



**Cheruiyot & another (Suing as the Legal Representatives of the Estate of the Late Mary Chebet Sanga) v Chepkwony (Sued as the Legal Representative of the Estate of the Late Cheres Tapkerono Koske - Deceased) & 2 others (Environment & Land Case E007 of 2024) [2025] KEELC 3798 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3798 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE E007 OF 2024**

**LA OMOLLO, J  
MAY 12, 2025**

**BETWEEN**

**BENARD KIPRONOH CHERUIYOT ..... 1<sup>ST</sup> PLAINTIFF  
VINCENT YEGO KIPRONO ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE  
MARY CHEBET SANGA**

**AND**

**JOSEPH KIPKEMOI CHEPKWONY (SUED AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF THE LATE CHERES TAPKERONO KOSKE -  
DECEASED) ..... 1<sup>ST</sup> DEFENDANT  
THE LAND REGISTRAR KERICHO ..... 2<sup>ND</sup> DEFENDANT  
THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 15<sup>th</sup> May, 2024. It is expressed to be brought under Sections 1A, 1B & 3A of the *Civil Procedure Act* and Order 40 Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. Spent



- c. That pending the hearing and determination of this suit, the Defendants/Respondents be restrained by way of an injunction either by themselves, their agents, employees, servants and/or persons claiming under them from trespassing, entering, remaining on, demarcating, subdividing, leasing, selling, developing, interfering with and/or in any way adversely dealing with land parcels known as LR No. Kericho/Kaptebengwet/9 into LR No. Kericho/Kaptebengwet/255, 256 and 257 respectively. (sic)
  - d. That the costs of this application be borne by the Defendants/Respondents.
3. The application is based on the grounds on its face and the supporting affidavit of one Vincent Yego Kiprono sworn on 15<sup>th</sup> May, 2024.

### **Factual Background.**

4. The Plaintiffs/Applicants commenced the present proceedings vide the Complaint dated 15<sup>th</sup> May, 2024. They seek the following prayers;
  - a. A declaration that the late Mary Chebet Sanga (Deceased) is the legal owner of the land LR No. Kericho/Kaptebengwet/9 and/or the resultant subdivisions being LR No. Kericho/Kaptebengwet/255, 256 and 257 respectively.
  - b. A declaration that the Defendant's (sic) subdivision of LR No. Kericho/Kaptebengwet/9 into LR No. Kericho/Kaptebengwet/255, 256 and 257 respectively and subsequent registration of the same in his name was illegal, irregular, fraudulent, un-procedural hence null and void ab initio.
  - c. An order declaring the Land Registrar Kericho, the 2<sup>nd</sup> Defendant herein to cancel the title deeds for LR No. Kericho/Kaptebengwet/255, 256 and 257 respectively and reinstate and/or restore the title for LR Kericho/Kaptebengwet/9 in favour of the late Mary Chebet Sanga (Deceased).
  - d. An order of permanent injunction restraining the Defendant either by himself, his agents, family members, servants, employees and/or any other person claiming under him from, entering, trespassing on, remaining on, selling, charging, leasing, renting and/or in any manner interfering with the Plaintiffs' peaceful and quiet and peaceful (sic) and use of LR No. Kericho/Kaptebengwet/9 and/or the resultant subdivisions being LR No. Kericho/Kaptebengwet/255, 256 and 257 respectively.
  - e. General damages for loss of user.
  - f. Mesne profits.
  - g. Costs of this suit.
  - h. Interest in (sic) (d), (e) and (f) at Court rates from the date of filing the suit until payment in full.
  - i. Any other or further relief that this Honourable Court may deem fit and just to grant.
5. The 1<sup>st</sup> Defendant/Respondent filed his Statement of Defence dated 6<sup>th</sup> June, 2024 wherein he denies the averments in the Complaint and seeks that the Plaintiffs/Applicants suit be dismissed with costs.
6. As at the time of writing this ruling, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents have entered appearance but have not filed their Statements of Defence.



7. The application under consideration first came up for directions on 22<sup>nd</sup> May, 2024 when the Court directed that it be served upon the Defendants/Respondents.
8. The application was scheduled for hearing on 10<sup>th</sup> June, 2024 and was adjourned to 17<sup>th</sup> July, 2024 on which date it was further adjourned to 1<sup>st</sup> October 2024.
9. On 1<sup>st</sup> October, 2024, parties were given time to explore the option of compromising the application by issuance of status quo orders.
10. On 8<sup>th</sup> October, 2024 the Court was informed that the parties were not able to agree and the Court issued directions that the application be heard by way of written submissions.
11. On 12<sup>th</sup> November, 2024, the application was mentioned to confirm filing of submissions and then reserved for ruling .

