



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ethics and Anti-corruption Commission v Kokita alias Halima Chelagat Kokota & 2 others  
(Environment & Land Case E008 of 2025) [2025] KEELC 4799 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4799 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E008 OF 2025**

**CK NZILI, J  
JUNE 25, 2025**

**BETWEEN**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**HALIMA CHELANGAT KOKITA ALIAS HALIMA CHELAGAT  
KOKOTA ..... 1<sup>ST</sup> DEFENDANT**

**EDWIN KIPCHIRCHIR TUM (BEING SUED AS THE ADMINISTRATOR OF  
THE ESTATE OF NATHANIEL KIPKORIR TUM) ..... 2<sup>ND</sup> DEFENDANT**

**WILSON GACANJA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The applicant, by an application dated 4/3/2025, seeks interim orders of injunction, restraining the 2<sup>nd</sup> respondent from alienating, selling, charging, leasing, trespassing, developing, subdividing, transferring, wasting, disposing or in any manner dealing with Kitale Municipality Block 12/152, pending hearing and determination of this suit. The application is based on the grounds of its face and in a supporting affidavit of Leonard Mungai sworn on 4/3/2025.
2. The deponent deposes that under Section 23 of the *Anti-Corruption and Economic Crimes Act*, 2003, he is a member of the team investigating allegations of alienation and allocation of public land that had been planned or reserved as an open space forming part of the suit land. It is deposed that the open space was irregularly, fraudulently and illegally hived off and allocated to the 1<sup>st</sup> respondent, who thereafter transferred it to the 2<sup>nd</sup> respondent.
3. The applicant's officer deposes that as at 1973, the suit property formed part of approximately 55 Ha located between the former Kitale Webuye road and the Kitale Club reserved and in use by Kitale School as per a letter dated 14/9/1973, to the school and an Approved Development Plan attached as LM-1 and LM-2.



4. The deponent deposes that despite the excision, Kitale School continued to utilize the 55 Ha, including the open space, and made an official request to the Commissioner of Lands for its allocation through a letter dated 15/7/1985, annexed together with a map as annexure marked LM-3(a) and (b). While the School was awaiting the response from the 3<sup>rd</sup> respondent, the deponent avers that the 1<sup>st</sup> respondent connived with the 2<sup>nd</sup> respondent and with the approval of the 3<sup>rd</sup> respondent, fraudulently and illegally hived off a portion of the open space creating the suit property to obtain a title.
5. The deponent deposes that the 3<sup>rd</sup> respondent, upon an application by the 1<sup>st</sup> respondent, acted ultra vires and caused the issuance of a letter of allotment dated 25/5/1994 in favour of the 1<sup>st</sup> respondent for an area measuring 0.400 Ha of the open space to the 1<sup>st</sup> respondent attached as annexure LM-4.
6. The deponent deposes that in complete disregard of the existing alienation and public user, the Part Development Plan (PDP) No. KTL/10/93/56 was prepared as if the suit land was unalienated land, when it had already been alienated as an open space, where after the 1<sup>st</sup> respondent proceeded to accept the allotment letter on 20/9/1994 and paid the requisite charges as per annexures marked LM-5.
7. In furtherance of the illegal alienation, it is deposed that the 3<sup>rd</sup> respondent proceeded to instruct the Director of Survey to survey the site vide Survey Plan F/R No. 272/23, which amended the RIM to reflect the suit property as per copies marked LM-6. The deponent deposes that the registration process in favour of the 1<sup>st</sup> respondent commenced with the preparation and execution by the 3<sup>rd</sup> respondent, of the lease and its registration by the District Land Registrar Kitale, in favour of the 1<sup>st</sup> respondent as per annexure marked LM-7, a copy of the lease that was registered on 5/2/1996 and a copy of lease issued the same day.
8. The deponent deposed that before the ink on the lease could dry, the 1<sup>st</sup> respondent transferred the suit property to Nathaniel K. Tum, clearly indicating that he had been involved in the scheme to defraud the public of the land from the very beginning, as per a copy of the white card marked LM-8.
9. The deponent deposed that the drawing of the Department Ref. No. PDP No. KTL 10/93/56 Approved Plan No. 190, approved in 1994, the issuance of the allotment letter and the registration of the title was fraudulent, illegal, null and void and was incapable of conferring any interest and or right over the suit property to the 1<sup>st</sup> respondent, capable of being transferred to the 2<sup>nd</sup> respondent, for the open space was not available for alienation in the first instance.
10. Equally, the deponent deposed that the suit property has been listed as part of the properties to be distributed in the succession cause of the estate of the late Nathaniel Kipkorir Tum and thus was in a real danger of unlawful dealings. The deponent deposes that the 2<sup>nd</sup> respondent has put the suit property into commercial use through engaging in commercial farming and business, and thus has been generating an income which use is incompatible with the intended user of an open space. The deponent deposes that the 2<sup>nd</sup> respondent purportedly owns the suit property without authority and has ignored any demand sent to surrender the property, hence the reasonable apprehension that he may alienate or otherwise deal with it to frustrate any decree that may be passed against him.
11. The deponent deposed that it was just and in the public interest to prohibit the 3<sup>rd</sup> respondent from any dealing over the suit property to obviate dissipation of the assets and or rendering of these proceedings nugatory.
12. The application is opposed by the 1<sup>st</sup> respondent vide an affidavit sworn on 26/3/2025. It is averred that; the application is aimed at evicting the beneficiaries of the estate of Nathaniel Kipkorir Tum(deceased) who are in occupation; it is full of falsehoods and is misleading. She denied that the suit land was illegally allocated to her since she initially applied to the Commissioner of Lands for



