



Chirchir & another (Both Suing as Legal Representatives of the Estate of Kipchirchir Arap Marusoi) v Bor & another (Environment and Land Case E033 of 2024) [2025] KEELC 6179 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CASE E033 OF 2024
LA OMOLLO, J
SEPTEMBER 25, 2025**

BETWEEN

**PATRICK CHIRCHIR 1ST PLAINTIFF
ANDREW CHIRCHIR 2ND PLAINTIFF
BOTH SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF
KIPCHIRCHIR ARAP MARUSOI**

AND

**KENNETH BOR 1ST DEFENDANT
LAND REGISTRAR, KERICHO COUNTY 2ND DEFENDANT**

RULING

Introduction.

1. This ruling is in respect of the Plaintiffs/Applicants Notice of Motion application dated 16th December, 2024. The application is expressed to be brought under Order 40 Rules 1, 2, 3 & 4 of the Civil Procedure Rules and Sections 1A, 1B & 3A of the *Civil Procedure Act*.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the Court be pleased to grant a temporary injunction restraining the Respondents by themselves, their agents and/or servants from trespassing onto and/or erecting structures, selling, leasing, sub-dividing or encroaching in any manner, embarking on agricultural



activities or otherwise interfering or dealing with property title number Kericho/Kipkelion/Barsiele Block 2 (Kaplab) 45 pending the hearing and determination of the suit.

- d. That the Officer Commanding Kipkelion Police Station do enforce compliance of the orders above.
 - e. That cost of this application be provided for.
3. The application is based on the grounds on its face and the supporting affidavit sworn by both Patrick Chirchir and Andrew Chirchir on 16th December, 2024,

Factual Background.

4. The Plaintiffs/Applicants commenced the present proceedings vide the Complaint dated 16th December, 2024 wherein they seek the following prayers;
- a. A permanent injunction restraining the Defendants whether by themselves, their agents and/or servants or any persons acting under their instructions from, trespassing on and/or erecting structures or otherwise interfering or dealing with the Plaintiff's property title number LR/No. Kericho/Kipkelion/Barsiele Block 2 (Kaplab)45.
 - b. An order directing the 1st Defendant to vacate the suit property being LR/No. Kericho/Kipkelion/Barsiele Block 2 (Kaplab) 45 failing to which an order of eviction does issue against them.
 - c. General damages.
 - d. Cost of this suit.
 - e. Any other relief the Court deems fit to grant.
5. The 1st Defendant/Respondent filed a Statement of Defence and Counterclaim dated 29th January, 2025 wherein he seeks the following prayers;
- a. A permanent injunction restraining the Plaintiffs whether by themselves, their agents and/or servants or any person acting their instructions from trespassing on and/or erecting structures or otherwise from interfering or dealing with the 1st Defendant's deceased father's land known as Kericho/Kipkelion/Barsiele Block 2 (Kaplab)41.
 - b. An order of mandatory injunction directing the Plaintiffs vacate(sic), remove the fence, encroachments, beacons, structures erected, crops cultivated onto the Plaintiffs parcel of land known L/R No. Kericho/Kipkelion/Barsiele Block 2 (Kaplab)/41 measuring 16.52 Ha (40.82 acres) and the OCS Kipkelion Police Station to ensure compliance.
 - c. An order of mandatory injunction directing the Defendants to vacate, remove the fence, encroachments, beacons, structures erected, crops cultivated onto the Plaintiffs parcel of land known as Mau Summit/Molo Block 3/256 measuring approximately 0.4209 Ha.
 - d. An order directing the Lands Registry, Kericho to cancel the title deed Kericho/Kipkelion/Barseile Block 2 (Kaplab)45 measuring 20.98Hs(sic), issued to Kipchirchir Arap Mursoi (deceased) and issue afresh (sic) title in line with the measurements on the ground and as per the members register.
 - e. General damages.
 - f. Costs of the suit with interest thereon.