### **The Plaintiffs/Applicants Contention.**

12. The 2<sup>nd</sup> Plaintiff/Applicant contends that he has the authority of the 1<sup>st</sup> Plaintiff/Applicant to swear the affidavit on his behalf.
13. He also contends that they are the children of the late Mary Chebet Sanga and legal representatives of her estate having obtained grant of letters of administration intestate dated 25<sup>th</sup> January, 2024 in Bomet SRM Succession Cause No. E41 of 2023; Estate of the late Mary Chebet Sanga.
14. He further contends that their deceased mother is the legal owner of land parcel No. Kericho/Kaptebengwet/9 measuring approximately 6.4 Ha having been registered as the owner on 17<sup>th</sup> May, 1974.
15. It is his contention that the late Mary Chebet Sanga alias Tabutany w/o Sanga was in physical occupation of the suit property and that she died on 29<sup>th</sup> March, 1995.
16. It is also his contention that they commenced succession proceedings and filed the aforementioned succession suit with the consent of all the other beneficiaries.
17. It is further his contention that on 4<sup>th</sup> April, 2023 they conducted a search on the suit parcel at Bomet County Land Registry for purposes of filing Summons for Confirmation of Grant and that they discovered that the late Cheres Tapkerono Koske had without their consent subdivided land parcel No. Kericho/Kaptebengwet/9 into land parcel No's Kericho/Kaptebengwet/255, 256 and 257.
18. He contends that the late Cheres Tapkerono Koske transferred land parcel No. Kericho/Kaptebengwet/255 to Mary Chebet Sanga (Deceased), Kericho/Kaptebengwet/256 to one James Kipngetch Kenduiywa on 12<sup>th</sup> May, 1980 and then to his name on 16<sup>th</sup> November, 1987.
19. It is his contention that the late Cheres Tapkerono transferred land parcel No. Kericho/Kaptebengwet/257 to the late Mary Chebet Sanga (Deceased) on 12<sup>th</sup> May, 1980 and then to his name on 8<sup>th</sup> May, 1980 notwithstanding that the parcel file was opened on 12<sup>th</sup> May, 1980.
20. He also contends that the late Cheres Tapkerono Koske charged the suit properties to the detriment of the estate of their late mother. He adds that the late Cheres Tapkerono Koske illegally, irregularly and/or un procedurally subdivided the suit parcel.
21. He further contends that the Defendants/Respondents are unlawfully claiming proprietary interest over the suit property and the resultant subdivisions while knowing that the land belongs to their deceased mother.



22. It is his contention that the Defendants/Respondents colluded with the Land Registrar to defraud the estate of their late mother.
23. It is also his contention that the Defendants/Respondents intermeddled with the estate of a deceased person.
24. It is further his contention that the 1<sup>st</sup> Defendant/Respondent presented forged documents for purposes of securing fraudulent registration of the suit property in his favour.
25. He contends that the Defendants/Respondents trespassed and remained on the suit parcel while knowing that the land did not belong to them.
26. He also contends that the 1<sup>st</sup> Defendant/Respondent knowingly included the suit property and/or the resultant subdivisions in Kericho HC Succession Cause No. E045 of 2021 Estate of the Late Cheres Tapkerono Koske and yet the land did not form part of his estate. He adds that the Court confirmed that the suit properties form part of the estate of the late Cheres Tapkerono Koske vide the judgement delivered on 9<sup>th</sup> May, 2024.
27. He further contends that the 1<sup>st</sup> Defendant/Respondent has refused to surrender vacant possession of the suit property and the Plaintiffs/Applicants efforts to get vacant possession have been met with ridicule.
28. It is his contention that the Defendants/Respondents conduct is illegal, irregular and un procedural and it violates their rights as provided under Article 40 of *the Constitution* of Kenya. He adds that the said conduct has occasioned the estate of their late mother substantial loss.
29. The 2<sup>nd</sup> Plaintiff/Applicant sets out particulars of substantial loss that include loss of user and mesne profits. He contends that the estate of the deceased is likely to suffer irreparable harm that would be irredeemable if the Court does not grant the orders sought.
30. He also contends that the Defendants/Respondents will not suffer any prejudice if the orders sought are granted as they are intended to preserve the suit property for the benefit of all the parties.
31. He ends his deposition by stating that they have a prima facie case with high chances of success, that the balance of convenience tilts in their favour and that it is in the interest of justice that the application be allowed as prayed.

