



**Sum v Kiptanui & another (Environment and Land Appeal
E003 of 2025) [2025] KEELC 4343 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E003 OF 2025**

CK YANO, J

MAY 21, 2025

BETWEEN

JOEL CHERUIYOT SUM APPELLANT

AND

BENJAMIN KIPTANUI 1ST RESPONDENT

JEREMIAH TANUI 2ND RESPONDENT

RULING

1. Vide a Notice of Motion dated 20th February, 2025 and filed under certificate of urgency, the Plaintiff/Appellant sought the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. That an order of temporary injunction be and is hereby issued to restrain Benjamin Kiptanui and Jeremiah Tanui, in their personal capacity or through their employees, agents or servants, assignees or anybody acting under their instruction from trespassing onto and/or interfering with the fence, boundaries, or structures on the property, intimidating the plaintiff or his workers, threatening the plaintiff's life or otherwise and/or in any way interfering with the possession and occupation of Joel Cheruiyot Sum in the property known as Uasin Gishu/Kahungura/397 measuring 8.3Ha pending the hearing and determination of Eldoret ELC Appeal No. E003 of 2025.
 5. An order of Inhibition be issued restraining the Land Registrar – Uasin Gishu County and/or the Land Settlement Officer or any other person acting in capacity and/or acting on their behalf and/or under their instructions from registration of any disposition or making of entries



in the register of land reference No. Uasin Gishu/ Kahungura/397 measuring 8.3Ha pending the hearing and determination of Eldoret ELC Appeal No. E003 of 2025.

6. Any trespass onto and/or in any way interfering by Benjamin Kiptanui and Jeremiah Tanui in their personal capacities or through their employees, agents or servants, assignees or anybody acting under their instructions from trespassing onto and/or interfering with the fence, boundaries or structures on the property, intimidating the plaintiff or his workers, threatening the plaintiff's life or otherwise and/or in any way interfering with the possession and occupation of Joel Cheruiyot Sum in the property known as No. Uasin Gishu/ Kahungura/397 measuring 8.3Ha or from registration of any disposition or making of entries in the register of land reference No. Uasin Gishu/ Kahungura/397 measuring 8.3Ha without the express authority from this court shall constitute intermeddling with the estate punishable under the provisions of the statute as Contempt of court.
7. The Officer Commanding Station (OCS) Naiberi Police Station do ensure compliance with the orders issued herein.
8. Costs be in the cause.
2. The application is based on the 17 grounds on the face of the application and on the Appellant's Supporting Affidavit sworn on even date and a Supplementary Affidavit dated 24.3.2025. He stated that he is the registered owner of land parcel No. Uasin Gishu/ Kahungura/397 measuring 8.3Ha and has been in occupation thereof since its acquisition.
3. He explained that he filed a suit in the trial court vide Eldoret CM ELC No. E191 of 2024, which was struck out on account of pecuniary jurisdiction, vide the ruling of the court delivered on 22nd January, 2025, hence the instant appeal.
4. It is his claim that between 22/1/2025 and 28/1/2025, the respondents have unlawfully attempted to evict him from the suit land, contrary to the provisions of the Land Act and Article 40 of the Constitution which safeguards his rights to property.
5. It is his contention that he is apprehensive that the Land Registrar and the Land Settlement Officers, under the influence from the respondents are likely to alter the land register in respect to the suit parcel, which he maintained would undermine the land administration process and create irreparable harm to him.
6. He maintained that he has established a prima facie case for injunctive relief, since he is the registered owner of the suit land with rights are guaranteed under sections 24, 25 and 26 of the Land Registration Act and Article 40 of the Constitution.
7. Further, he avers that the balance of convenience heavily tilts in favor of preserving the status quo currently existing at the land registry and on the ground. That he stands to suffer prejudice unless the orders sought are granted. That there is need for the orders sought to be granted in order for his ownership rights to be preserved and to ensure justice.
8. In his supplementary affidavit, he admitted that the initial allottee of the suit land was the late Kiptanui A. Too. That however, the said Kiptanui Too failed to comply with the terms of the allocation as outlined in the letter of allotment dated 28.4.1983 and which led to the allocation being rescinded.
9. It is his claim that he only made an application for the allotment of the suit land upon being satisfied that it was available for allocation. That his application was approved and upon payment of all the requisite amounts, he was issued with a title deed in his name.



10. He dismissed the claims by the respondents that the family of the late Kiptanui A. Too has been in possession of the suit property to date and maintained that the land was vacant and he took immediate possession upon being issued with the title deed.
11. The application was opposed. The Respondents jointly filed their Replying Affidavits sworn on 26th February, 2025. They dismissed the application as being frivolous, vexatious, brought in bad faith and is marred with unfounded, malicious and misconceived allegations and should therefore be dismissed.
12. It is their claim that the applicant has introduced issues at the appellate stage that were not subject of the suit in the trial court. That whereas the memorandum of appeal focuses on challenging the trial court's finding on its pecuniary jurisdiction, the application raises weighty, substantive and new issues of ownership, possession and cancellation of the title of the suit land.
13. That contrary to the averments made by the applicant on the issue of ownership, they deponed that the suit land was allotted to the late Kiptanui A. Too, vide a letter of allotment dated 28/4/1983. They contend that the family of the late Kiptanui A. Too has been in continuous, peaceful and uninterrupted possession of the subject land for a period of more than 41 years until sometimes on 18/10/2024, when the applicant invaded the property.
14. They accused the applicant of forcefully cutting and destroying the fence, invading the suit property using hooligans and erecting temporary structures in an effort to claim occupation of the suit land. They annexed photographs to show the destroyed trees and the temporary structures on the suit land.
15. It is further their claim that the applicant had failed to prove the allegations of the purported eviction or disruption of the status quo to warrant the grant of the orders sought. In conclusion, they urged the court to dismiss the application with costs.
16. The Application was canvassed by way of written submissions. The applicant filed his submissions dated 26th March, 2025 while the respondents filed their submissions dated 1st April, 2025, which I have read and considered.