- the allocation of the suit land which had been classified as an open space and Kitale Academy, which allocation was granted and issued with a leased annexed a copy of the lease dated 1/5/1994 as HCK 1.
13. Further, the 1<sup>st</sup> respondent denied that the suit land was public land and thus was legally allocated to her, and there were no objections from the relevant government offices. That she proceeded to pay the charges and stamp duty and was issued with a lease on 1/5/1994. Subsequently, she sold the land to the deceased through a transfer in his favor over 30 years ago.
  14. The 1<sup>st</sup> respondent added that the applicant does not deserve the orders sought, since it has not proved fraud in the process of acquisition of the suit land; has not therefore established a prima facie case; has not demonstrated or established irreparable loss likely to be suffered and that the balance of convenience does not tilt in favor of the applicant. The deponent annexed the allotment letter dated 25/5/1994, letter dated 20/9/1994; receipt number D027105 dated 28/9/1994; instructions for a new lease; approval form; stamp duty certificate dated 19/1/1996; letter dated 19/6/1996 forwarding the and a copy of the lease registered 1/5/1994 as HCK 2.
  15. In addition, the 1<sup>st</sup> respondent averred that there is a restriction placed by the land registrar on 19/12/2023, though the suit land has been intact since then. The 2<sup>nd</sup> respondent in his affidavit reiterated the averments of the 1<sup>st</sup> respondent.
  16. When this matter came up for interpartes hearing on 27/3/2025, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the suit land was still under the name of the deceased and that there was a restriction on the title. Further, learned counsel submitted that possession of the land was in the family of the 2<sup>nd</sup> respondent as set out in the replying affidavit sworn 26/03/2025.
  17. A party seeking temporary orders of injunction has to establish a prima facie case, demonstrate irreparable damage which cannot be compensated by way of damages if the injunction is not granted, and that the balance of convenience tilts in its favour. See *Giella -vs- Cassman Brown & Another* [1973] EA 358. In *Nguruman Ltd -vs- Jan Bonde Nielsen & Another* [2012] eKLR, the court observed that the three conditions must be satisfied sequentially in order to qualify for a temporary injunction.
  18. A prima facie case is established if, based on the material before the court or tribunal, one will conclude that a right has been infringed to call for a rebuttal from the opposite party.
  19. Under Section 26 of the [Registration Act](#), a title deed held by a person is deemed to be prima facie evidence that the person named therein, is the absolute and indefeasible title holder subject to exception under Section 26(3) and (4) and (b) thereof on account of fraud, misrepresentation, illegality or acquisition out of unprocedural or corrupt scheme. A title deed obtained otherwise is not protectable, under Article 40(6) of the [Constitution](#).
  20. In *Ethics and Anti-Corruption Commission -vs- Joseph Oroko Ongera & another* [2021], the court observed that the acquisition of title cannot be construed only as an end result, without looking into the process leading to the issuance of the title. In *Chemney Investment Ltd -vs- Attorney General & Another* [2018] eKLR, the court cited *Funzi Island Development Ltd & Others -vs- County Council of Kwale* [2014] eKLR and *Munya Maina -vs- Harun Gathiha Maina* [2013] eKLR, that an illegal transaction cannot confer indefeasible title and that public interest should be taken into account, since a title obtained in contravention of the law was invalid. Further in *Kipsirgoi Investment Ltd -vs- Kenya Anti-Corruption Commission*, [CA No. 288 of 2010](#), the court observed that a bona fide purchaser for value without notice is protected, subject to the qualification that the title in issue was not created in breach of statute.



