



**Simiyu (Suing as the Legal Representative of the Estate of Pius Simiyu Wanakacha)
v Land Registrar - Trans Nzoia County & 8 others (Environment & Land
Case E043 of 2024) [2025] KEELC 4566 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4566 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E043 OF 2024**

CK NZILI, J

JUNE 16, 2025

BETWEEN

**ZEBEDEE WAFULA SIMIYU (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF PIUS SIMIYU WANAKACHA) PLAINTIFF**

AND

**LAND REGISTRAR - TRANS NZOIA COUNTY 1ST DEFENDANT
JANE ROSE MACHUMA WANYAMA 2ND DEFENDANT
ATINA MTABO 3RD DEFENDANT
STEPHEN OGARA OUMA 4TH DEFENDANT
REX MIKISI MUSUNGU 5TH DEFENDANT
FELICITY RUGURU 6TH DEFENDANT
PETER OUMA MAKUBE 7TH DEFENDANT
SHARIFF JUMA SAKWA 8TH DEFENDANT
HENRY BARASA MAKOB 9TH DEFENDANT**

RULING

1. The court by an application dated 14/11/2024 is asked to:
 - (1) ...spent
 - (2) ...spent



- (3) Issue a temporary injunction restraining the 2nd to 9th respondents from charging, selling, advertising for sale, alienating or disposing or completing any conveyance or transfer of title Nos. Kiminini/Kinyoro/Block 3/Matisi/1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864 and 1865, (hereinafter the suit parcels) pending hearing and disposal of the suit.
 - (4) Order that the 2nd to 9th respondents surrender before court title deeds for the suit parcels of land.
2. The application is premised on the grounds on its face and in the affidavit in support of Zebedee Wafula Simiyu sworn on 14/11/2024. It is deposed that the applicant is the legal representative of the estate of Pius Simiyu Wanakacha (deceased) as per a confirmation of grant dated 2/11/2022, who used to be the owner of land title numbers Kiminini/Kinyoro/Block3/Matisi/266 now known as Kiminini/Kinyoro/Block3/Matisi/2801, Kiminini/Kinyoro/Block3/Matisi/274 as per copies of mutation dated 18/2/2014. He attached the same as annexures ZWS-1 and 2.
 3. The applicant deposes that the deceased had intended to sell L.R No. Kiminini/Kinyoro/Block3/Matisi/2801 to the 2nd - 9th respondents as per an agreement dated January 2010 and upon receiving consideration, he allowed them to begin occupation of the said properties. The applicant avers that after the occupation the 2nd - 9th respondents requested that the deceased surrender the original title to them to begin the process of subdivision and transfer to obtain titles under their names. The applicant deposes that the deceased mistakenly gave the wrong mother title namely; Kiminini/Kinyoro/Block3/Matisi/274, resulting in erroneous subdivisions of the said mother title on 18/2/2014 leading to the suit parcels of land.
 4. Equally, the applicant deposes that the 2nd - 9th respondents are residing on land title number Kiminini/Kinyoro/Block 3/Matisi/266, now Kiminini/Kinyoro/Block3/Matisi/2801, but possess the wrongly subdivided titles going by copies of official search certificates attached as annexures ZWS-2 - 8. The applicant deposes that in the interest of justice, he wishes to have the wrongly subdivided and issued titles cancelled to process new titles for the correct parcel of land that was the subject matter in the sale agreement, otherwise, he will greatly be prejudiced if the orders sought are not issued.
 5. Further, the applicant deposes that there will be no prejudice occasioned to the 2nd - 9th respondent, if the orders are issued as they remain in possession of their properties in the land title numbers Kiminini/Kinyoro/Block 3/Matisi/266, now known as Kiminini/Kinyoro/Block 3/Matisi/2801.
 6. The application is opposed through a replying affidavit sworn by the 5th respondent, Rex Mikisi Musungu on 2/1/2025, on behalf of the 3rd, 7th and 9th respondents for being misconceived devoid of merits, frivolous, vexatious, bad in law, defective and an abuse of the court process. The 5th respondent deposes that the late seller sold land title number Kiminini/Kinyoro/Block 3/Matisi/274 to the co-defendants and subsequently surrendered the mother title as per copies of sale agreements attached as RMM-2A, B, C, and D, after which they obtained valid and legal title deeds for the respective parcel of land, and shown to them by the vendor.
 7. The respondents depose that they have been occupying and developing the parcels of land for over 15 years without any complaint from the applicants late father, hence the application is an afterthought, intended to cure some mischief only known to the applicant, who has no genuine claim.
 8. From the court record, it is not clear if the 1st, 4th, 6th and 8th respondents were served with a summons to enter an appearance. A party seeking temporary orders of injunction has to establish a prima facie case without a probability of success, that he will suffer irreparable loss or damage in the absence of



