



**Toroitich (Suing as the Personal Representatives of the Estate of Toroitich
Chebor - Deceased) v Choge & 2 others (Environment & Land Case
E007 of 2025) [2025] KEELC 4680 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4680 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E007 OF 2025**

MAO ODENY, J

JUNE 24, 2025

BETWEEN

**ESTHER TOROITICH (SUING AS THE PERSONAL REPRESENTATIVES OF
THE ESTATE OF TOROITICH CHEBOR - DECEASED) PLAINTIFF**

AND

GILBERT KOSKEI CHOGE 1ST DEFENDANT

SIMEON LANGAT 2ND DEFENDANT

THE LAND REGISTRAR NAKURU 3RD DEFENDANT

RULING

1. This ruling in respect of the Plaintiff/Applicant's Notice of Motion Application dated 3rd February, 2025 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That pending the hearing and determination of the suit, a temporary injunction do issue restraining the Defendants, their agents/servants and employees from trespassing, entering, invading, developing, occupying, interfering with, carrying out any demolition, construction or any transaction whatsoever on Title No. Molo South/Langwenda Block 11/384 or on any portion thereof or on any buildings thereon.
 - e. That costs be provided for.



2. The application was supported by the annexed affidavit of the Plaintiff/Applicant Esther Toroitich, sworn on 3rd February, 2025 where she deponed that the deceased was a member of Kalenjin Enterprises Ltd now known as Rift Valley Enterprises Ltd, having purchased about 75 nominal shares which entitled him to 5.4 acres of land.
3. It was her deposition that sometimes in 1998, the deceased successfully balloted for plot numbers Molo South/Lagwenda Block 11/48 [“KEWAMOI”], Molo South/Lagwenda Block 11/383 [“KEWAMOI”] and Molo South/Lagwenda Block 11/384 [“KEWAMOI”] and that the deceased and his family members have always been in possession of the said properties.
4. The Applicant further deponed that the 1st Defendant has fraudulently procured the title for Molo South/Lagwenda Block 11/384 [“KEWAMOI”] with the connivance of the 3rd Defendant and urged the court to grant the prayers as sought in the Application.
5. The 1st Defendant filed a Replying Affidavit sworn on 18th February, 2025 where he deponed that he was a member of Rift Valley Enterprises Ltd and having purchased shares, was entitled to land parcel Molo South/Langweda Block 11/384 KEWAOI. He further deponed that he paid the clearance fee in respect of the land and was cleared by the Directors of Rift Valley Enterprises Ltd on 10th March 2005 to be issued with a title deed for the plot number. The 2nd Defendant has been in physical possession of the land since 10th June 2006.
6. It was the 1st Defendant’s case that on 28th April, 2005, he was issued with the title deed for Molo South/Langwenda Block 11/384 [“KEWAMOI”] which he lawfully sold to the 2nd Defendant vide sale agreement dated 24th April, 2006. He deponed that the court lacks the pecuniary jurisdiction to hear this matter as the suit property is valued at Ksh, 900,000/ and urged the court to dismiss the application with costs.
7. The 2nd Defendant filed a Replying Affidavit sworn on 18th February, 2025, and deponed that he entered into a sale agreement dated 24th April, 2006 with the 1st Defendant for the sale of land parcel Molo South/Langweda Block 11/384. It was his evidence that he paid the last instalment of the purchase price on 10th June 2006 and thereafter took over possession of the property and is still in possession. He further deponed that he has acquired indefeasible title to the property and that the plaintiff is guilty of laches for challenging his title twenty years after the title was issued to him and urged the court to dismiss the application with costs.
8. The Plaintiff/Applicant filed a Further Affidavit sworn on 7th March, 2025 and deponed that all fully paid up members of Kalenjin Enterprises Ltd participated in a balloting exercise where they were allocated properties depending on the number of shares and the ballots one had picked. It was her deposition that it is not true that a member was allocated property upon purchasing shares and payment of clearance fees.
9. The Applicant also stated that the 2nd Respondent cannot claim to have been in possession of the suit property from the year 2005, whereas her family has been tilling the land since 1998 when her late husband successfully balloted for the same and paid the requisite fees.

