, transferring, alienating and dealing



with land parcel number Moi's Bridge/Moi's Bridge Block 12 (Ex-Culien)/364 in any manner pending the hearing and determination of this suit.

- f. Costs for this application be provided for.
3. The Application is premised on the grounds set out on the face of it and is supported by the Plaintiff/Applicant's Affidavit of even date. According to the Plaintiff, on 28<sup>th</sup> March, 2023, he entered into a sale agreement with the Defendant/Respondent to purchase the parcel of land known as Moi's Bridge/Moi's Bridge Block 12 (Ex-Culien)/364 (the suit property) for KShs. 43,260,000/-. He claims that he paid KShs. 4,601,920/- as deposit to the Defendant's son, Andrew Soy, and the balance was paid in instalments which the Defendant acknowledged receipt thereof.
  4. The Plaintiff alleged that the Defendant undertook to hand over vacant possession of the land to him upon receipt of the consideration, but despite acknowledging receipt of payment, he has refused to execute the transfer documents in his favour. The Plaintiff further avers that he has since taken vacant possession of the land despite the refusal to transfer. The Plaintiff claims that the Defendant and his sons are threatening to trespass onto the land, and if the orders issued herein are not granted, he will suffer irreparable and substantial loss.
  5. The Plaintiff thus sought the injunctions to restrain the Defendant from trespassing and taking possession of the land, as well as to bar him from selling or otherwise alienating it. He urged that the Application was made in good faith, and that the Defendant would suffer no loss if the injunctions are granted. He added that it is in the interest of justice that the prayers sought in the application are allowed.
  6. The Defendant/Respondent opposed the Application by way of a Replying Affidavit sworn on 22<sup>nd</sup> April, 2025. He confessed that he had filed suit in Eldoret ELC No. E025 of 2025 against the Plaintiff herein, Philemon Kiprono Muge and Andrew Kipngetch Korir Soy. He deponed that he is the sole registered owner of the suit property, and had learned with shock of the sale agreement of 28<sup>th</sup> March, 2023 executed by the then chief of Moi's Bridge Area.
  7. The Defendant explained that he was not in Moi's Bridge Area on the date the Agreement was signed. He alleged that it was purportedly signed on his behalf by Andrew Kipngetch Korir Soy, his son, but the proceeds, which were paid by way of various instalments as set out in the Affidavit, were received by a stranger by the name of Philemon Kiprono Muge. The Defendant deponed that the transactions between the Plaintiff and the third parties were illegal, irregular, made through collusion and fraudulent. That he never received any part of the consideration, without which a contractual relationship cannot be created.
  8. The Defendant deponed that he had reported the matter to the DCI, Soy Sub-County Vide OB. No. 15/22/03/2025. That pursuant to this report, the suspects are being processed for arraignment in court, and that he had also submitted the original sale agreement for forensic examination. The Defendant avers that he entered the suit property with his family members to plough it, but the Plaintiff, with the assistance of the OCS Moi's Bridge Police Station and police officers chased them away. The Defendant claimed that the Plaintiff's actions amount to infringement of his constitutional right to property, and expressed apprehension that the Plaintiff may lock him out of the suit land to his detriment as he had planted thereon. He asked that the application be dismissed.

**Notice of Motion dated 25<sup>th</sup> March, 2025 in ELC No. E025 of 2025;**

9. The Plaintiff in ELC Case No. E025 of 2025 (who is the Defendant in ELC Case No. E023 of 2025), sued Jonah Kiprop Marindich (the Plaintiff in the lead case) alongside Philemon Kiprono Muge and



Andrew Kipngetich Korir Soy. Together with the Plaintiff, he also filed a Notice of Motion Application dated 25<sup>th</sup> March, 2025 in which he seeks the following orders:-

