



Chuma & 4 others (Suing at the Legal Representatives of the Estate of the Late Kipkorir Kogo Kipsang alias Kironya Kogo - Deceased) v Kiplimo (Environment & Land Case E001 of 2024) [2025] KEELC 3823 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3823 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E001 OF 2024**

CK YANO, J

MAY 15, 2025

BETWEEN

**ROSA TELE CHUMA 1ST PLAINTIFF
MONICA CHEPKOECH SITIENEI 2ND PLAINTIFF
MARY CHEPKEMBOI 3RD PLAINTIFF
MUTAI KIPSANG 4TH PLAINTIFF
JANE JEPCHOGE 5TH PLAINTIFF
SUING AT THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
KIPKORIR KOGO KIPSANG ALIAS KIRONYA KOGO - DECEASED**

AND

JOSEPH KIPLIMO DEFENDANT

RULING

1. Vide a Notice of Motion dated 3rd February, 2025 and filed under certificate of urgency, the Plaintiffs/ Applicants sought the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That pending the hearing and determination of the suit, a temporary order of injunction do issue against the Defendant/ Respondent, his agents, servants and/or any other person claiming or acting on the Defendant/ Respondent's instructions, restraining him from disturbing and/or preventing the Plaintiffs/ Applicants from using, possessing, occupying and/or use of land parcel No. Kapsaret/ Kapsaret Block 6 (Kapsaret)/17 and/or barring the



Plaintiffs/Applicants from accessing the suit property, evicting and/or in any other manner interfering with the Plaintiff/Applicant's occupation, possession and/or use of the said land.

- d. That costs of this Application be borne by the Defendant/ Respondent.
2. The application is based on the 13 grounds on the body of the application and on the Supporting Affidavit sworn on even date and on the Supplementary Affidavit dated 4.4.2025 and sworn by Rosa Tele Chuma, on her own behalf and on behalf of the co-applicants.
 3. She avers that they have been living on the suit parcel, together with her co-applicants, and that they were born and raised on the suit parcel.
 4. It is her claim that the land was acquired by her late father, Kipkorir Kogo Kipsang alias Kironya Kogo, but their father died before the land was transferred to his name. She however maintained that they have been enjoying quiet possession and use of the land throughout their lifetime despite not having a title registered in the name of their late father.
 5. That the defendant/respondent had never attempted to evict or interfere with their possession and use of the suit land until sometimes in February, 2025, when he threatened them with physical harm and other dire consequences if they continued using or carrying out any other activities on the suit land.
 6. It is her claim that the respondent illegally and/or fraudulently acquired title to the suit land; having irregularly registered himself as the owner of the suit property to the exclusion of the applicants and the other beneficiaries of the estate of their late father.
 7. It is her contention that the respondent's actions amount to disinheriting them of their rightful inheritance and maintained that the suit parcel rightful belongs to them as children of the late Kipkorir Kogo Kipsang alias Kironya Kogo.
 8. She deponed that they have a prima facie case against the respondent with high chances of success. Her basis is that the respondent irregularly presented himself as the owner of the suit land despite having knowledge that the land belonged to their late father and was to be shared by all the beneficiaries of his estate.
 9. Further, that the respondent became the registered owner of the suit land without filing a Succession Cause in respect of the estate of the late Kipkorir Kogo Kipsang alias Kironya Kogo, who was the owner of the said land.
 10. It is also her contention that they stand to suffer irreparable loss incapable of monetary compensation in the event that the orders sought are not granted.
 11. She avers that the balance of convenience tilts in their favor since they have been in possession and have been using the subject land since their birth.
 12. She thus argued that it is in the interest of justice that the orders sought of injunction be granted pending the hearing and determination of the suit.
 13. In her supplementary affidavit, it was her contention that they have never leased the suit land from the respondent as alleged and maintained that the suit land is a family land which has always been used by the beneficiaries of the estate of her late father, Kipkorir Kogo Kipsang.
 14. It is their claim that on the strength of the respondent's admission that he acquired the suit land after the demise of the late Kipkorir Kogo Kipsang, that the same points to the fact that he simply intermeddled with the suit property.