**The 1<sup>st</sup> Defendant/Respondent's Response.**

32. In response to the Plaintiffs/Applicants application, the 1<sup>st</sup> Defendant/Respondent filed a Replying Affidavit sworn on 6<sup>th</sup> June, 2024.
33. He deposes that the Plaintiffs/Applicants are not the biological children of the late Mary Chebet Sanga and that they are her grandchildren.
34. He also deposes that Samuel Kipyegon Keter is the father of the 2<sup>nd</sup> Plaintiff/Applicant while Kipkemoi Keter alias Oringi is the father of the 1<sup>st</sup> Plaintiff/Applicant. He goes to state that both fathers of the Plaintiffs/Applicants are alive.
35. He further deposes that the Plaintiffs/Applicants acknowledged in their objector's affidavit filed in Kericho HC Succession Cause No. E045 of 2021 Estate of the Late Cheres Tapkerono that the late Mary Chebet Sanga sold a portion of the suit parcel measuring two acres to the Late Cheres Tapkerono.



36. It is his deposition that the said sale led to the subdivision of the suit parcel and the creation of the new subdivisions which procedure was legal.
37. It is also his deposition that the late Mary Chebet Sanga made an application to the Land Control Board to have land parcel No. Kericho/Kaptebengwet/9 subdivided into land parcel No's Kericho/Kaptebengwet/255, 256 and 257.
38. It is further his deposition that land parcel Number Kericho/Kaptebengwet/256 was registered in the name of James Kipngetich Kenduiwa who later transferred it to the late Cheres Tapkerono Koske.
39. He deposes that the Plaintiffs/Applicants also admit that a portion of land parcel No. Kericho/Kaptebengwet/9 measuring 1.5 acres was sold to James Kipngetich Kenduiwa and another portion sold to Taita Mosonik aka Yugoi Mosonik by the late Mary Chebet Sanga who transferred the said parcels to them.
40. He also deposes that the Plaintiffs/Applicants in their affidavit of protest sworn on 12<sup>th</sup> January, 2023 admit that the late Mary Chebet Sanga sold two acres of the suit parcel to the late Cheres Tapkerono Koske vide a sale agreement dated 14<sup>th</sup> November, 1990. The said portion was registered as land parcel No. Kericho/Kaptebengwet/256 which legitimized the subdivision of the suit parcel.
41. He further deposes that the Plaintiffs/Applicants are only contesting the ownership of 2.59 Ha which is approximately 4.384 acres and yet they are claiming the entirety of land parcel No. Kericho/Kaptebengwet/9 which measures 6.4 Ha. He adds that the 2.59 Ha comprises of the two acres purchased by the late Cheres Tapkerono Koske and the portion James Kipngetich Kenduiwa transferred to him.
42. It is his deposition that the Plaintiffs/Applicants have come to Court with unclean hands as they have not accounted for the rest of the estate of the late Mary Chebet Sanga.
43. He ends his deposition by urging the Court to dismiss the Plaintiffs/Applicants application.

**Issues for determination.**

44. The Plaintiffs/Applicants filed their submissions on 12<sup>th</sup> November, 2024 while the 1<sup>st</sup> Defendant/Respondent filed his submissions on 8<sup>th</sup> November, 2024.
45. The Plaintiffs/Applicants submit on the following issues;
  1. Whether the orders sought should be granted
  2. Who should bear costs of the application.
46. With regard to the first issue, the Plaintiffs/Applicants rely on the judicial decisions of *Ali Kitsao Katana v Kassim Mohamed Omar & 5 Others* [2018] eKLR, *Mrao Ltd vs First American Bank of Kenya Ltd* [2003] eKLR and submit that they have demonstrated at paragraphs 4 and 5 of their affidavit in support of the application that they ought to be registered as owners of the suit parcel.
47. The Plaintiffs/Applicants rely on Section 26(1) of the *Land Registration Act*, the judicial decisions of *Kitamaiyu Limited v County Government-Kiambu & another* [2018]eKLR, *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010 of 2021) [2023] KESC 30 (KLR) (21 April 2023) [Judgement] and submit that they are challenging the subdivision of the suit parcel even though the 1<sup>st</sup> Defendant/Respondent deposes that the late Mary Chebet Sanga sought the consent of the Land Control Board to subdivide the land.