Analysis and Determination:

17. Looking at the application, the affidavits together with the annexures thereto as well as the rival submissions in totality, it is my considered view that the only issue arising for determination is whether the Applicant has met the requirements for the grant of a temporary order of injunction as sought.
18. The grant of injunctions is governed by the provisions of Order 40 (1) (2) of the Civil Procedure Rules which provides as follows: -
 1. 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;
 - (b),
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 orders.”



19. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 also empowers this court to grant interim preservation orders, including an interim order of injunction in the nature sought herein.
20. An applicant seeking orders of injunction is under a duty to sufficiently demonstrate the 3 elements as set out in *Giella vs Cassman Brown and Co. Ltd* [1973] EA. 358 at 360 where the court held as follows: -
 - a). where he is required to demonstrate that he has a prima facie case with serious triable and arguable issues with a probability of success against the respondent. The test on prima facie case does not mean establishing a case beyond reasonable doubt;
 - b). He will suffer irreparable harm/injury which cannot be adequately compensated by damages;
 - c). Balance of convenience: In granting an injunction under this condition the court must be satisfied that the hardship or inconvenience which is likely to be caused to the applicant by declining the injunction will be greater than that which is likely to be caused to the respondent.
21. The 3 elements/principles outlined above are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. The existence of one element alone does not automatically entitle an applicant to an order of injunction without considering the other elements. See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86.
22. On whether the applicant has established a Prima Facie case which raises arguable and triable issues with a probability of success, the Court of Appeal in *Mrao Ltd vs. First American Bank of Kenya and 2 Others* (2003) KLR 125 explained what amounts to a prima facie case and stated as follows:

“a prima facie case in a civil application 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.”
23. The applicant’s claim is premised on the fact that he is the registered owner of the suit land and has been in possession and occupation thereof. He contends that the respondents are intent on interfering with his ownership and possession and are threatening to evict him.
24. The respondents on the other hand dismissed the claims made by the applicant. It is their contention that they have been in possession and occupation of the suit land for a period of over 41 years. That contrary to the averments made in the application, the applicant invaded the suit land sometimes in November, 2024 using hooligans and destroyed the trees on the land parcel and put up temporary structures.
25. I have critically considered the rival positions by parties herein. Both parties contend that they are the actual and beneficial owners of the suit parcel. The applicant’s ownership claim is anchored on the title deed duly registered in his name while the respondents’ ownership claim is anchored on the Allotment Letter issued in favor of their late father Kiptanui A. Too. Both parties further contend that they are in occupation and use of the suit land.
26. Before delving into the merits of whether the applicant has established a prima facie, I wish to comment on the background of this matter. The appeal before this court arises out of the decision in Eldoret CMELC No. E191 of 2024.
27. The appellant/plaintiff had filed the suit therein and an application for injunction. The respondents filed their response and a notice of preliminary objection, challenging the jurisdiction of the



Magistrates' court to entertain the suit as filed. The trial court issued its ruling on the preliminary objection on 22.1.2025, whose effect was to strike out the suit for want of pecuniary jurisdiction, hence the instant Appeal.

28. I have carefully considered the averments made by the applicant on the issue of prima facie case as a basis of his ownership as well as the ownership claims made by the respondents on their Replying Affidavit.
29. It is my considered opinion that delving into the merits of the elements of temporary injunction would amount into delving into issues that were never discussed by the trial court at the appellate court for the first time.
30. Further, I do also note the averments made by the respondents and the annexures in proof thereof of the destruction of trees on the suit land by the applicant and his agents. It is interesting to note that the applicant is seeking to restrain the respondents while he is also causing damage by cutting trees. A party who seeks an equitable relief should come to court with clean hands. Certainly, from the material on record, it is clear that it is the applicant who is busy damaging the suit property while asking this court to restrain the respondents. He therefore cannot benefit from the court's discretion.
31. Be that as it may, I do acknowledge the need to preserve the suit property from wanton destruction or change in status pending the determination of the appeal by this court. Consequently, I find that there is need to safeguard and maintain the status quo in the interest of justice, pending the determination of the appeal.
32. Status quo has been defined as the situation as it exists. The court in the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, while discussing the purpose of an order of status quo explained as follows: -

“ ... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”
33. In view of the foregoing, I find that the Notice of Motion Application dated 20th February, 2025 is not merited and is hereby dismissed.
34. However, in the interest of justice and in order to preserve the subject matter of the appeal herein, I do issue an order of status quo, prevailing before the issuance of the ruling by the trial court on 22.1.2025, pending the hearing and determination of the appeal.
35. The applicant and the Respondents are stopped from conducting any new activities or putting up structures that will change the status of the suit land. The suit land should also not be alienated in any manner until the appeal is heard and determined.
36. Parties to bear their own costs.
37. It is so ordered.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 21ST DAY OF MAY, 2025.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered in the presence of: -

Mr. Githaiga for Respondents.



Ms. Chirchir holding brief for Ms. Chesoo for Appellant.

Court Assistant – Laban