15. The application was opposed. The Respondent filed a Replying Affidavit sworn on 24th March, 2025. He denied all the allegations made by the applicants and dismissed the application as having been filed in bad faith with the intention of depriving him of his rightful ownership of the suit parcel.
16. He admitted the averments made by the applicants that the late Kipkorir Kogo Kipsang purchased the suit land measuring approx. 19.10Ha, from one Norman Moody. However, it was his contention that the late Kipkorir Kogo Kipsang died before completing all the payments in respect to the suit land, which was at the time charged, and could therefore not be registered in his name.
17. It is his claim that after the demise of the late Kipkorir Kogo Kipsang, he made efforts to source funds and paid off the remaining balance and consequently had the suit parcel discharged. He thereafter had the suit parcel registered in his name and he maintained that he followed the due process in the registration of the land in his name.
18. He denied the allegations made in paragraph 4 of the Supporting Affidavit that he threatened the applicants with physical harm and asserted that he only informed the applicants of his legal ownership of the land and those on fraud.
19. It is his contention that the plaintiff has not provided any evidence to support their claim that the suit parcel was meant to be shared among all the beneficiaries of the estate of the late Kipkorir Kogo Kipsang or that they have enjoyed a quiet possession of the suit land throughout their lifetime
20. The respondent maintained that he is in exclusive possession of the suit parcel and that he only leased a portion of the suit land measuring 7 acres to plough between the year 2019 – 2024, at a consideration of Kshs. 15,000/= per acre per year. That the applicants thus intend to gain illegal entry into the suit land.
21. Further, he averred that the applicants will not suffer any irreparable loss if the orders sought are not granted since they have no legal entitlement to the land. He maintained that the balance of convenience tilts in his favor since he is the registered owner of the suit property. He thus urged the court to dismiss the application with costs.
22. The Application was disposed of by way of written submissions. However, from a perusal of the court record, I have only seen the respondent's submissions 26th March, 2025 together with authorities, which I have read, considered and summarized as hereunder.

Respondent's Submissions;

23. The Respondent submitted on 4 issues, touching on the 3 principles to be proved to warrant the grant of a temporary injunction and costs of the application.
24. On the first issue of prima facie case, he relied on the definition of a prima facie case as outlined in the case of Mrao vs First American Bank of Kenya Limited & 2 Others [2003] eKLR and Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR.
25. He submitted that he is the registered owner of the suit land, having properly acquired the title thereto in accordance with the law. That the applicants have failed to demonstrate any right to the suit property that has been or is threatened with violation.
26. He dismissed the claims by the applicants that the subject land belonged to their late father and averred that the same had not been supported by any credible evidence and are mere allegations. That no proof has been adduced by the applicants of their father's ownership of the suit land.



27. It was his assertion that the registration of the defendant as the proprietor of the suit land under the LRA confers valid title and that the applicants have not demonstrated any valid and legal basis for challenging the respondent's title.
28. Further, he claimed that no evidence has been adduced to prove that the applicants have instituted succession proceedings in respect of their late father's estate as required by law. Thus, it is his contention that the applicants cannot claim any legal right to the property.
29. Therefore, it was his position that the applicants' claim is based on unsubstantiated allegations and does not meet the threshold of a prima facie case with a probability of success.
30. On issue No. 2 of whether the Applicants will suffer irreparable harm, he relied on the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* in defining what amounts to an irreparable injury or harm. It was his submission that the applicants have failed to demonstrate any irreparable harm that they will suffer if the orders sought are not granted. It was his contention that the alleged inconvenience or loss as claimed by the applicants can be adequately compensated by damages.
31. Further, it was his claim that the applicants have not provided any specific instances of actual harm that has occurred or which is imminent. Thus, he maintained that the applicants have failed to demonstrate the irreparable loss that they will suffer that cannot be adequately compensated by an award of damages.
32. On the last element of balance of convenience, he relied on the decision in *Bryan Chebii Kipkoech vs Barnabas Tuitoek Bargarioria & Another* [2019] eKLR.
33. He submitted that the balance of convenience significantly favors the respondent who is the registered owner of the suit property and has invested in it. Hence granting the injunctive orders would unjustly deprive the respondent of his legal rights as the registered proprietor and he stands to suffer greater prejudice.
34. He further averred that the applicants have not adduced any evidence of their continuous and uninterrupted possession despite stating that they have been using the suit land since birth.
35. The respondent maintained that he had not engaged in any acts that would warrant the court's intervention through injunctive reliefs. That the allegations of threats are unsubstantiated and are intended to mislead the court.
36. In conclusion, it was his submission that the applicants have failed to satisfy the conditions necessary for the grant of a temporary injunction and urged the court to dismiss the application with costs.

Analysis and Determination:

37. From the foregoing, it is my considered opinion that the sole issue arising for determination is whether the Applicants have met the requirements for the grant of a temporary order of injunction as sought.
38. The law governing injunctions is found under 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.”