- g. Any other relief this Honourable Court deems fit (sic) to grant.
6. As at the time of writing of this ruling the 2nd Defendant/Respondent had not filed its Statement of Defence.
 7. The application under consideration first came up for hearing on 18th December, 2024 when the Court directed that it be served upon the Defendants/Respondents.
 8. On 12th February, 2025 the application came up for hearing which hearing was adjourned to 3rd March, 2025. On 3rd March, 2025 Counsel for the 2nd Defendant/Respondent informed the court that they would not be participating in the hearing of the application and the application was further adjourned to 26th March, 2025. Parties were, in the meantime, given opportunity to explore the option of recording a consent on the application.
 9. On 23rd March, 2025 the parties informed the Court that they were not able to agree on status quo orders. The Court therefore issued directions that the application be canvassed by way of written submissions.
 10. On 23rd June, 2025 the matter was mentioned to confirm filing of submissions and then reserved for ruling.

The Plaintiffs/Applicants Contention.

11. The Plaintiffs/Applicants contend that they are the legal representatives of the estate of the late Kipchirchir Arap Marusoi.
12. The Plaintiffs/Applicants also contend that their deceased father was the registered owner of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45.
13. The Plaintiffs/Applicants further contend that their father died on 29th October, 2002. They go on to state that he was a polygamous man with two wives and that he left behind a number of beneficiaries.
14. It is their contention that they have been in peaceful occupation of the suit parcel since the year 1983. They add that they have been undertaking agricultural activities on the suit parcel without any interference.
15. It is also their contention that the 1st Defendant/Respondent recently encroached onto the suit parcel and is intending to excise off ten acres and yet he is neither a purchaser nor a beneficiary of the estate of the deceased.
16. It is further their contention that their possession, use and occupation of the suit parcel has been open and regular which rights they have excised in conformity with the laws of the land.
17. They contend that the 1st Defendant/Respondent has motioned his agents, servants and/or assigns to clear the disputed portion by destroying any vegetation and/or structures and leave the land bare. They go on to state that the 1st Defendant/Respondent has planned for a survey of the suit property on 18th December, 2024.
18. The Plaintiffs/Applicants also contend that they believe that the 1st Defendant/Respondent is out to disenfranchise them from their land by hook or crook and yet their deceased father was a bona fide proprietor with indefeasible title.



19. The Plaintiffs/Applicants further contend that on or about the year 2006, they realized that the 1st Defendant/Respondent's deceased father had illegally subdivided their land and allocated twelve acres of the suit property to himself.
20. It is their contention that they checked the Registry Index Map and realized that it had been amended on or about the year 1991 without informing the registered owner. (sic)
21. It is also their contention that they lodged a complaint before the Lands Disputes Tribunal being claim No. 522 of 2006. They go on to state that the matter was decided in their favour.
22. It is further their contention that the 1st Defendant/Respondent deceased father was given thirty days to appeal but he did not file any appeal.
23. The Plaintiffs/Applicants contend that the 1st Defendant/Respondent is planning to utilize the said portion of land and leave them destitute. They add that the 1st Defendant/Respondent has used his influence to ensure that the suit parcel is inaccessible to them.
24. The Plaintiffs/Applicants also contend that the 1st Defendant/Respondent's acts of encroachment have caused them to suffer mentally, psychologically and has put their entire family through emotional distress and they cannot exercise their rights and privileges over the suit parcel as guaranteed by *the Constitution*.
25. The Plaintiffs/Applicants further contend that they sought services from an advocate and sent a demand letter to the 1st Defendant/Respondent. They add that despite receiving the said letter, the 1st Defendant/Respondent has not stopped trespassing and/or interfering with their property. They add that the 1st Defendant/Respondent is hell bent on frustrating their quiet and peaceful possession.
26. It is their contention that the Defendants/Respondents, their servants, agents and/or assigns should be stopped from their actions as the 1st Defendant/Respondent intends to forcefully grab their land.
27. It is also their contention that it is in the interest of justice that the orders sought be granted and end their deposition by stating that if the orders sought are not granted, they will suffer irreparable loss and damage which will not be adequately compensated in monetary terms.