- a. Spent
  - b. Spent
  - c. Spent
  - d. That this Honourable Court be pleased to grant an order of temporary injunction restraining the 1<sup>st</sup> and 3<sup>rd</sup> Defendants/Respondents jointly and severally whether by themselves, their authorized agents, employees and/or servants and/or otherwise from entering, setting foot, remaining therein, occupying, possessing, fencing and/or further fencing, ploughing, planting and/or doing anything related to farming of all that parcel of land known as Moi's Bridge Block 12 (Excullen) 364 measuring approximately 8.35Ha pending the hearing and determination of the main suit.
  - e. That this Honourable Court be pleased to make such order as it deems meet and just.
  - f. That the costs of this Application be borne by the Defendants.
10. The grounds in support of this Application are set out on the face of the Motion, and in the Supporting Affidavit of even date sworn by Joshua Soi Cheriro. The said Affidavit is a replica of the Replying Affidavit in ELC Case No. E023 of 2025 already summarised above. However, Mr. Cheriro added that the 1<sup>st</sup> Defendant herein has since fenced the entire suit property and may soon start ploughing and thereafter planting on the suit land to his detriment. He stated that this Court has jurisdiction to issue the orders sought herein, and urged that the Defendants/Respondents would suffer no prejudice if the orders herein are granted.

#### **The 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondent's Response;**

11. A Notice of Appointment of Advocates had been filed by the firm of Z.K. Yego with respect of all the three Defendants alongside a Replying Affidavit sworn by Jonah Kiproop Marindich on 3<sup>rd</sup> April, 2025 in opposition to the Application. He also reiterated the averments in his Supporting Affidavit dated 21<sup>st</sup> March, 2025 in ELC Case No. E023 of 2025. He however clarified that the sale was pursuant to instructions given to the 3<sup>rd</sup> Defendant/Respondent by his father, Joshua Soi Cheriro, who allegedly wished to transfer his land from Uasin Gishu County to Nandi County. He averred that per the terms of the Agreement, that the purchase price was paid to through the owner's son Andrew, the 3<sup>rd</sup> Respondent herein, and 2<sup>nd</sup> Defendant/Respondent who was Andrew's Agent.
12. Jonah Marindich deponed that he peacefully took possession of the suit land since 2024 and has been utilising it without any complaint from the registered owner until recently when the Plaintiff sought to rescind their Agreement, including reporting him to the area chief. He conceded that he paid the deposit to the Andrew Soy, the 3<sup>rd</sup> Defendant and the balance of the purchase price was paid to the 2<sup>nd</sup> Defendant. He accused the Joshua Cheriro of seeking to increase the consideration, and upon refusal, Joshua Cheriro sought to rescind their agreement, even though he had initially handed over his national ID Card and KRA Pin Certificate for purposes of the transfer.
13. Jonah Marindich accused Joshua Cheriro of encroaching onto the suit property and destroying the boma rhodes grass planted thereon, occasioning him losses to the tune of KShs. 12,612,000/-. He also accused the Joshua Cheriro of misleading the court alleging that he had been farming on the land, yet he had been in possession and occupation of the land since 2023. He deponed that he purchased the property with the knowledge and consent of Joshua Cheriro, and denied taking part in any fraud in



the sale. He claimed that the application lacks merit and is misconceived for failure to comply with Order 40 Rule 1, 2 and 9 of the Civil Procedure Rules, 2010.

### **The 3<sup>rd</sup> Defendant/Respondent's Replying Affidavit;**

14. The 3<sup>rd</sup> Defendant/Respondent also opposed the Motion through a Replying Affidavit dated 3<sup>rd</sup> April, 2025 drawn and filed by the firm of Z.K. Yego Law Offices. He admitted that the Plaintiff is his father, and that he had expressed a desire to transfer his suit land close to his current residence in Uasin Gishu County. That his father gave him consent and authority to execute the transfer of the land to Uasin Gishu, and he offered the land for sale to Jonah Marindich. He averred that he had informed Joshua Cheriro that Jonah Marindich had accepted the offer. He urged that pursuant thereto, Jonah Marindich and Joshua Cheriro entered into the sale agreement dated 28<sup>th</sup> March, 2023 and he acted as an agent in that transaction.
15. The 3<sup>rd</sup> Defendant averred that upon execution, Jonah Marindich paid the Kshs, 4,601,920/- to him as the Joshua Cheriro's authorised agent. That the balance was paid to him by the Jonah Marindich and Philemon Kiprono Muge as the authorised agent in the transaction. He deponed that Jonah Marindich took immediate possession of the land in 2023 without any opposition or contest. He averred that Joshua Cheriro voluntarily handed over his KRA PIN Certificate and National ID card to pursue the transfer. He denied any fraud and/or collusion, stating that Joshua Cheriro had handed over the title deed to the property to Jonah Marindich voluntarily.
16. He further clarified that the purchase price paid to him by Jonah Marindich and Philemon Kiprono Muge was used to purchase another property in Uasin Gishu County with Joshua Cheriro's approval. He accused Joshua Cheriro of unlawfully encroaching into the land. He averred that Joshua Cheriro had painted a false picture to this court that he had been farming on the land, yet Jonah Marindich had been in occupation since 2023 with his approval.

