



Omangi (Suing as Legal Representative and Administrator of the Estate of Daniel Omangi Mokaya (Deceased)) v Ouro & 4 others; Attorney General (Interested Party) (Environment and Land Case E015 of 2025) [2025] KEELC 4724 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E015 OF 2025**

**CK NZILI, J
JUNE 18, 2025**

BETWEEN

**JELIAH KWAMBOKA OMANGI PLAINTIFF
SUING AS LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE
ESTATE OF DANIEL OMANGI MOKAYA (DECEASED)**

AND

**ROBERT NYAMWEYA OURO 1ST DEFENDANT
HENRY SIRIMAN AMWATA 2ND DEFENDANT
LAND REGISTRAR KITALE LAND REGISTRY 3RD DEFENDANT
LAND ADJUDICATION AND SETTLEMENT DEPARTMENT (TRANS NZOIA
COUNTY)- 4TH DEFENDANT
DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 5TH
DEFENDANT**

AND

THE HON. ATTORNEY GENERAL INTERESTED PARTY

RULING

1. The application dated 19/3/2025 seeks an interim injunction barring and restraining the defendants from transferring, alienating, disposing, leasing, entering, remaining on, constructing, or in any way interfering with land known as Kapomboi Scheme Plot No. 402 and an order directing the 5th defendant to place a restriction or caution on the title register, pending hearing and determination of this suit.



2. The reasons are contained on the face of the application and in a supporting affidavit sworn by Jemiah Kwamboka Omangi on 19/3/2025. The applicant deposes that the initial registered owner of the land was the late Daniel Omangi Mokaya who passed on 16/4/2007, now represented by her as per the certificate of confirmation of grant issued on 1/4/2011 annexed as JKO-1.
3. The applicant deposes that since allocation, the deceased and his family have continuously been undertaking agricultural activities on the suit land, the applicant. The applicant avers that while conducting a tour of the land, a neighbor gave her a copy of a letter dated 6/2/2025, from the State Department of Lands and Physical Planning, seeking to access the land to conduct boundary confirmation which she had not been served with. The same letter is attached as Annexure JKO-2. The applicant deposes that she wrote to the land office in a letter dated 4/3/2025, attached as Annexure JKO-3.
4. The applicant says that she has recently learned that the property was unlawfully transferred to the 1st and 2nd respondents contrary to Section 45 of the Law of Succession Act, without her knowledge or consent as per the attached green card dated 11/3/2025 and an official search certificate dated 13/3/2025 marked as Annexures JKO-4.
5. The applicant deposes that she was never served with any notice, summons, or documentation regarding any change in ownership, hence the transfer was done secretly and unlawfully, high-handed, arbitrarily, and fraudulently to deprive the estate of the deceased its proprietary rights over the suit land. The applicant deposes that she neither sold, transferred, gifted, or otherwise, alienated the suit property to any third party, nor did she authorize or consent to such dealings.
6. Given her continued unauthorized occupation and dealing with the property, the applicant deposes that her beneficial ownership rights are at grave risk and creates a possibility of further unlawful transactions to unsuspecting third parties, unless there are existing orders or restrictions to prevent such dealings that might prejudice her interests under Article 40 of the Constitution, and against her legitimate expectation to continue enjoying peaceful occupation of the land.
7. The applicant deposes that the defendants have acted without due process, causing her to suffer anxiety, loss, and imminent risk of eviction from her land.
8. The application is opposed by a replying affidavit sworn by the 1st defendant on 26/3/2025, and on behalf of the 2nd defendant. He avers that he has the authority to plead from the 2nd defendant which he has annexed as RNO-1. He avers that the suit land is registered jointly in his name and that of the 2nd respondent following allocation by the Director of Land adjudication and Settlement, as seen in the copy of the title deed and an offer letter dated 28/8/2024 annexed as RNO-2 and 3.
9. Similarly, the 1st and 2nd respondents aver that the said offer was only valid for 90 days within which to pay a sum of Kshs.50,294/=, which they paid and were issued with payment receipts annexed as RNO-3, whereby the suit land was discharged and a title deed issued to them annexed as RNO-4(a) and (b).
10. Again, the 1st and 2nd respondents aver that in December 2024, in the company of the Director of Land Adjudication and Settlement Kitale, the land surveyor, area chief and the OCS Kapomboi, they visited the suit land which was vacant and established its boundaries and beacons. That soon thereafter, they took possession and proceeded to cultivate and planted maize, the applicant filed this suit.
11. The 1st and 2nd respondents deny engaging in fraud in the acquisition of the suit land and there is no risk of eviction since the applicant is not in possession. Again, they aver that the applicant has not met