48. The Plaintiffs/Applicants also submit that they are challenging the root of the 1<sup>st</sup> Defendant/Respondent's title as the late Mary Sanga was the registered owner of the suit parcel until the 1<sup>st</sup> Defendant/Respondent orchestrated the suspicious subdivision.
49. The Plaintiffs/Applicants rely on the judicial decision of Naftali Ruthi Kinyua v Patrick Thuita Gachure & another [2015]eKLR and submit that they have demonstrated that they have a prima facie case with high chances of success and they are therefore deserving of the orders sought.
50. The Plaintiffs/Applicants rely on the judicial decision of Kitamaiyu Limited v County Government-Kiambu & another [2018]eKLR and submit that they will suffer irreparable damage if the orders sought are not granted as the 1<sup>st</sup> Defendant/Respondent is in the process of transmitting the suit parcel from his late father's name to his name.
51. The Plaintiffs/Applicants rely on the judicial decision of Kenya Ports Authority & another v Kaba Investment Limited & 8 Others [2019]eKLR and submit that they have satisfied the conditions necessary for grant of the orders sought.
52. The Plaintiffs/Applicants submit that alternatively the Court can grant orders of status quo as the 1<sup>st</sup> Defendant/Respondent has maintained that he is in physical possession of the suit parcel.
53. The Plaintiffs/Respondents rely on the judicial decision of Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 Others [2015] eKLR in support of their submissions.
54. The Plaintiffs/Applicants rely on Section 27 of the Civil Procedure Act and urge the Court to allow their application as prayed.
55. The 1<sup>st</sup> Defendant/Respondent reiterates his averments in his Replying Affidavit and submits that the Plaintiffs/Applicants misinterpreted facts and they have therefore failed to prove their case.
56. The 1<sup>st</sup> Defendant/Respondent also reiterates that the Plaintiffs/Applicants are grandsons of the deceased and not her sons as alleged and they should therefore not be entertained by this Court.

### **Analysis and Determination.**

57. I have considered the application, the response thereto and the rival submissions. It is my view that the only issue that arises for determination is whether the Plaintiffs/Applicants are entitled to an order of temporary injunction pending the hearing and determination of this suit.
58. In the judicial decision of Giella vs. Cassman Brown [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally 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.”



59. The Plaintiffs/Applicants must first establish a prima facie case. A prima facie case was defined in the judicial decision of *Mrao Limited vs. 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.”
60. The Plaintiffs/Applicants contend that they are the legal representatives of the estate of the late Mary Chebet Sanga. They also contend that she was the registered owner of land parcel No. Kericho/Kaptebengwet/9.
61. The Plaintiffs/Applicants further contend that the late Mary Chebet Sanga died on 29<sup>th</sup> March, 1995.
62. It is the Plaintiffs/Applicants contention that on 4<sup>th</sup> April, 2023 they went to conduct a search on land parcel No. Kericho/Kaptebengwet/9 at the Bomet Land Registry when they discovered that it had been subdivided into land parcel No’s Kericho/Kaptebengwet/255, 256 and 257.
63. It is also the Plaintiffs/Applicants contention that they found out that the late Cheres Tapkerono Koske was the one who subdivided the suit parcel and that the 1<sup>st</sup> Defendant/Respondent represents his estate.
64. It is further the Plaintiffs/Applicants contention that the 1<sup>st</sup> Defendant/Respondent listed the resultant subdivisions of the suit parcel in Kericho HC Succession Cause No. E045 of 2021 Estate of the late Cheres Tapkerono Koske as properties of the late Cheres Tapkerono Koske.
65. The Plaintiffs/Applicants contend that the 1<sup>st</sup> Defendant/Respondent has refused to give them vacant possession of the suit parcels and that they will suffer prejudice if the orders sought are not granted.
66. A copy of the green card for land parcel No. Kericho/Kaptebengwet/9 is among the documents attached to the Plaintiffs/Applicants affidavit in support of the application.
67. Entry No. I on the green card is dated 17<sup>th</sup> May, 1974 when Tabutany W/O Arap Sanga was registered as the owner.
68. Entry No. 2 is dated 28<sup>th</sup> January, 1980 when the proprietor’s name was corrected to Mary Chebet Sanga otherwise known as Tabutany W/O Sanga.
69. Entry No. 3 is dated 9<sup>th</sup> August, 1980. It shows that the title was closed on subdivision and new title No’s 255, 256 and 257 issued.
70. A copy of the green card for land parcel No. Kericho/Kaptebengwet/257 has been annexed. Entry No. 1 is dated 12<sup>th</sup> May, 1980 when Mary Chebet Sanga was registered as the owner. The 12<sup>th</sup> is crossed out and in its place 9<sup>th</sup> is handwritten over it.
71. Entry No. 2 is dated 9<sup>th</sup> May 1980 when Cheres Tapkerono Koske was registered as the owner. There are other entries on the green card with entry No’s 4, 5 and 6 showing various charges registered on the suit parcel.
72. A copy of a transfer of land dated 9<sup>th</sup> May, 1980 has also been attached. It is with respect to land parcel No. Kericho/Kaptebengwet/257 and it shows the transfer from the late Mary Chebet Sanga to the late Cheres Tapkerono Koske. The said transfer of land is registered on the same date.