### **3<sup>rd</sup> Defendant's Preliminary Objection;**

17. In an interesting turn of events, a Preliminary Objection dated 4<sup>th</sup> April, 2025 was filed on behalf of the 3<sup>rd</sup> Defendant through the firm of EGO Kipkemboi Advocates raising the following Objections:
  - a. That the Replying Affidavit dated 3<sup>rd</sup> April, 2025 offends Section 5 of the [Oaths and Statutory Declarations Act](#).
  - b. The alleged affidavit was sworn by the 3<sup>rd</sup> Defendant/Respondent before a commissioner for oaths (Amos Kiprop Songok) at Eldoret whereas the 3<sup>rd</sup> Defendant/Respondent is a student at Nottingham Trent University in Birmingham, United Kingdom having left Kenya on 25.09.2024.
  - c. That the said Replying Affidavit has been prepared, signed and sworn without authorization of the 3<sup>rd</sup> Defendant.

### **Submissions:**

18. On 23<sup>rd</sup> April, 2025 this matter was mentioned alongside ELC E025 of 2025 and the two suits were consolidated, with this file being the lead file. The court further directed that the two applications be canvassed by way of written submissions.
19. The Plaintiff in ELC Case E023 of 2025 (hereinafter referred to as Jonah Marindich) filed his submissions in support of his application dated 9<sup>th</sup> May, 2025. The Defendant in ELC Case No. E023 of 2025 (Joshua Soi) filed two sets of submissions both dated 9<sup>th</sup> May, 2025 one in opposition to the



Application dated 21<sup>st</sup> March, 2025 and the other in support of his application dated 25<sup>th</sup> March, 2025. The court has taken time to read and consider the said submissions.

### **Analysis and Determination:**

20. This court has considered the two applications herein, the responses filed thereto as well as the parties' submissions and the authorities cited therein. The issues that arise are:-
- i. Whether the 3<sup>rd</sup> Defendant's Preliminary Objection is merited
  - ii. Who between Joshua Soi and Jonah Marindich is entitled to the temporary injunction sought?
  - iii. Whether Joshua Soi should be restrained from alienating the suit property;
  - iv. Who shall bear the costs of the two applications?

#### **a. Whether the 3<sup>rd</sup> Defendant's Preliminary Objection is merited**

21. Before descending into the merits of the two applications, I must first deal with the Preliminary Objection filed by the 3<sup>rd</sup> Defendant herein dated 4<sup>th</sup> April, 2025. A preliminary objection was defined by the Court of Appeal decision in the case of Mukisa Biscuit Manufacturing Co. Ltd. v West End Distributors Ltd (1969) E.A. 696, where Law, JA in that case said (p.700):-

“I agree that the application for the suit to be dismissed for want of prosecution should have taken the form of a motion, and not that of a ‘preliminary objection’ which it was not. So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration .”

22. In the same case, Newbold, P stated (p.701):

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

23. It is abundantly clear that a preliminary objection should only raise a point of law which must not be blurred with factual details liable to be contested. It should also not raise matters that would require to be proved through the processes of evidence. Any preliminary objection that bears factual aspects calling for proof, or requiring parties to adduce evidence to authenticate the matters raised therein cannot be held to be a proper preliminary objection.
24. The 3<sup>rd</sup> Defendant objects to the Replying Affidavit filed on his behalf by the firm of Z. K. Yego and Company Advocates, claiming that it offends Section 5 of the [Oaths and Statutory Declarations Act](#), which provides as follows:-



