



**Chumo (Suing as Administration of the Estate of Cheruiyot Arap Chemoigut - Deceased)
v Sirng'ewo (Suing as Administrator of the Estate of Kimutai Arap Murei - Deceased)
(Environment and Land Case E005 of 2025) [2025] KEELC 4667 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4667 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E005 OF 2025**

CK NZILI, J

JUNE 18, 2025

BETWEEN

**SAMUEL KIBET CHUMO (SUING AS ADMINISTRATION OF THE ESTATE OF
CHERUIYOT ARAP CHEMOIGUT - DECEASED) PLAINTIFF**

AND

**ABRAHAM ASMAN SIRNG'EWU (SUING AS ADMINISTRATOR OF THE
ESTATE OF KIMUTAI ARAP MUREI - DECEASED) DEFENDANT**

RULING

1. The court by an application dated 18/2/2025, is asked to issue a temporary injunction restraining the defendant, his family members, agents, servants, or persons claiming interest or acting through him from undertaking any transactions or dealings of whatever nature, including subdividing, transferring, charging, selling or leasing 5.8 acres in Plot No. 79, Karara Bororiet Settlement Scheme, until the suit is heard and finalized.
2. The reasons are contained on the face of the application and in a supporting affidavit sworn by Samuel Kibet Chumo on 18/2/2025.
3. The applicant deposes that he is the administrator of the estate of Cheruiyot Arap Chemoigut, as per the temporary and confirmed grant of letters of administration, attached as annexure marked SKC-1 and 2. It is averred that the deceased paid for a share of the allocated Plot No. 79 measuring 5.8 acres alongside the defendant's late father measuring 4.5 acres, with 0.4 acres reserved for public utility. He attached the receipts and the area list as SKC-3(a) (b) and 4 respectively.
4. The plaintiff deposes that the total parcel of land No. 79 measuring 11 acres or thereabouts was to be subdivided in 2013, but the respondent kept procrastinating on claims that his late father's estate was yet to be subjected to a succession process going by the letters and receipts for payment of survey



fees marked as annexure SK-5(a), (b) and (c). the plaintiff deposes that recently the subdivision was scheduled for 30/1/2025 but the defendant resisted it after he filed JR. No. E001 of 2025, while awaiting the ruling, the plaintiff deposes that the defendant has embarked on tree cutting spree as per annexed photographs marked SKC-6, following which a report was made by the Sub-County officer attached as annexure SKC-7.

5. Though the respondent was served with the application and a return of service filed dated 7/3/2025, there is no response filed to both the application and the statement of claim as of 14/5/2025.
6. The first principle of an injunction law is to establish a prima facie case. A prima facie case is established if, on the material placed before the court, a right has been infringed or threatened with infringement to call for a rebuttal from the opposite side. See *Mrao Ltd -vs- First American Bank Ltd* [2003] eKLR. In *Nguruman Ltd -vs- Jan Bonde Neilsen* [2014] eKLR, the court said that a prima facie case must be an arguable case where evidence is placed to show that the right is threatened with breach or infringement. In establishing the same, the court need not conduct a mini-trial but on the face of it, if there is an arguable case with a probability of success at the main hearing.
7. As to irreparable damage, the court said that it is one which has no standard to measure with accuracy, must be actual, substantial, and demonstrate, such that monetary damages cannot be a proper legal remedy.
8. On balance of convenience, the court in *Pius Kipchirchir Kogo -vs- Franck Kimeli Tenai* [2018] eKLR, held that the meaning is that if the injunction is not granted and the suit ultimately succeeds, the inconvenience to the plaintiff would be more than that which would be caused to the defendant if the injunction is granted but the suit ultimately dismissed.
9. In *Paul Gitonga Wanaju -vs- Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR, the court said that in dealing with the balance of convenience, if a doubt exists or if the right is not disputed but its violation is denied, the court takes that consideration the nature of the injury and the likely party to suffer more either way the court decides the motion and eventually the suit, and further that the court will seek to maintain the status quo, in determining where the balance of convenience lies.
10. Applying the foregoing case law to this suit, the annexures attached to the application and the affidavit confirm that the joint ownership of the suit land is not disputed. What is pending is a subdivision so that each of the parties can obtain a separate and distinct ownership document. If there is also another pending case, it would be prejudicial for the defendant to embark on acts that would drastically interfere with the subject matter. I think the plaintiff has surmounted the three hurdles logically and sequentially to be entitled to the relief sought. The application is allowed. The interim orders of injunction shall remain in force for one year only.
11. Mention on 24/7/2025.
12. Order accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18TH DAY OF JUNE 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant Dennis

Mr. Barongo for Ngeywa for plaintiff present



Defendant absent