The 1st Defendant/Respondent's Response.

28. The 1st Defendant/Respondent filed a Replying Affidavit sworn on 29th January, 2025.
29. He deposes that he has been sued as a trespasser. He adds that he ought to have been sued in his capacity as a representative of the estate of the deceased because the issue in the present matter is a boundary dispute that involves the land that belonged to the deceased.
30. He also deposes that he is the son of Joshua Machi A. Biegon (deceased) who is the registered owner of land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba) 41 measuring 16.52 Ha.
31. He further deposes that the said parcel of land borders land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba) 45.
32. It is his deposition that that the parties herein have a boundary dispute. He goes on to state that the Plaintiffs/Applicants have encroached onto his late father's parcel of land and are conducting farming activities on it.



33. It is also his deposition that before his demise, his late father instructed the firm of M.C Getanda & Co. Advocates to write to one Jane Marisoi the wife of Kipchirchir Arap Marusoi demanding that she vacates from the disputed portion of land.
34. It is further his deposition that the Plaintiffs/Applicants have misdirected the Court at paragraph 13 of their Supporting Affidavit that his (1st Defendant/Respondent) late father failed to appeal against the decision of the Land Disputes Tribunal and yet they are aware that the decision of the Land Disputes Tribunal was set aside by the Principal Magistrate's Court in Misc. Application No. 6 of 2006. He goes on to state that the Court held that the Land Disputes Tribunal did not have jurisdiction to handle issues of amendment of records.
35. He deposes that because of the persistent complaints between the two families, they requested the County Surveyor through the Assistant County Commissioner, Kipkelion Division to conduct a survey on the two parcels of land to determine the boundaries.
36. He also deposes that on 29th February, 2024 the County Surveyor wrote a letter to the Assistant County Commissioner informing him that the survey will be conducted on 12th March, 2024.
37. He further deposes that the boundary ascertainment exercise was conducted on 12th March, 2024 and a report made on 4th April, 2024. He adds that the said report was forwarded to the Assistant County Commissioner.
38. It is his deposition that the said report confirmed that the disputed portion is within land parcel No. Kericho/Kipkelion/Barisiele Block 2 (Kaplaba) 41.
39. It is also his deposition that in order to acquire land in Kericho/Kipkelion/Barsiele Block 2, one had to be a registered member of Kaplaba Estate Limited. The registered members were given parcels of land according to the number of purchased shares.
40. It is further his deposition that from the said register, his late father's parcel of land measures 16.52 Ha (40.82 acres) while the Plaintiffs/Applicants land measures 16.66 Ha (41.17 acres). This information tallies with the Surveyor's Report.
41. He deposes that he was given an opportunity to sample (sic) several title deeds within the said area and that he can confirm that all the sampled parcels correspond to the members register.
42. He also deposes that the Plaintiffs/Applicants have tampered with the Land Registry and allocated themselves more acreage to their title deed which does not correspond on the ground and the members register. He adds that the Plaintiffs/Applicants title deed states that they own a parcel of land measuring 20.98 Ha and yet in the members register they are entitled to 16.66 Ha.
43. He further deposes that the Plaintiffs/Applicants are taking advantage of the anomaly on the title deed to have the Registry Index Map altered. He goes on to state that the Plaintiffs/Applicants title deed should be cancelled and a fresh one issued to ensure that the area on the ground reflects on the title deed.
44. It is his deposition that he has been advised by his advocates on record that he who comes to equity must come with clean hands. He goes on to state that the Plaintiffs/Applicants have tainted themselves (sic) and they are therefore not deserving of the orders sought in the application under consideration and the Plaintiff.
45. It is also his deposition that it is clear that it is the Plaintiffs/Applicants who have trespassed onto his (1st Defendant/Respondent) parcel of land and have started claiming ownership. He adds that this Court should put a stop on the Plaintiffs/Applicants actions.