5. Particulars to be stated in jurat or attestation clause Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
25. The objection is premised on the grounds that the affidavit was allegedly sworn by the 3<sup>rd</sup> Defendant/ Respondent before one Amos Kiprop Songok, a commissioner for oaths, at Eldoret. The 3<sup>rd</sup> Defendant/Respondent however claims that he is a student at Nottingham Trent University in Birmingham, United Kingdom having left Kenya on 25<sup>th</sup> September, 2024. This means that he was not in Kenya at the time the Affidavit was made to have possibly deponed it. He further objected to the said Replying Affidavit, claiming that it was prepared, signed and sworn without his authorization.
26. There is no doubt that the matters raised in the 3<sup>rd</sup> Defendant's PO would require this Court to investigate the fact of the 3<sup>rd</sup> Defendant's whereabouts on the date the Affidavit was allegedly made. The matters raised in the 3<sup>rd</sup> Defendant's PO cannot be determined as a preliminary point. The same can only be determined at the hearing or if raised properly through a formal application which would allow parties to adduce evidence by way of Affidavits in support of or in opposition of the matters raised.
27. Consequently, the 3<sup>rd</sup> Defendant's Preliminary Objection is not a proper PO, and the same is dismissed.

**b. Who between Joshua Soi and Jonah Marindich is entitled to the temporary injunction sought?**

28. Jonah Marindich and Joshua Soi are the Plaintiffs/Applicants in the two suits herein. They both seek an injunction, aiming to have the other restrained from using and or dealing with the suit property herein.
29. The principles applicable when considering an application for an interlocutory injunction were settled *Giella v Cassman Brown & Co. Ltd* [1973] E.A 358, where the court held that:-
- “The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
30. The first condition is that a party seeking an interlocutory injunction must demonstrate that they have a prima facie case with probability of success. A prima facie case was defined in the judicial decision of *Mrao Limited v First American Bank of Kenya & 2 Others* [2003] eKLR as follows:-
- “A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
31. In the instant case, Jonah Marindich claims to have purchased the suit property from Joshua Soi for KShs. 43,260,000/- through an agreement for sale dated 28<sup>th</sup> March, 2023. He claims that Joshua handed over to him the original title but has refused to execute the transfer forms to him. This refusal notwithstanding, he claims to have taken possession of the land and is currently utilising it by planting Boma Rhodes grass on the land as part of a contract with Kenya Seed Company.



32. Jonah Marindich annexed a copy of a Land Sale Agreement dated 28<sup>th</sup> March, 2023 showing the vendor as Joshua Soi and the agreed purchase price as KShs. 43,260,000/-. According to the agreement, the deposit paid on the execution date was KShs. 4,500,000/- and the vendor undertook to hand over vacant possession. He also annexed what appears to be a statement of accounts from account held at Nafasi DT Sacco showing that KShs. 4,601,920 was transferred to Andrew Soy on 29<sup>th</sup> March, 2023. Andrew Soy, sued as the 3<sup>rd</sup> Defendant in ELC Case No. E025 of 2025 is Joshua Soi's son. Jonah Marindich claims that he acted as Joshua's agent in the alleged transaction.
33. Joshua Soi on his part contends that he is the registered owner of the suit property. He annexed a Certificate of Official Search issued on 15<sup>th</sup> January, 2015 showing that he is indeed the registered proprietor of the land in contention. As regards the alleged consideration, Joshua Soi states that he never received any part of it. He also annexed the same statement of accounts showing that the deposit was paid to Andrew Soy and not to him.
34. Joshua Soi claims that the balance was not paid to him but to Philemon Kiprono Muge, the 2<sup>nd</sup> Defendant in ELC E025 of 2025. Joshua also annexed another statement of accounts from KCB Bank showing several transactions to Philemon Kiprono Muge for purchase of land. Joshua further claims that he could not possibly have sold the land to Jonah Marindich on 28<sup>th</sup> March, 2023 as he was not in the Moi's Bridge Area on the said date.
35. Jonah Marindich has admitted that the deposit of the purchase price was paid to Andrew Soy and not the registered owner. Mr. Marindich has also admitted the fact that the balance of the purchase price was paid to Philemon Muge as an agent for both Joshua Soi and Andrew Soy. There is no proof at this interlocutory stage that the consideration, or any part thereof, ever made its way to Joshua Soi Cheriro, the registered owner.
36. In fact, Joshua Soi Cheriro has denied the alleged agreement for sale, denied authorising his son to sell the land and also denied receiving any part of the consideration. He took the dispute to the Chief of Moi's Bridge and has also lodged a complaint with the Police over this alleged sale.
37. I have taken a look at the Report from the Office of the Chief, Moi's Bridge Location which is dated 17<sup>th</sup> March, 2025 annexed to Joshua's Supporting Affidavit. It is titled "Findings and Ruling on a Land case Parcel No. Moi's Bridge/Moi's Bridge Block 12 (Ex Cullen)/364".
38. The Chief indicates that having heard the parties before him, he came to the conclusion that Joshua Soi never sold the land to Jonah Marindich. The Chief made a further finding that Joshua Soi was not present on the material day at the Chief's Office Moi's Bridge, which is the venue where the sale of land agreement was made. Among other findings, the Chief also found that the original title deed was handed over to Andrew to conduct a search to ascertain its sanctity.
39. Both parties have put forward a convincing case on this front, urging that they have established a prima facie case, for which they are entitled to the injunction sought. However, a prima facie case alone is not enough. A party seeking an order of injunction must therefore satisfy the all the conditions in the *Giella v Cassman Brown Case* (Supra).
40. In addition, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (2014) eKLR explained that all the three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if prima facie case is not established, then irreparable injury and balance of convenience need no consideration.
41. Therefore, this court needs to consider the second requirement, which is that it must be shown that a party will suffer irreparable loss and damage if the injunction sought is not granted. In *Giella v Cassman*