73. A copy of the green card for land parcel No. Kericho/Kaptebengwet/256 has also been attached. Entry No. 1 is dated 12<sup>th</sup> May, 1980 when the late Mary Chebet Sanga was registered as the owner.
74. Entry No. 2 is crossed out and it shows that on 9<sup>th</sup> May, 1980 the suit parcel was registered in the name of James Kipngetch Kenduiywa.
75. Entry No. 3 shows that on 12<sup>th</sup> June, 1980 the suit parcel was registered in the name of James Kipngetch Kenduiywa. Entry No. 4 is crossed out, it is dated 13<sup>th</sup> February, 1984 and refers to a charge that was registered on the parcel.
76. Entry No. 5 shows that the suit parcel was registered in the name of the late Cheres Tapkerono Koske and it is dated 16<sup>th</sup> November, 1987. Entry No. 6 shows that a title deed was issued on the same date.
77. Entry No's 7 and 8 are with respect to various charges registered on the suit parcel.
78. In response, the 1<sup>st</sup> Defendant/Respondent contends that the Plaintiffs/Applicants are not the biological children of the late Mary Chebet Sanga and explains they are her grandchildren.
79. The 1<sup>st</sup> Defendant/Respondent also contends that the late Mary Chebet Sanga sold a portion of land parcel No. Kericho/Kaptebengwet/9 measuring 2 acres to the late Cheres Tapkerono Koske.
80. The 1<sup>st</sup> Defendant/Respondent further contends that the late Mary Chebet Sanga made an application to the Land Control Board for the subdivision of land parcel No. Kericho/Kaptebengwet/9.
81. It is the 1<sup>st</sup> Defendant/Respondent's contention that land parcel No. Kericho/Kaptebengwet/9 was subdivided into land parcel No's Kericho/Kaptebengwet/255, 256 and 257 by the late Mary Chebet Sanga.
82. It is also the 1<sup>st</sup> Defendant/Respondent's contention that the Plaintiffs/Applicants filed an affidavit of protest in Kericho HC Succession cause No. E045 of 2021 in the matter of the estate of the late Cheres Tapkerono Koske wherein they admit that the late Mary Chebet Sanga sold land parcel No. Kericho/Kaptebengwet/256 to the late Cheres Tapkerono Koske.
83. It is the 1<sup>st</sup> Defendant/Respondent's contention that land parcel No. Kericho/Kaptebengwet/9 measured 6.4 Ha and the area in dispute is 2.59 Ha. He adds that the Plaintiffs/Applicants have misrepresented facts to the Court by alleging that it is the entire parcel of land that is in dispute.
84. The 1<sup>st</sup> Defendant/Respondent has attached to his replying affidavit a copy of an affidavit filed in Kericho HC Succession Cause No. E045 of 2021.
85. The heading of the affidavit is "2<sup>nd</sup> Objector's Affidavit of protest against issuance of Grant of Letters of Administration" It is sworn by Benard Kiprono Cheruiyot. He deposes that he is the late Mary Chebet Sanga's grandson and that she sold 2 acres of land parcel No. Kericho/Kaptebengwet/256 to Cheres Takpereno (sic) Koske through a sale agreement dated 14<sup>th</sup> November, 1990. (sic).
86. He also deposes that they were later shocked to learn that the late Cheres had transferred to himself land parcel No's Kericho/Kaptebengwet/257 and 289 without their knowledge and/or consent.
87. He further deposes that land parcel No's Kericho/Kaptebengwet/257 and 289 ought to have been distributed to him and his family members and not the Petitioner Joseph Kipkemoi and his brother Samwel Kipkemoi Chepkwony.
88. The 1<sup>st</sup> Defendant/Respondent has also attached a handwritten agreement for sale of land entered between Tabutany W/O Sanga and James Kipngetch Kenduiwa. It is for sale of one and a half acres of "Land Registration No. 9 Kaptebengwet".