46. It is further his deposition that the Plaintiffs/Applicants have interfered with the boundaries of the suit parcel while taking advantage of the anomalies on the title deeds. He goes on to state that he reported the matter to Kipkelion Police Station vide OB No. 09/05/06/2024.
47. He deposes that the Plaintiffs/Applicants and their agents and/or servants have stolen posts, caused malicious damage to property and have assaulted him. He adds that he reported the said incidents at Kipkelion Police Station vide Ob No's 15/28/06/2024, 08/11/07/2024 and 17/19/12/2024.
48. He also deposes that the matters are still pending investigations at the Police Station before directions are issued by the Director of Public Prosecution.
49. He ends his deposition by seeking that the Court protects the estate of the deceased and the Plaintiffs/Applicants be restrained from interfering with his peaceful possession of the suit parcel.
The Plaintiffs/Applicants Response to the 1st Defendant/Respondent's Replying Affidavit.
50. The Plaintiffs/Applicants filed a Supplementary Affidavit sworn by Andrew Chirchir the 2nd Plaintiff/Applicant on 20th March, 2025.
51. He deposes that the 1st Defendant/Respondent trespassed onto the suit parcel in his personal capacity and he cannot therefore be sued as a representative of the estate of his deceased father.
52. He also deposes that the 1st Defendant/Respondent encroached on a portion of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplab) (sic) measuring 10 acres and cut down trees.
53. He further deposes that he does not agree with the findings of the Surveyor's Report that is attached to the 1st Defendant/Respondent's Replying Affidavit. He goes on to state that the surveyor used an amended map which his (2nd Plaintiff/Applicant) late father disputed.
54. It is his deposition that his deceased father was registered as the owner of the suit parcel which measures 52.45 acres in the year 1991. He adds that since the said registration in the year 1991, neither the 1st Defendant/Respondent nor his father filed a suit complaining of encroachment.
55. It is also his deposition that in the year 1992, his late father visited the survey office because he wanted to subdivide the land and discovered that the Registry Index Map had been amended. He adds that the said amendments were done without any consultations.
56. It is further his deposition that his deceased father lodged various complaints with the Director of Surveys which complaints were addressed through the correspondences dated 30th July, 1992.
57. He deposes that before his late father was issued with a title deed, the land was surveyed.
58. He also deposes that they have been in occupation of the said land since it was allocated to their late father in the year 1976. He goes on to state that they have planted maize and built houses on the land.
59. He further deposes that the 1st Defendant/Respondent has never occupied any part of the suit parcel.
60. It is his deposition that the 1st Defendant/Respondent has only sampled the title deeds belonging to the neighboring areas but has not ascertained the actual acreages of the said parcels on the ground.
61. It is also his deposition that if the 1st Defendant/Respondent believes that they have tampered with the title deed, then he must have been aware of the said anomalies all along but did not do anything to rectify them.



62. He ends his deposition by stating that they have not interfered with any boundary and that the marked boundary has been there since the suit parcel was allocated to them in the year 1976.

Issues for Determination.