Brown (Supra), the court was clear that irreparable injury is such that it would not be adequately compensated by way of damages. Further, in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages.

An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

42. With regards to the alleged loss and damage, though as admitted, the purchase price was paid to third parties, there is no doubt that Jonah Marindich paid the same as per the land sale agreement. By doing so, he believed that he would acquire interests on the suit land, and claims he was given the title and identification documents of the seller to effect transfer. That aside, he took over the land and has planted boma rhodes grass which is part of a contract with Kenya Seed Company. He claims that he will suffer losses of upto KShs. 12,612,000/- if the injunction is not issued against Joshua Soi.
43. Jonah Marindich claims that Joshua Soi encroached into the land and destroyed the boma rhodes grass growing on the suit property. It is for this reason that he seeks not only to have Joshua Soi barred from entering the land, and further that he be barred from selling and or otherwise alienating the suit property.
44. Joshua Soi on his part has claimed that he and his family were farming in the land when they were chased out of it by Jonah Marindich in the company of police officers. He has submitted that he is a man of old age, sickly and shall suffer mentally, emotionally and physically if the application is not allowed. He further argued that he would not be able to feed his family as he had planted maize on the suit property, and that he stands to lose his sole source of income. There is also the structure that is alleged in the Chief's report to have been demolished by Jonah Marindich when he went into the land and took the materials thereto.
45. Moreover, as the registered owner of the land, Joshua Soi Cheriro is by law entitled to occupation and use of the land, yet if the injunction is issued against him, he will not be able to use the land or plant on it as he clearly had started before he was chased off the land. As a registered proprietor, Joshua is entitled to the protection that the law accords persons who hold registered title.
46. If both parties are to be believed, they are both actively on the suit land currently. They also claim that they stand to suffer loss either way if the orders sought are not issued. There is no way of knowing at this point who is actually on the land at the moment.
47. To determine this, there is need for the court to conduct a site visit to determine the true position on the ground before deciding in whose favour the injunction should be issued. Until then, in order to preserve the suit property, I think it is wise that the status quo obtaining as at today's date be maintained pending the site visit by the Deputy Registrar of this Honourable Court. The Hon. DR shall give a report on the true position on the ground after which the court shall make further orders in the interest of justice.



48. In *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR, the court held that a status quo order can be given by the court exercising its general jurisdiction. Further that the order need not necessarily be prayed by the parties and in fact can be originated by the court. Most importantly, however, the court set out the manner in which a court ought to frame a status quo order as follows:-

“23. ... Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

49. Notably, when the matter was mentioned on 23<sup>rd</sup> April, 2025, the court ordered that none of the parties are to use the land until the court determines the two applications. To this court’s knowledge, that is the status quo obtaining as at this moment. For the avoidance of doubt, that is what is meant to be maintained by the status quo order issued herein pending the site visit and further orders of this court.

