



**Nduva (Suing as the Legal Representative of the Estate of Serah Munee Mutula) v Muchiri, Simiyu & Moseti (Sued as the Trustees of P&T Employees Housing Co-operative Society Ltd) & another (Land Case E031 of 2024) [2025] KEELC 4702 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4702 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
LAND CASE E031 OF 2024  
NA MATHEKA, J  
JUNE 24, 2025**

**BETWEEN**

**IRENE NTHENYA NDUVA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SERAH MUNEE MUTULA) ..... PLAINTIFF**

**AND**

**CHARLES MWANGI MUCHIRI, JOHN MUKUSI SIMIYU & ALEX ISOE MOSETI (SUED AS THE TRUSTEES OF P&T EMPLOYEES HOUSING CO-OPERATIVE SOCIETY LTD) ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, MACHAKOS COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application is dated 10<sup>th</sup> May 2024 and is brought under Order 41 Rule 1, 2 & 4 and Order 50 Rule 1 of Civil Procedure Rules, Section 1A, 1B, 3A and 63E of the Civil Procedure Act, Section 26 and 80 of the Land Registration Act, Articles 2, 20, 21, 22, 23, 40, 42, 47, 48, 50 and 75 of the Constitution seeking the following orders;
  1. That this Application be certified as urgent and service of the same be dispensed with at the first instance.
  2. That a temporary injunction do issue restraining the Defendants/Respondents either by themselves and/or by their authorized agents, servant, employees and/or any persons acting under their authority from interfering, alienating, transferring, subdividing, disposing and/or in any other manner from dealing with all those parcels of land registered as Mavoko Town Block 2/7705 to Mavoko Town Block 2/7877 pending the hearing and determination of this Application.



3. That a temporary injunction do issue restraining the Defendants/Respondents either by themselves and/or by their authorized agents, servant, employees and/or any persons acting under their authority from interfering, alienating, transferring, subdividing, disposing and/or in any other manner from dealing with all those parcels of land registered as Mavoko Town Block 2/7705 to Mavoko Town Block 2/7877 pending the hearing and determination of this suit.
  4. That the 2<sup>nd</sup> Defendant/Respondent be directed to enforce and ensure full compliance with the orders issued herein.
  5. That costs of this Application be paid by the Defendants/Respondents
2. It is supported by the Supporting Affidavit for Joseph Mutua Muinde and on inter alia the following grounds that the Plaintiff/Applicant is a daughter and the legal administrator of Serah Mune Mutula. That the deceased was the sole registered owner of all that parcel of land registered as Mavoko Town Block 2/63. That the deceased during her lifetime never sold nor transferred to anyone the aforementioned parcel of land registered as Mavoko Town Block 2/63. That Plaintiff/Applicant has learnt that the 1<sup>st</sup> Defendant/Respondent illegally, unlawfully and fraudulently caused the said parcel of land registered as Mavoko Town Block 2/63 to be transferred to themselves without the consent of the deceased. That the Plaintiff/Applicant has further learnt that the 1<sup>st</sup> Defendant/Respondent had caused Mavoko Town Block 2/63 to be subdivided into 172 plots now registered as Mavoko Town Block 2/7705 to Mavoko Town Block 2/7877. That the 1<sup>st</sup> Defendant/Respondent does not have any agreement that they entered into with the deceased for the sale of all that land registered as Mavoko Town Block 2/63. That the 1<sup>st</sup> Defendant/Respondent equally does not have transfer forms duly signed by the deceased confirming that the deceased transferred Mavoko Town Block 2/63 to them. That the 1<sup>st</sup> Defendant/Respondent does not have proof that they indeed paid the deceased any consideration for the said parcel of land. That the 1<sup>st</sup> Defendant/Respondent did not obtain the Land Control Board consent before the suit land herein was transferred.
  3. That from the foregoing it is very clear that the 1<sup>st</sup> Defendant/Respondent illegally, unlawfully and frequently caused the transfer from the deceased to themselves all that parcel of land registered as Mavoko Town Block 2/63 and proceeded to illegally and unlawfully cause the same to be subdivided into 172 plots being Mavoko Town Block 2/7705 to Mavoko Town Block 7877. That unless the 1<sup>st</sup> Defendant/Respondent are stopped by an order of this court from interfering, alienating, transferring, subdividing, disposing and/or in any other manner from dealing with all those parcels of land registered as Mavoko Town Block 2/7705 to Mavoko Town Block 2/7877 the Estate of the deceased will continue to suffer irreparably. That the 1<sup>st</sup> Defendant/Respondent activities are causing untold waste, damage and loss to the Estate of the deceased and unless restrained by an order of this Honourable Court the Estate stands to suffer irreparably. That the Plaintiff/Applicant and the Estate of the deceased have been denied access and the right to occupy and deal with their land and are suffering loss and damages contrary to Article 40 of the *Constitution* of Kenya 2010 and the rules of natural justice.
  4. The Respondents oppose the application stating that a sale agreement was executed between the deceased as the vendor and the 1<sup>st</sup> Defendant as the purchaser. They also attached correspondences by the deceased vendors advocate acknowledging payment towards the purchase price. The 1<sup>st</sup> Defendant has attached the application and consent from Athi River Consent Board, mutations and receipts for the payment of stamp duty. The interested parties state that 173 people have bought the property from the 1<sup>st</sup> Defendant and stand to suffer if interim orders are given.



