



REPUBLIC OF KENYA



**Tilitei & another v Psiwa & 3 others (Environment and Land Case E037 of 2024) [2025] KEELC 4688 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4688 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E037 OF 2024**

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

**BETWEEN**

**MARKO KANOMOUS TILITEI ..... 1<sup>ST</sup> PLAINTIFF**

**STEPHEN KAMARKOR AKUTO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KIMUTAI PSIWA ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER-TRANS-  
NZOIA COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT .... 3<sup>RD</sup>  
DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application for determination is dated 27/9/2024, the applicant is seeking orders of injunction to restrain the 1<sup>st</sup> respondent, its agents, servants, or any other person acting on its behalf from entering into, selling, constructing, transferring, charging, or doing any act on parcel Chepchoina Settlement Phase 11 Plot No.5X3, measuring 15 acres; an order of status quo, pending hearing and determination of this application and suit.
2. The grounds are that the suit land was first allocated to the 1<sup>st</sup> applicant in 1994 by the then Provincial Commissioner, I.K Chelanga, following a presidential directive. Upon compliance with the allotment conditions, the 1<sup>st</sup> applicant took possession and control of the suit land in 1997. Further, in 2007, the 3<sup>rd</sup> respondent directed that all allotment letters be surrendered following which new letters were issued on 22/8/2008. To comply with the new conditions, the 1<sup>st</sup> applicant paid 10% of the purchase price.



3. Subsequently, the 1<sup>st</sup> applicant bequeathed the suit land to his nephew, the 2<sup>nd</sup> applicant, who is still in possession and occupation upon purchase. The applicants have been in quiet possession, occupation, and use of the suit land for 27 years, until January 2023, when the 2<sup>nd</sup> applicant learned that unknown people had visited the land. He therefore visited Arthi House to confirm the status of the suit land, where he confirmed that it was partially paid for by the 1<sup>st</sup> applicant and that it had been allocated to someone else.
4. The applicants aver that the acts of the respondents amount to trespass since the 2<sup>nd</sup> applicant has never parted with the ownership, control, or management of the suit land. That the respondents have, through fraud and collusion with land registry officials, issued the 1<sup>st</sup> respondent with a letter of allotment of the suit land, in total disregard of the applicant's overriding interest.
5. Again, the applicants aver that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' acts were malicious, unfair, and illegal in reallocating the suit land to the 1<sup>st</sup> respondent, for they did not give notice to the first allottee informing him of his default, and accord him time to remedy the breach within a prescribed time as is required by law. Similarly, the 4<sup>th</sup> respondent failed to advertise and invite the public and those desirous of allotment, to issue a ground report through the 3<sup>rd</sup> respondent and the survey office.
6. On further grounds, the 2<sup>nd</sup> applicant through his affidavit of even date adds that; upon re-allotment, the 1<sup>st</sup> respondent paid for the suit land through the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. He avers that on 11/5/2023, the 2<sup>nd</sup> respondent wrote to the 3<sup>rd</sup> respondent requesting discharge in favor of the 1<sup>st</sup> respondent. It is eminent that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents may discharge the suit land to the 1<sup>st</sup> respondent and will consequently be registered in his name.
7. Again, the 2<sup>nd</sup> applicant avers that the 2<sup>nd</sup> respondent acknowledged that the suit land had been double allocated and was allowed to pay the balance of the purchase price which he did on 1/8/2023.
8. He avers that the illegal subsequent allocation followed a ground report carried out on 28/2/2023, whereby the 2<sup>nd</sup> and 3<sup>rd</sup> respondents acted contrary to the recommendation that, the first allotted be informed of the breach and its remedy. A caution was also given to the 1<sup>st</sup> respondent upon reallocation.
9. The 2<sup>nd</sup> applicant further avers that the acts of the respondents are an infringement of his property and stands to suffer massive loss and inconvenience. He marked as annexures SKA1 and JKK 2-12, copies of the allotment letters dated 21/4/1994, 22/8/2008, and 24/4/2023; three payment receipts; letter from area chief; payment receipt; letter on payment by the 1<sup>st</sup> respondent; letter by the 2<sup>nd</sup> respondent and a ground report.
10. Opposing the motion, the 1<sup>st</sup> respondent filed his affidavit sworn on 4/10/2024. He avers that he was lawfully allocated the suit land following his application and subsequently paid for it. Again, the 1<sup>st</sup> respondent avers that he complied with all the requirements for the allocation and was thus issued with an allotment letter.
11. In addition, the 1<sup>st</sup> applicant avers that he undertook due diligence and found the suit land vacant and had no knowledge of the previous allocation. According to him, he later learned that the 1<sup>st</sup> applicant failed to pay for the suit land and it was repossessed.
12. He contends that the suit and the application are brought in bad faith and lack merits. The bank receipts and the allotment letter are annexed as KP- 1 and 2.
13. On 30/9/2024, the court issued inter alia; an order of status quo directing that the party in occupation and use of the suit land remain thereon and that no destruction of property, or planting of perennial crops but to maintenance of those already planted and could plant short-term or annual crops on their