**c. Whether Joshua Soi should be restrained from alienating the suit property;**

50. In the same breadth, this court has also been asked to issue an injunction against Joshua Soi, restraining him from selling, transferring or otherwise alienating the suit property. The need to preserve immovable property in the adjudication of land matters pending before the court cannot be gainsaid. There is no doubt that the instant suit cannot be successfully determined if the suit land is alienated or otherwise alienated pendente lite.

51. It is not in doubt that the suit property is currently registered in the name of Joshua Soi Cheriro. What is not clear at the moment, is whether the suit property was indeed sold to Jonah Marindich with the registered owner’s consent. Joshua Soi Cheriro is adamant that he did not consent or participate on the sale of his land. While this may be true, it is also possible that upon hearing the testimony and seeing the evidence produced at the hearing, it may very well emerge that Jonah Marindich did indeed acquire the land legally. If that be the case, and if the registered owner has by then disposed of the suit land before the judgment or decree, then without a doubt, his claim would have been defeated and these proceedings rendered an academic exercise.

52. Such a scenario is prevented under the doctrine of *lis pendens* which is applied to restrain any party from disposing or otherwise dealing in a suit property until the suit is heard and determined. The *Black’s Law Dictionary* 9<sup>th</sup> Edition, defines *lis pendens* as the jurisdictional, power or control acquired by a court over property while a legal action is pending. In the case of *Mawji v US International University & Another* (1976) KLR 185, Madan, J.A. stated thus:-

“The doctrine of *lis pendens* under section 52 of TPA is a substantive law of general application. Apart from being in the statute, it is a doctrine equally recognized by common law. It is based on expedience of the court. The doctrine of *lis pendens* is necessary for final adjudication of the matters before the court and in the general interests of public policy and good effective administration of justice. It therefore overrides, section 23 of the RTA and prohibits a party from giving to others pending the litigation rights to the property in dispute so as to prejudice the other...”



53. As stated in the above authority, initially the doctrine of lis pendens was previously guaranteed under the provisions of the Section 52 Indian Transfer of Property Act (ITPA), but the said Act was repealed. The doctrine is however still applicable as a common law principle by virtue of Section 3 (1) of the Judicature Act Cap 8.
54. There is no doubt that the instant case concerns a contested property dispute, where the rights to the suit property are in serious contention. There is thus need to preserve the suit property until the suit herein is heard and determined. Under the circumstances, it goes without saying that there is need to issue the injunctive relief sought against Joshua Soi as the registered owner to restrain him from disposing of and/or alienating the suit property pending hearing and determination of the suit.

**d. Who shall bear the costs of the two applications?**

55. Turning to the issue of costs of the two Applications, Section 27 of the Civil procedure Act provides that:-

27. Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

56. In terms of section 27 of the Civil Procedure Act, costs should follow the events, but a court may for good reasons order otherwise. The award of costs is therefore a matter in which the trial Judge is given discretion, which discretion must be exercised wisely.
57. In the instant case, the two Plaintiffs in the two suits both filed applications seeking an injunction against the other. Since the court is to await the outcome of the site visit by the Hon. Deputy Registrar, it is only prudent that at the moment, each party shall bear their own costs.

**Orders:-**

58. For the foregoing reasons, the Applications dated 21<sup>st</sup> March, 2025 and 25<sup>th</sup> March, 2025 as well as the 3<sup>rd</sup> Defendant's Preliminary Objection dated 4<sup>th</sup> April, 2025 are determined as follows:
- a. There will be an order of status quo to be maintained by all the parties it being understood that the state of affairs is that none of the parties herein are to utilise the suit property pending the site visit to be conducted by the Hon. Deputy Registrar of this Court, and/or further orders of this court.
- b. A temporary injunction order be and is hereby issued restraining the Joshua Soi Chero either by himself or his agents from selling, transferring, alienating and dealing with land parcel number Moi's Bridge/Moi's Bridge Block 12 (Excullen)/364 in any manner pending the hearing and determination of this suit.



- c. The 3<sup>rd</sup> Defendant's Preliminary Objection dated 4<sup>th</sup> April, 2025 is without merit and the same is dismissed.
- d. Each party shall bear their own costs.

59. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025 VIDE MICROSOFT TEAMS.**

**HON. C. K. YANO**

**ELC, JUDGE**

In the presence of;

Mr. Ketter N. K. for the Defendant.

Mr. Yego for Plaintiff.

Court Assistant - Laban.

