



**Tonui v Bett (Civil Miscellaneous Application E013 of 2024)
[2024] KEHC 7359 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL MISCELLANEOUS APPLICATION E013 OF 2024**

**JK SERGON, J
JUNE 19, 2024**

BETWEEN

SARAH CHEPKEMOI TONUUI APPLICANT

AND

SAMSON KIPLAGAT BETT RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 30th April, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That pending the inter partes hearing of this application, a temporary injunction be issued to restrain the respondent, whether by themselves, their family members, servants and/or agents or otherwise from further intermeddling in the suit land known as LR No Kericho/Kipkelion/Chepseon/Block 4/ Chepseon 452 (1.63 Ha) more so expanded cultivation, leasing to third parties, trespassing upon, building and selling and all other dealings with the suit land therein in any manner whatsoever.
 - (iii) That upon the hearing and determination of this application, the respondent be ordered to restore the land to its original state and be fined accordingly for the offence of intermeddling.
 - (iv) That the OCS Chepseon be directed to supervise the order sought herein.
 - (v) Any other orders that this Court deems fit and just to grant.
2. The application is supported by grounds on the face of it and the supporting affidavit of Sarah Chepkemoi Tonui the applicant herein.



3. The applicant avers that the deceased was the registered and absolute owner of the suit property LR No Kericho/Kipkelion/Chepseon/Block 4/Chepseon 452 and LR No Kericho/Kapsoit/1124 measuring a total of 18 acres.
4. The applicant avers that the deceased died on 6th October, 2014 being survived by two wives Grace Tonui, the first wife and Sarah Chepkemoi Tonui, the second wife and the applicant herein. The applicant proceeded to list all the beneficiaries of the deceased comprising the first and second houses.
5. The applicant avers that they are in the processes of taking out letters of administration and commencing the succession process and that it was mutually agreed amongst the beneficiaries that each household would occupy separate portions of the property without interference by the other household as per the wishes of the deceased prior to his demise.
6. The applicant avers that the two parcels comprising the deceased's estate, have been developed severally and occupied by various beneficiaries as assigned by the deceased during his lifetime.
7. The applicant avers that the deceased had explicitly stated that the parcels to be occupied by the two households; Sarah Chepkemoi Tonui and Grace Chelangat Tonui, with each widow being responsible for distributing her share among her offspring and beneficiaries.
8. The applicant avers that contrary to the aforementioned arrangement, one Samson Kiplagat Bett, the respondent herein, part of the first household has encroached upon the portion occupied by members of the second household and that the respondent intends to carry out cultivation, construction and other activities that are inconsistent with the occupation and peaceful enjoyment of the second household. The applicant avers that the said activities are tantamount to intermeddling with the estate of the deceased.
9. The respondent filed a preliminary objection and grounds of opposition in respect to the application on the following grounds among others:-
 - (i) That the applicant herein has no *locus standi* to sue for and/ or on behalf of the estate of Kipsongol Arap Tonui.
 - (ii) That the application herein is defective for lack of an appropriate pleading and as such the same offends the provisions of Order 3 Rule 1 of the [Civil Procedure Rules](#).
 - (iii) That the orders being sought are substantive in nature and cannot be granted by way of a miscellaneous application.
 - (iv) That the entire application should be struck out with costs.
10. The respondent also filed a replying affidavit in opposition to the notice of motion dated 30th April, 2024.
11. The respondent is the youngest son of Kipsongol Arap Tonui (the deceased herein) from the first family. The respondent avers that his father died on 6th October, 2014 and was survived by two houses.
12. The respondent avers that as a family they have never filed a succession cause with regard to their father's estate and the applicant herein has no authority to present the current proceedings on behalf of the estate as she is not an administrator of the said estate.
13. The respondent avers that the deceased, is the registered absolute owner of land LR No. KERICHOKIPKELION/ CHEPSEON BLOCK 4 (CHEPSEON) /452 (4.02 acres) and LR No. KERICHOKAPSOIT/1124 (14 acres).



14. The respondent avers that the family met to confirm their deceased father's allocation of the estate property as a precursor to commencing the succession but the same has not been filed. The respondent further avers that during the lifetime of his father, the father voluntarily and on his own volition took him to the suit property i.e.LR No. Kericho/Kipkelion/ Chepseon Block 4 (Chepseon) /452, identified and showed him the exact position to construct his dwelling home and where to carry out farming activities.
15. The respondent avers that the estate his father is made up of two assets i.e.LR No. Kericho/Kipkelion/ Chepseon Block 4 (Chepseon) /452 (4.02 acres) andLR No. Kericho/Kapsoit/ 1124 (14 acres) both developed severally and were occupied by the various beneficiaries as assigned by the deceased during his lifetime and all the beneficiaries have remained in the respective portions to date.
16. The respondent avers that since the year 2006, when his father showed him the portion of land to occupy, nobody among the family members ever raised an objection or has ever come forward to lodge a claim of ownership even at the time of his demise on 6th October 2014.
17. The respondent maintained that the applicant and her children wanted to evict him from the farm that was willingly and legitimately allocated to him by his late father with the intention of rendering him landless, homeless and destitute since all his brothers had occupied their portions without any dispute.
18. The respondent urged this court to intervene and direct the applicants herein to stop interfering with possession of the land given to him by his father.
19. The parties were directed to canvas the matter via written submissions, however, at the time of writing the ruling the parties were yet to comply and file their submission of the Case Tracking System.
20. Having considered pleadings filed by the parties, the sole issue for determination by this court is whether to issue a temporary injunction in respect toLR No Kericho/Kipkelion/Chepseon/Block 4/ Chepseon 452. The answer is in the negative. It is my finding that given the fact that the parties are yet to file succession proceedings in the matter, the applicant has no *locus standi* to approach the court and in any event the applicant has not established a cogent case warranting a temporary injunction. The purpose of a temporary injunction as stated in Order 40 Rule 1 of the [Civil Procedure Rules, 2010](#) is to stay and prevent the wasting, damaging, alienation, the sale, removal or disposition of the suit property. The principles which guide the court in deciding whether or not to grant an interlocutory injunction are well settled in the locus classicus case of [Giella v Cassman Brown & Co. Ltd \[1973\] EA 358](#) as follows;
 - (i) prima facie with a probability of success,
 - (ii) the applicant might otherwise might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages, and
 - (iii) if the court is in doubt on the existence or otherwise of a prima facie case, it will decide the application on the balance of convenience.”
21. In [Nguruman Limited v Jan Bonde Nielsen & 2 Others](#) [2014] eKLR the Court of Appeal restated the law as follows: “ In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;
 - (a) establish his case only at a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.



These are the three pillars on which rests 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. See *Kenya Commercial Finance Co. Ltd V. Afraba Education Society [2001]* Vol. 1 EA 86. 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 is 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. The existence of a *prima facie* case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted. "

22. In light of the foregoing, I find that the notice of motion dated 30th April, 2024 is devoid of merit, it is hereby dismissed with no orders as to costs, each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Biko for the applicant

Wangare for the Respondent