63. The Plaintiffs/Applicants filed their submissions on 23rd June, 2025 while the 1st Defendant/Respondent filed his submissions on 24th April, 2025.
64. The Plaintiffs/Applicants submit on whether the Court should grant them an interlocutory injunction. They rely on the judicial decision of *Gielle vs Cassman Brown & Co. Ltd (1973) EA3* and submit that the Court in the said decision set out the threshold that has to be met by a party seeking an interlocutory injunction.
65. The Plaintiffs/Applicants submit that they have to establish that they have a prima facie case with a probability of success.
66. The Plaintiffs/Applicants rely on *Mrao Ltd vs First American bank of Kenya Ltd & 2 Others [2003] eKLR* and submit that they have established that they have a prima facie case.
67. The Plaintiffs/Applicants submit that they are the legal representatives of the estate of their late father who is the registered owner of the suit parcel.
68. The Plaintiffs/Applicants also submit that they have moved this Court after their right to property was infringed by the 1st Defendant/Respondent.
69. The Plaintiffs/Applicants rely on Section 27 of the *Land Registration Act* and submit that the 1st Defendant/Respondent's allegations of interference on the acreage on the title deed are mere allegations as there are no civil or criminal proceedings commenced against them.
70. The Plaintiffs/Applicants rely on Section 26 of the *Land Registration Act* and submit that they have produced a copy of the title deed of the suit parcel which is prima facie evidence that their deceased father is the indefeasible owner of the suit parcel.
71. The Plaintiffs/Applicants submit that they have demonstrated that they are likely to suffer irreparable injury which cannot be adequately compensated by an award of damages as their family is emotionally distressed and cannot utilize the suit parcel because of the 1st Defendant/Respondent's actions.
72. The Plaintiffs/Applicants also submit that unless the Court issues an order of injunction, the 1st Defendant/Respondent may proceed and utilize the portion of the suit property to their detriment.
73. The Plaintiffs/Applicants rely on the judicial decision of *Kenya Electricity Transmission Company Limited v Kibotu Limited [2019] eKLR* and submit that when the Court is in doubt, it should decide the case on a balance of convenience.
74. The Plaintiffs/Applicants also submit that the 1st Defendant/Respondent will not suffer any prejudice if an order of injunction is issued.
75. The Plaintiffs/Applicants conclude their submissions by urging the Court to allow their application as prayed.
76. The 1st Defendant/Respondent submits on the following issues;
- a. Whether the Honourable Court issues temporary injunction pending hearing and determination of the suit. (sic)



- b. Who should bear the costs of the application.
77. On the first issue, the 1st Defendant/Respondent relies on the judicial decisions of *Hezron Kamau Gichuru v Kianjoya Enterprises Ltd & another* [2022] eKLR, *Nguruman Limited versus Jan Bonde Nielson & 2 Others* [2014] eKLR and submit that an Applicant seeking an interlocutory injunction must establish a prima facie case, demonstrate irreparable injury if a temporary injunction is not granted and if there is any doubt, show that the balance of convenience tilts in his favour.
78. The 1st Defendant/Respondent relies on the judicial decision of *Maina vs Stanbic Bank Kenya Limited & 2 Others* [2022] eKLR and while reiterating the averments in his replying affidavit submits that the disputed portion of land forms part of his (1st Defendant/Respondent) deceased father's parcel of land. That is land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba) 45.
79. The 1st Defendant/Respondent also submits that he has annexed to his Replying Affidavit a survey report which confirms that the said portion belongs to his (1st Defendant/Respondent) father and a copy of a register that confirms the exact measurement of the portion of land that each member of Kaplaba Estate Limited was allocated.
80. The 1st Defendant/Respondent further submits that other members of Kaplaba Estate Limited have title deeds and the measurements of their parcels of land tally with the register.
81. It is the 1st Defendant/Respondent's submissions that the Plaintiffs/Applicants have failed to explain how their acreage in the title deed is higher than the acreage in the register.
82. It is also the 1st Defendant/Respondent's submissions that the Plaintiffs/Applicants are not deserving of the orders sought as they have trespassed onto his (1st Defendant/Respondent) father's parcel of land while claiming ownership.
83. The 1st Defendant/Respondent reiterates that the Plaintiffs/Applicants have on several occasions interfered with the boundaries of the suit parcel and they are therefore not deserving of the orders sought.
84. On the question of who shall bear costs of the application, the 1st Defendant/Respondent relies on Section 27(1) of the *Civil Procedure Act* and urges the Court to dismiss the Plaintiffs/Applicants application.

