



**Ethics & Anti-Corruption Commission v Kiptoo & 3 others (Environment and Land Case E009 of 2025) [2025] KEELC 4849 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4849 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E009 OF 2025**

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

**BETWEEN**

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

**AND**

**KEN KIPTOO ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPHINE KERUBO ALIAS J KERUBO ..... 2<sup>ND</sup> DEFENDANT**

**EDWIN KIPCHIRCHIR TUM (BEING SUED AS THE ADMINISTRATOR OF  
THE ESTATE OF NATHANIEL KIPKOROR TUM) ..... 3<sup>RD</sup> DEFENDANT**

**WILSON GACANJA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 4/3/2025 the applicant seeks temporary orders of injunction, barring and restraining the 3<sup>rd</sup> respondent from alienating, selling, charging, leasing, developing, subdividing, transferring, wasting, disposing or in any manner dealing with Kitale Municipality Block 12/153, pending hearing and determination of this suit. The grounds are set out on the application and in a supporting affidavit of Leonard Mungai, a Senior Investigator with the applicant, sworn on 4/3/2025.
2. It is deposed that after the allegation of illegal alienation of public land planned alienation and reserved as open space of land forming part of Kitale Municipality Block 12/153 were raised, investigations disclosed that the suit property initially formed part of approximately 55 Ha located between the former Kitale Webuye roundabout and the Kitale Club, reserved and used by Kitale School.
3. The deponent states that some part was excised from the Kitale School land and reserved as open space for better planning and use. The school continued utilizing and made an application to the Commissioner of Lands for its allocation through a letter dated 15/7/1985.



4. While waiting for a response from the 4<sup>th</sup> respondent, the applicant states that the 1<sup>st</sup> and 2<sup>nd</sup> respondents connivance with the 3<sup>rd</sup> respondent and, with the approval of the 4<sup>th</sup> respondent, fraudulently and illegally hived off a portion of the open space created and obtained a title to it. The applicant deposes that upon an application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, acting ultra vires caused the issuance of a letter of allotment in favour of the 1<sup>st</sup> and 2<sup>nd</sup> respondents for an area measuring 1.36 Ha, a portion of the open space, regardless of the existing alienation and or the public user, without preparing a PDP in line with the law.
5. The applicant deposes that the applicant accepted the letter of allotment on 6/4/1994 but made no payments of the charges set therein, and instead requested a letter of consent to transfer, citing financial constraints, only to later make full payment of the charges.
6. In furtherance of the illegal action, the applicant states that the 4<sup>th</sup> respondent proceeded to instruct the Director of Survey to conduct a survey of the site vide survey plan F/R No. 272/111 despite the absence of a PDP and ground report, and later a RIM was amended to reflect the suit property.
7. The applicant deposes that the registration process in favour of the 1<sup>st</sup> and 2<sup>nd</sup> respondents commenced with the preparation and execution by the 4<sup>th</sup> respondent of the lease and its registration by the District Land Registrar Kitale on 17/7/1995, and a certificate of lease issued on the same date.
8. Before the ink on the lease could dry, the applicant deposed that the suit property was transferred to the late Nathaniel K. Tum, clearly indicating that he was involved in the scheme to defraud the public of the land from the very beginning.
9. The applicant deposes that the whole process was null and void ab initio since the land had been reserved for public use. The applicant deposes that the property is now listed as part of the estate of the deceased, likely to be distributed, and may be unlawfully dwelt in to defeat the claim.
10. The applicant deposes that the 3<sup>rd</sup> respondent has put the suit land in commercial use through commercial farming and business use, which is incompatible with its intended public use as an open space. The applicant deposes that it is in the public interest to issue the orders sought; otherwise, any adverse dealings on it may frustrate the eventual decree after the hearing and determination in favour of the applicant, rendering the proceedings nugatory.
11. The applicant has attached copies of the letter by Kitale School, an approved PDP, schools request letter, map, allotment letter, acceptance letter, letter to the Director of Surveys, copy of the lease, and the white card as annexures marked LM-1, 2, 3(a) and (b), 4, 5, 6, 7, and 8 respectively.
12. The application is opposed by the 3<sup>rd</sup> respondent, through a replying affidavit sworn by Edwin Kipchirchir Tum on 26/3/2025, terming the same as malicious, aimed at evicting the beneficiaries of the estate from the land, before the matter is heard and determined, based on falsehood and as lacking merit. It is deposed that the suit land was acquired lawfully and procedurally through purchase by the deceased in January 1995. From the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and after that deceased undertook due diligence.
13. The 3<sup>rd</sup> respondent deposes that after a lease was issued, the deceased took immediate possession of the suit land until his demise, leaving the beneficiaries of the estate in possession to date, who have been paying land rates for the land.
14. The 3<sup>rd</sup> respondent deposes that the deceased was an innocent purchaser for value without any notice and or information on any defect or irregularity and obtained the same after following due process. The 3<sup>rd</sup> respondent terms the claim as suspect coming after the deceased passed on 22/2/2022, yet