Plaintiff’s Submissions

10. Counsel for the Plaintiff filed submissions dated 7th March, 2025 and identified the issue for determination as: whether the Applicants have satisfied the conditions for the grant of temporary injunction set out under Order 40 Rule 1 of the Civil Procedure Rules, 2010. Counsel submitted that the Applicant has established a prima facie case as she holds the original ballots to the suit property,



the requisite receipts and has been in actual occupation of the suit property from 1998 only to realize that the 1st Respondent has fraudulently procured the title.

11. Counsel submitted that the Applicant would suffer irreparable harm that cannot be compensated by way of damages and that she has shown that the Defendants curtailed their ownership rights and development on the land by the illegal transfers. Counsel relied on the cases of *Giella vs Cassman Brown & Co Ltd* [1973] EA 358, *Mrao vs First American Bank of Kenya Ltd & 2 others* [2003] eKLR and *Nguruman Ltd vs Jan Bonde Neilsen & 2 others* [2014] eKLR and submitted that the Applicant has satisfied the principles that warrant the grant of a temporary injunction.

1st & 2nd Defendants' Submissions

12. Counsel for the 1st and 2nd Defendants filed submissions dated 21st March 2025 and submitted that the Plaintiff/Applicant has failed to satisfy the conditions for the grant of a temporary injunction as set out in the case of *Giella vs Cassman Brown Company Limited* [1973].
13. Counsel further submitted that the 1st and 2nd Defendants/Respondents have presented documentary evidence showing how they rightfully and legally acquired the said property. Counsel relied on Article 40 of *the Constitution* of Kenya, Sections 24, 25 and 26 of the *Land Registration Act* 2012 and the cases of *Mrao Ltd vs American Bank of Kenya Ltd* [2003] eKLR and *Mary Nduta Kimemia vs John Warubi Kibera* [2017] eKLR.
14. Counsel submitted that if at all the Plaintiff/Applicant was to suffer any loss or injury, the same can be adequately remedied by an award of damages and relied on the cases of *Nguruman Limited vs Jan Bonde Nielson & 2 others* [2014] eKLR and *Wairimu Mureithi vs City Council of Nairobi Civil Appeal No 5 of 1979* [1981] KLR 322.
15. It was counsel's further submission that the balance of convenience tilts in favour of the 1st and 2nd Defendants as the land was registered in the name of the 1st Defendant who lawfully sold it to the 2nd Defendant/Respondent. Counsel relied on the cases of *Cheptanui Soy vs Michael Sayaya & Another* [2018] eKLR and *Virginia Edith Wambui vs Joash Ochieng Ougo, Civil Appeal No 3 of 1987* [1987] eKLR and urged the court to dismiss the application with costs.

Analysis And Determination

16. The issue for determination is whether the Plaintiff/Applicant has satisfied the conditions for the grant of an injunction. In the case of *Rockland Kenya Limited v Elliot White Miller* [1994] eKLR, the court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff's undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence



on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

17. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

Where in any suit it is proved by affidavit or otherwise—

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
 - b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
18. The Applicant must establish a prima facie case with a probability of success and that he/she will suffer irreparable loss and damage if the injunction is not granted and lastly, in case the court is in doubt, the balance of convenience tilts in favour of granting the order of injunction.
19. From the Plaintiff/Applicant’s Supporting affidavit and documents relied upon, the Plaintiff has exhibited the original ballot paper to the suit property, and the requisite receipts. Further that the Plaintiff’s family has been in possession and cultivating the land since the allocation of the suit land. There has be no evidence to disapprove the fact that the Plaintiff has been in occupation of the suit land at this juncture
20. The purpose of a temporary injunction is to preserve the substratum of the case and the Plaintiff has proved that she has a prima facie case with a probability of success. I have considered the application, the submissions by counsel and find that the Plaintiff’s application has merit and is hereby allowed in the following specific orders:
- a. A temporary injunction is hereby issued restraining the Defendants, their agents/servants and employees from trespassing, entering, invading, developing, occupying, interfering with, carrying out any demolition, construction or any transaction whatsoever on Title No. Molo South/Langwenda Block 11/384 or on any portion thereof or on any buildings thereon pending the hearing and determination of this suit.
 - b. Costs to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