21. The sanctity of title is therefore not an instrument to be a vehicle for unjust enrichment at the public expense. Article 79 of the Constitution, as read together with Section 11(1) of the Ethics and Anti-Corruption Commission Act, grants the applicant powers to inter alia, investigate or initiate, and institute proceedings in court for purposes of the recovery or protection of public property. In *Ethics and Anti-Corruption Commission -vs- Patrick Ochieno Abachi & 6 others* [2021] eKLR, the court observed that Ethics and Anti-Corruption Commission had the mandate under Section 55(2) and Section 11(1) of the Ethics and Anti-Corruption Commission Act, as read together with Article 252 and Chapter 6 of the Constitution to undertake such a mandate.
22. The applicant in this suit avers that the current registration and use of the suit land is contrary to the intended use as public land, as an open space. Section 63(c) of the Civil Procedure Act provides that to prevent the end of justice from being defeated, the court may grant a temporary injunction.
23. Order 40 Rule (1) of the Civil Procedure Rules provides that where it is proved that any property in dispute is in danger of wastage, alienation, or wrongful sale, or the defendant threatens to dispose of the property in circumstances affording reasonable probability that the plaintiff will or may be abstracted or delayed in the execution of any possible decree, to be passed against the defendant, the court may restrain such an act or make any other order to stay or prevent the wasting, damaging, alienation, sale, removal or disposition of the property as the court may think fit, until the disposal of the suit.
24. In determining whether or not a prima facie case is established, a court does not conduct a mini-trial but will consider whether the facts in support or opposition, make out a case likely to succeed at the hearing and whether there is real danger if the property is not preserved to dissipate as to irreparable damage. Section 45 of the Ethics and Anti-Corruption Commission Act provides that it is an offence to acquire or damage public property.
25. In *Said Ahmed -vs- Mannasseh Denga & Another* [2019] eKLR, the court said that if the act complained of is unlawful, then the issue of whether damages or is and can be adequate remedy does not arise for a party should not be allowed to maintain an advantageous position that he has acquired by flouting the law. See also *Alkman -vs- Muchoki* [1984] KLR 353. In *Stanley Mombo Amuti -vs- Kenya Anti-Corruption Commission* [2019] eKLR, the court observed that constitutional protection of property doesn't extend to property that has been unlawfully acquired.
26. Applying the distilled principles in the cited case law to the material before this court drawn from the application and the replying affidavit, the court finds that the applicant has surmounted the three hurdles on temporary injunction to be entitled to the reliefs sought.
27. There is therefore a real danger that the substratum of the suit will be dissipated if it is not preserved by way of a temporary injunction, to last for 1 year. It is so granted.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

In the presence of:

Court Assistant – Dennis

Miss Githinji for applicant present

Miss Odwa for 1<sup>st</sup> and 2<sup>nd</sup> defendants present

3<sup>rd</sup> defendant absent

**HON. C.K. NZILI**



**JUDGE, ELC KITALE.**