- none was filed during his lifetime, otherwise, faceless persons instigated the investigation challenging his acquisition, and that the suit is filed without including all the relevant officers/offices who approved the application.
15. Again, the 3<sup>rd</sup> respondent deposes that though the applicant has a mandate to reclaim or protect parcels of land acquired through fraud or corrupt dealings, nothing in the attached documents points to any such conduct perpetrated by the deceased, otherwise, the applicant has not met the ingredients to deserve interim orders since the land was obtained in a formal, regular and in a procedural manner.
  16. The 3<sup>rd</sup> respondent deposes that there is already a restriction placed on the title by the Land Registrar on 19/12/2023, hence no evidence has been tendered to show that the land has been handled adversely to warrant the orders sought.
  17. The deponent has attached to the affidavit copies of the transfer, lease registered on 17/7/1995, copy of the certificate of lease, rate payment invoice, cash deposit receipts, letters dated 9/2/1994, approval form, letter of allotment, letter dated 6/4/1994, request No. DO66367, letters dated 10/2/1995, standard form on instrument to prepare a new lease, certificate of stamp duty, letter dated 8/6/1995 forwarding the lease, copy of lease registered on 17/7/1995, as annexures marked EKT-1-4 respectively.
  18. Similarly, the 2<sup>nd</sup> respondent averred that the applicant has not demonstrated that the suit land has been used contrary to the lease. He added that the orders sought are bases on suspicions without tangible evidence of the illegal acquisition of the suit land. That the grant of the injunction would amount to eviction of the beneficiaries of the estate of the deceased, and would amount to deprivation of land contrary to Article 40 of the Constitution.
  19. 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 3<sup>rd</sup> respondent as set out in the replying affidavit sworn 26/3/2025
  20. 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 to qualify for a temporary injunction.
  21. 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. Under Section 26 of the Land 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 exceptions under Section 26(3) and (4) and (b) thereof on account of fraud, misrepresentation, illegality or acquisition out of unprocedural or corrupt scheme.
  22. A title deed obtained otherwise is not protectable under Article 40(6) of the Constitution. 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 Gathiba 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.



23. 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. The sanctity of title is therefore not an instrument to be a vehicle for unjust enrichment at public expense.
24. 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 & Others* [2021] eKLR, the court observed that EACC had the mandate under Section 55(2) and Section 11(1) of the *EACC Act* as read together with Article 252 and Chapter 6 of the *Constitution* to undertake such a mandate.
25. 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 ends of justice from being defeated, the court may grant a temporary injunction.
26. 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 obstructed 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.
27. 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.
28. 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.
29. In *Stanley Mombo Amuti -vs- KACC* [2019] eKLR, the court observed that constitutional protection of property doesn't extend to property that has been unlawfully acquired.
30. 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. There is a real danger that the substratum of the suit may dissipate if 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 plaintiff/applicant present

Odwa for 3<sup>rd</sup> defendant present



1<sup>st</sup> and 2<sup>nd</sup> defendant absent

4<sup>th</sup> defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