89. It is not disputed that land parcel No. Kericho/Kaptebengwet/9 was subdivided into land parcel No's Kericho/Kaptebengwet/255,256 and 257.
90. It is also not disputed that land parcel No's Kericho/Kaptebengwet/256 and 257 are registered in the name of the late Cheres Tapkerono Koske.
91. It is further not disputed that the 1<sup>st</sup> Defendant/Respondent is in possession of the resultant subdivisions of the suit parcel.
92. What is in dispute is whether the subdivision of land parcel No. Kericho/Kaptebengwet/9 into land parcel No's Kericho/Kaptebengwet/255,256 and 257 was done by the late Cheres Tapkerono Koske without the consent of the late Mary Chebet Sanga and/or whether the said subdivision was done by the Late Mary Chebet Sanga.
93. This issue will be best addressed during the hearing of the main suit.
94. Given the totality of the circumstances of this case, it is my view that the Plaintiffs/Applicants have not demonstrated that they have a prima facie case.
95. The second condition for grant of orders of temporary injunction is that the Plaintiffs/Applicants must demonstrate that they will suffer irreparable injury that would not be adequately compensated by way of damages.
96. In *Nguruman Limited vs. 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 facie, 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.”

97. The judicial decision in *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further

show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)

98. The Plaintiffs/Applicants submit that they will suffer irreparable harm which cannot be adequately compensated by way of damages if the orders sought are not granted as the 1<sup>st</sup> Defendant/Respondent is in the process of transferring the resultant subdivisions of the suit parcel to his name.



99. The 1<sup>st</sup> Defendant/Respondent did not submit on this issue.
100. As afore stated in the preceding paragraphs, land parcel No's Kericho/Kaptebengwet/256 and 257 are registered in the name of the late Cheres Tapkerono Koske. The 1<sup>st</sup> Defendant/Respondent is the legal representative of his estate.
101. Nothing has been placed before this Court to show that indeed the 1<sup>st</sup> Defendant/Respondent is in the process of transferring the resultant subdivisions of the suit parcel to his name.
102. That being the case, the Plaintiffs/Applicants have not demonstrated that they will suffer irreparable damage which cannot be compensated by way of damages.
103. The third condition is that the Plaintiffs/Applicant must demonstrate that the balance of convenience tilts in their favour. In Pius Kipchirchir Kogo vs Frank Kimeli Tenai (supra) the Court held as follows;

“The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience being equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” (Emphasis mine)

104. In Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Ltd & 2 others [2016] eKLR the Court while dealing with the question of balance of convenience expressed itself thus;

“Where any doubt exists as to the Applicants' right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” [Emphasis mine]

105. The 1<sup>st</sup> Defendant/Respondent is in occupation; he is claiming through his deceased father who is registered as owner of the suit parcels. My view is that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants.
106. The Plaintiffs/Applicants have therefore failed to meet the threshold for the grant of an order for temporary injunction.

### **Disposition.**

107. The upshot of the foregoing is that the Plaintiffs/Applicants application dated 15<sup>th</sup> May, 2024 lacks merit and it is hereby dismissed with costs.



108. However, noting that it is important to preserve the subject matter of any suit pending hearing and determination, and further noting that Section 3A of the Civil Procedure Act, Section 13 of the Environment and Land Court Act and Practice Direction No. 28(k) of the Practice directions of this Court contained in Gazette Notice No. 5178 dated 25<sup>th</sup> July, 2014 give powers to this court generally and specifically to make orders for the preservation of the subject matter of any suit, I hereby issue orders as follows;

- a. The status quo obtaining as at the date of this ruling shall be maintained pending the hearing and determination of this suit.
- b. For the avoidance of doubt, parties herein are prohibited from subdividing and/or transferring land parcel No's Kericho/Kaptebengwet/255, 256 and 257 and/or doing all and any activities whose effect shall be to alter the physical or legal status of the suit land pending the hearing and determination of this suit.

109. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 12<sup>TH</sup> DAY OF MAY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of:

Mr. Ouma for the Plaintiffs/Applicants

1<sup>st</sup> Defendant/Respondent (in person) Joseph Kipkemoi Chepkwony.

Miss Chepkemoi for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents.

Court Assistant; Mr. Joseph Makori.