5. This court has considered the application and the submissions therein. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* [1973] EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 [2014] eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates 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.

6. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

7. Consequently, the Plaintiff ought to, first, establish a prima facie case. In the case of *Mrao Ltd v First American Bank of Kenya Ltd* [2003] eKLR the Court of Appeal gave a determination on a prima facie case. The court stated that;

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

8. In support of their application, the Plaintiff stated that the deceased was the sole registered owner of all that parcel of land registered as Mavoko Town Block 2/63. That the deceased during her lifetime never sold nor transferred to anyone the aforementioned parcel of land registered as Mavoko Town Block 2/63.

9. Secondly, The Plaintiff has to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR provides an explanation for what is meant by irreparable injury and it states;

“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.

10. The Plaintiffs stated that the 1<sup>st</sup> Defendant/Respondent illegally, unlawfully and fraudulently caused the said parcel of land registered as Mavoko Town Block 2/63 to be transferred to themselves without the consent of the deceased. That the Plaintiff/Applicant has further learnt that the 1<sup>st</sup> Defendant/Respondent had caused Mavoko Town Block 2/63 to be subdivided into 172 plots now registered as Mavoko Town Block 2/7705 to Mavoko Town Block 2/7877.

11. Thirdly, the Plaintiffs have to demonstrate that the balance of convenience tilts in their favour. In the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR which defined the concept of balance of convenience as:

“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 be 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.”

12. In the case of *Paul Gitonga Wanjau v Gatbuthis Tea Factor Company Ltd & 2 others* [2016] eKLR, the court dealing with the issue 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.”

13. The Plaintiff/Applicant contends that the balance of convenience tilts in their favour because if the orders sought herein are not granted there is danger of the suit land to be further subdivided by third parties and transferred to the detriment of the Applicant which will in turn lead to the violation of the Applicant’s proprietary rights. That without the intervention of this Court, the Applicants herein stands to suffer grave irreparable loss and damage and the risk of losing their property.

14. The decision of *Amir Suleiman v Amboseli Resort Limited* [2004] eKLR where the learned judge offered further elaboration on what is meant by “balance of convenience” and stated;

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

15. It is not in dispute that the suit land has been subdivided and the interested parties are in occupation. That they have made developments and investments on the suit land. The Applicant alleges fraud and maintains that the deceased never sold the suit land to the 1<sup>st</sup> Defendant. Bearing this in mind, I am convinced that there is a lower risk in granting orders of temporary orders than not granting them, as I wait to hear the suit on its merits. This is especially so because I have not had opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to the subdivision. I have also not had the opportunity to interrogate the annexures to therein.

16. In *Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & Another* [2019] eKLR where the court in deciding on an injunction application stated;

“circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the *Civil Procedure Rules* requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose



the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts...”

17. In view of the foregoing, I find that the application is merited and order that the status quo be maintained pending the hearing and determination of this suit. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF JUNE 2025.**

**N.A. MATHEKA**

**JUDGE**