an injunction and lastly; that a balance of convenience favours issuance of a temporary injunction. A prima facie was defined in *Mrao Ltd -vs- First American Bank of (K) Ltd & Others* [2003] eKLR as established where, looking at the material before the court, a right has been infringed to call for a rebuttal from the opposite party. Irreparable damage or loss has been defined as loss that may be quantified by way of monetary terms, in the absence of an injunction as held in *Charter House Investment Ltd -vs- Nduachi Co. Ltd & others* [2017].

9. Balance of convenience as held in *Pius Kipchirchir Kogo -vs- Frank Kimeli Tenai* [2018] eKLR, is the prejudice plaintiff will suffer if an injunction is not granted and the suit ultimately decided in his favour as opposed to the inconvenience caused to the defendant if the injunction is granted, but the suit is ultimately dismissed. The court said the inconvenience being equal, the plaintiff has to show that the comparative mischief from the inconvenience, likely to arise in the absence of the injunction will be greater than that which is likely to arise from granting the orders.
10. In *Paul Gitonga Wanjau -vs- Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR, the court observed that where doubts exist as to the applicant's 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 injury the respondent is likely to suffer, if it would turn out to be right.
11. There is no doubt that the 2nd - 9th respondents obtained their title deeds for the suit parcels of land in 2014 and 2019, going by the mutation forms dated 18/2/2014 and the official search certificates. The applicant has not refuted the contents of the replying affidavit by the 3rd, 5th, 7th and 9th respondents and denied that the transfer form dated 10/4/2014 as well as annexure marked RMM-3, said to be the sale agreement dated 14/6/2003, was executed by his late father. The bottom line of the plaintiff's suit is that the late father gave the wrong mother title deed leading to the subdivision, transfers and registration of the resultant title deeds in favour of the 2nd – 9th defendants. The plaintiff does not attribute any liability, complicity and or wrongdoing on the part of the defendants.
12. A cause of action as held in *Pius Kimaiyo Lagat -vs- Co-operative Bank of (K) Ltd* [2017] eKLR, is the factual situation, the existence of which entitles one person to obtain from the court a remedy against the other. The applicant has to establish as a matter of fact how the mistake arose in the sale, subdivision, transfer and registration of the suit parcels of land to support the cancellation of the sale, transfer and registration thereof. When the discovery of the wrongful surrender occurred has not been pleaded. A cause of action based on a contract expires after 6 years and so is for recovery of land within 12 years. The 3rd, 5th, 7th and 9th respondents have pleaded that the applicant's late father sold, gave possession, transferred and acquired valid legal and genuine title deeds.
13. The applicant has to discharge the burden that his right or interest in the suit parcel of land has been violated by the respondents. The certificate of confirmation of grant was issued jointly to the applicant and Margaret Khakoi Simiyu on 1/11/2022. The applicant cannot urge the right on behalf of the estate of his late father without the concurrence of a co-administrator. The certificate of grant is indivisible. Co-administrators must act in unison. See *Re Estate of Makokha Idris Khasabuli (Deceased)* [2020] eKLR
14. Once the applicant fails to surmount a prima facie case, the court may not consider other parameters. See *Nguruman Limited -vs- Jan Bonde Nielsen & 2 others* [2014] eKLR.
15. Even if the applicant had a bona fide interest, still the delay of over 6 years denies him the alleged right to interim orders. Equally, the 3rd, 5th, 7th and 9th respondents have pleaded that they have occupied, developed and utilized the suit parcels of land for over 15 years without any complaint. I find the



balance of convenience favours the status quo being maintained. As to the surrender of the title deeds before the court, the applicant has not told the court if he ever engaged the respondents to swap the title deeds and or rectify the alleged anomalies. The delay in not seeking remedies for 15 years disentitles the applicant of any interim orders.

16. The upshot is that I find the application dated 14/11/2024 lacking merits. It is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 16TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Kurui for Juma for the plaintiff present

HON. C.K. NZILI

JUDGE, ELC KITALE.