39. Section 13 (7) (a) of the *Environment and Land Court Act*, 2015 further empowers this court to grant interim preservation orders, including an interim order of injunction in the nature sought herein.
40. The principles governing the grant of injunctions are well settled. An applicant seeking orders of injunction is under a duty to satisfy the 3 principles 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.
41. These 3 principles as outlined above are to be applied as separate, distinct and logical hurdles which an applicant is expected to prove consecutively. 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.
42. The first element is whether the applicants have 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.”
43. I have carefully considered the rival positions presented by both parties. It is not in dispute that the suit parcel is registered in the name of the respondent, who holds a title thereto.
44. I do however note that the said title in the name of the respondent is the basis of the applicants’ claim and this court if therefore careful not to delve into the manner of obtaining the said title which is an issue in the substantive suit, at this interlocutory stage.
45. What however the applicants need to establish is that they have a prima facie case, which is genuine and arguable and there exists a right which has been infringed by the respondent.
46. It is the applicants’ claim that they have been in quiet possession of the suit land, which belonged to their father, over the years despite the same not having been registered in the name of their father. That the respondent fraudulently presented himself as the owner of the suit land and had the suit land registered in his name. The Applicants averred that they have been residing on and using the suit land for a long period of time. That in February, 2025, when the Applicant’s begun tilling and/or



- preparing the suit land for planting, the Respondent threatened them with physical harm and other dire consequences if the Applicants continued being on the land or carrying out any activities thereon.
47. On his part, the respondent maintained that he is the lawful proprietor of the suit land and has been in exclusive possession and occupation.
48. In their plaint, the Applicants pleaded that in or about the year 1963, the late Kipkorir Kogo Kipsang purchased a portion of land out of LR. No 10554 which was charged to Agricultural Settlement Funds Trustee and was services through AST No. 00608. That the late Kipkorir Kogo Kipsang died before the property was registered in his name though he was in possession until his demise and after his demise, the Applicants continued occupying and utilizing the land. The Applicants accuse the Respondent of fraudulently and illegally registering the land in his name.
49. In his defence, the Respondent admits that the late Kipkorir Kogo Kipsang entered into a land sale agreement with one Norman Moody for the purchase of the suit land, but passed on before completing all payments in respect of the charged suit land and as such the property could not be registered in his name. The Respondent avers that after the demise of the late Kipkorir Kogo Kipsang, he (the Respondent) made frantic efforts to source for funds and paid off the remainder of the charge dues in respect of the suit land parcel, and as such was able to discharge the land which was due for repossession and/or auction by the Agricultural Settlement Funds Trustee, and thereafter registered the land in his name. Among the prayers sought by the Applicants in their plaint is an order for cancellation of the title in the Respondent's name, alleging that the registration of the suit property in the Respondent's name was unprocedural, unlawful and tainted with illegality.
50. The question that therefore follows is whether the Applicants have established a prima facie case as defined in the Mrao case above. My answer to this is in the affirmative. This is because it is clear that both parties are laying a claim on the suit land. From the facts, the Applicants have shown and the Respondent has admitted that at one time the late Kipkorir Kogo Kipsang had an interest in the land. The issue of ownership and whether or not the registration of the land in the Respondents name was illegal or unprocedural are issues to be determined at the main trial. At this stage, it suffices to state that based on the material presented before this court by the Applicants, it is my considered opinion that the applicants have demonstrated that they have a prima facie case.
51. The second element is that the Applicants must demonstrate the irreparable loss and injury that they are likely to suffer and which cannot be adequately compensated by an award of damages unless an order of injunction is granted. In my considered view, should the Applicants be evicted, this will destroy the substratum of the suit and will occasion irreparable harm to the Applicants as they will also be deprived of their livelihood before the issue of ownership of the suit land is heard and determined.
52. On the element of balance of convenience, this court is satisfied that the inconvenience likely to be caused to the applicants by declining the injunction is greater than that which is likely to be caused to the respondent. It is therefore my finding that the balance of convenience lies in favour of the applicants.

Costs:

53. The general rule is that costs follow the event. However, in this case, I have taken note of the fact that the parties are siblings and will therefore exercise my discretion in not granting costs of the application.

Orders:

54. The application dated 3rd February, 2025 is allowed in the following terms: -



- a. An order of temporary injunction be and is hereby issued, restraining the Respondent/ Defendant, his agents, servants and/or any other person claiming or acting on the Respondent's instruction from disturbing and/or preventing the Plaintiffs/ Applicants from using processing, occupying or in any other manner interfering with the plaintiffs/Applicants' use of the suit parcel No. Kapsaret/Kapsaret Block 6 (Kapsaret)/ 17.
- b. For the avoidance of doubt, the order of temporary injunction issued in (a) above is limited to the portion currently occupied, possessed and used by the plaintiffs/Applicants.
- c. Parties to bear their own costs of the Application.

55. It is so ordered.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 15TH DAY OF MAY, 2025.

HON. C. K. YANO

JUDGE, ELC

Ruling delivered in the presence of: -

Mr. Onyango holding brief for Mr. Yego for Respondent.

Ms. Odwa for Plaintiffs/Applicants.

Court Assistant – Laban