- the conditions to warrant the orders sought and they stand to suffer loss and damage if the court grants the orders of injunction.
12. The applicant relied on written submissions dated 28/5/2025. She submits that she has satisfied the condition for grant of the orders of injunction as set out in *Kamau -vs- Karanja*(2022) eKLR, where the court cited with approval *Giella -vs- Casman Brown & Co. Ltd*(1973) EA and *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 others* (2003) eKLR, on the proposition that she has established a prime facie case.
 13. In addition, the applicant submits that all the property of the deceased vests in the personal representative as provided under Section 79 of the [Law of Succession Act](#) and that the actions of the respondents amount to intermeddling, contrary to the provisions of Article 76(1) of [the Constitution](#). Section 45 of the [Law of Succession Act](#) and the subsequent title cannot be deemed indefeasible under Section 26(1) of the [Land Registration Act](#).
 14. The applicant also relies on *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) and *Unga Group PLC. -vs- Maureen Wanjiru Wanyaga* [2021] KEHC 3080 (KLR), and submits that she stands to suffer loss if the orders of injunction are not granted since the balance of convenience tilts in her favor. Similarly, the applicant submits that the court under Sections 68 and 77 of the [Land Registration Act](#) and Section 3A of the [Civil Procedure Act](#) has powers to issue an order of restriction, inhibition or a caution.
 15. The 1st and 2nd respondents rely on written submission dated 28/3/2025. They submit that the applicant is not deserving of the orders sought since she has not established a prima facie case, has not placed before the court any material before the court to show that an award of damages cannot be adequate compensation for the loss of the suit property and the balance of convenience tilts in favor of the 1st and 2nd respondents since they are in possession and have planted maize.
 16. The 1st and 2nd respondents rely on *Giella -vs- Cassman Brown & Co.Ltd* (supra), *Mrao Ltd -vs- First American Bank of Kenya* (supra), *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Company Ltd & 2 others* [2016] KEHC 7263 (KLR) and *East African Development Bank -vs- Hyundai Motors Kenya Limited* [2006] KECA 369 (KLR).
 17. Section 13(7) [Environment and Land Court Act](#), grants this court powers to issue injunctions. A party seeking a temporary order of injunction and inhibition has to meet the principles in *Giella -vs- Cassman Brown* (supra) namely, prove a prima facie case with a probability of success at the hearing, show that there will be irreparable damage in the absence of an injunction and lastly, that the balance of convenience, tilts in favor of granting the reliefs sought.
 18. A prima facie case is established as defined in *Mrao Ltd -vs- First American Bank (K) Ltd* (supra), where looking at the material presented, a tribunal would find a right violated or breached to call for a rebuttal from the opposite side. Irreparable damage is that which cannot be quantified monetarily. It must be real, actual, substantial, and demonstratable. Balance of convenience refers to the inconvenience likely to be faced by the applicant in the absence of any injunction and the suit ultimately succeeds, compared to if an unjust is issued and the suit is ultimately dismissed.
 19. In *Nguruman Ltd -vs- Jan Bonde Nielsen & Others* (supra) it was held that the three pillars must be applied separately, distinctly and logically. The court said that speculative injury found on fear or apprehension will not suffice. Equally, the court said that the equitable remedy of a temporary injunction is solely issued to prevent grave and irreparable injury. The court said that an applicant must show a clear and unmistakable right to be protected, which is directly threatened by an action sought to be restrained, the invasion of the right must be material, substantial and with an urgent necessity to



prevent the irreparable damage that may result from the invasion. The court said that all that is required is for the person applying to demonstrate such right, not by showing a title, but by raising a fair and bona fide question as to the existence of the right which he alleges, on a balance of probabilities.

20. The applicant alleges that the deceased was allocated the land. The date of allocation, size, terms and conditions of the allocation, compliance with the terms and conditions of the allocation, and the allocating authority are not pleaded, and or copies of documents availed to show the nexus between the initial allottee and the land the initial allottee passed on in April 2007.
21. Between 2007 the issuance of the confirmation of grant on 1/4/2011 and the filing of the suit, there is no evidence on whether the applicant perfected the allocation with the allocating authority. One who alleges must prove. The burden is on the applicant to show that a right has been infringed by the respondents.
22. An inhibition under Sections 68 and 76 of the *Land Registration Act*, is like a prohibitory injunction. It bars the registered owner of the property under dispute from registering any transaction over the said property, until further orders or until the suit is heard and determined. The court issuing such orders must be satisfied that the applicant has good grounds to warrant issuance of such an order for it strives to preserve the property in dispute pending hearing. The court in issuing a temporary injunction and inhibition must always take the course with the lower risk of injustice. See Dorcas Muthoni & Others -vs- Michael Ileri Ngari [2016] KEHC 6213 [KLR].
23. Looking at the replying affidavit vis-vis the supporting affidavit, I think the applicant has not made a case to be issued with the interim orders sought. The application is dismissed with costs.

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

Ndugu for Wachira for applicant present

Ndege for 1st and 2nd defendants present

Kutei for 3rd - 5th defendants and Interest Party present