- portions. The area chief was also directed to visit the suit land to confirm the ground position for the preservation of the status quo and deliver a report.
14. Parties were to explore an out-of-court settlement and on 12/2/2025, the court gave them more time to engage but no consent has been filed yet.
  15. Order 40 Rule 1 of the Civil Procedure Rules provides that: “a court may order a temporary injunction to restrain such act, or make such other order to stay and prevent 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.”
  16. It is trite law as long established, that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the applicant has established a prima facie case; whether upon examination of the prevailing circumstances, it becomes clear that the applicant stands to suffer an irreparable loss that the respondent would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be to consider in who’s favor the balance of convenience tilted. These principles were set out in *Giella -vs- Cassman Brown & Co. Ltd* 1973 E.A 358.
  17. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in *Nguruman Ltd -vs- Jan Bonde Nielsen & 2 Others*, [2014] eKLR observed that: “In an interlocutory injunction application, the applicant has to satisfy the triple requirements to: establish his case only at a prima facie level, demonstrate irreparable injury if a temporary injunction is not granted, and allay any doubts as to injury by showing that the balance of convenience is in his favor.
  18. Bearing the above in mind, the first stop of the journey towards my final determination is whether the applicants have established a prima facie case. A prima facie case was defined in *Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where Bosire, JA stated as follows: “So what is a prima facie case? I would say 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 right that has been infringed by the opposite party to call for an explanation or rebuttal from the latter.”
  19. Looking at the plaint, the plaintiffs have particularized the allegations of fraud and illegality against the defendants. A prima facie case need not succeed. The applicants have demonstrated their interest in the suit land evidenced by the first and subsequent allocation and remedy for the initial breach. Issues of repossession and reallocation of the suit land to the 1<sup>st</sup> respondent have been termed as illegal and fraudulent. An in-depth look at such matters on merits shall be the main suit. It therefore suffices to say that the applicants have established a prima facie case.
  20. On the other hurdles that need to be surmounted, other than stating that they stand to suffer injury, the applicants have not demonstrated the same as held in *Agnes Naliaka Chesoto -vs- James Wangalwa* (2014) eKLR.
  21. The area chief is yet to furnish the court with a report confirming the status quo of the suit land. However, since the parties have not disputed the prevailing status quo on occupation and use of the suit land as granted by the court on 30/9/2024, the justice of the case would demand that the same be maintained pending the hearing and determination of the main suit.
  22. Mention to confirm for pre-trial conference on 24/7/2025.

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

In the presence of:



Court Assistant - Dennis

Mr. Barongo for the 1<sup>st</sup> defendant present

Karani for plaintiff absent

Mr. Kutei for Chilaka for the 2<sup>nd</sup> - 4<sup>th</sup> defendants present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