Analysis and Determination.

85. I have considered the Plaintiffs/Applicants application, the response thereto and the rival submissions. My view is that the only issue that arises for determination is whether the Plaintiffs/Applicants have met the criteria for grant of an order of temporary injunction pending the hearing and determination of this suit.
86. In the judicial decision of *Giella vs. Cassman Brown* [1973] EA 358, the Court set out the conditions for grant of interlocutory injunctions. They are as follows;

“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an Applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

Thirdly if the Court is in doubt it will decide an application on the balance of convenience.”



87. The Plaintiffs/Applicants must first establish a prima facie case. A prima facie case was defined in the judicial decision of Mrao Limited vs. First American Bank of Kenya & 2 Others [2003] eKLR as follows;

“A prima facie case in a civil case include but is not confined to a “genuine or arguable” case. It is a case which on the material presented to the Court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

88. The Plaintiffs/Applicants contend that they have commenced the present proceedings on behalf of the estate of their deceased father Kipchirchir Arap Marusoi.

89. The Plaintiffs/Applicants also contend that their deceased father is the registered owner of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45.

90. The Plaintiffs/Applicants further contend that the 1st Defendant/Respondent has trespassed onto the suit parcel of land and is intending to excise off ten acres.

91. It is the Plaintiffs/Applicants contention that sometime in the year 2006, they discovered that the 1st Defendant/Respondent’s deceased father illegally subdivided their parcel of land and hived off ten acres for himself.

92. It is also the Plaintiffs/Applicants contention that they checked the Registry Index map and realized that in the year 1991, the 1st Defendant/Respondent’s deceased father amended it.

93. It is further the Plaintiffs/Applicants contention that they lodged a complaint before the Lands Disputes Tribunal i.e. Claim No. 522 of 2006 and the matter was decided in their favour. The 1st Defendant/Respondent’s deceased father was given thirty days to file an appeal which he failed to file.

94. It is the Plaintiffs/Applicants contention that the 1st Defendant/Respondent is intending to utilize the said portion of land and has ensured that the said land is inaccessible to them.

95. Among the documents attached to the Plaintiffs/Applicants affidavit in support of the application is an unclear copy of a title deed. The legible portions of the parcel number are Kericho/Kipkelion... Block 2 (Kaplaba)/45.

96. The title deed was issued to Kipchirchir Marusoi on 22nd March, 1993.

97. The Plaintiffs/Applicants have also attached a copy of a Certificate of Official Search for land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba)45 dated 5th July, 2024 which shows that Kipchirchir A. Marusoi was registered as the owner on 22nd March, 1991.

98. The Plaintiffs/Applicants have attached proceedings of the Kipkelion Land Disputes Tribunal Claim No. 522/2006 In the matter of the dispute between Jane Marusoi and Joshua Yegon. The dispute was on land parcels No’s Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45 and 41.

99. The award of the tribunal is as follows;

“Having heard the representation of all the disputing parties including the witnesses and having considered the documents availed to us, we hereby decide and order that:-

1. The District Surveyor should visit the disputed farms i.e. Kericho/Kipkelion/Barsiele Block2(Kaplaba)/45 and Kericho/Kipkelion/Barisiele Block 2 (Kaplaba) 41 and determine the actual acreages on the ground.



2. The District Land Registrar should re-visit and amend the map as it were before to reflect what is on the ground as the current ammended (sic) map does not reflect what is on the ground. The (sic) owners did not sit and agree on any amendment made thereto on the amended map.
3. Costs awarded to the Claimant.”

100. In response, the 1st Defendant/Respondent contends that his deceased father one Joshua Machi A. Biegon is the registered owner of land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba) 41 which borders the Plaintiffs/Applicants parcel of land.
101. The 1st Defendant/Respondent also contends that they have been having a boundary dispute with the Plaintiffs/Applicants after the latter trespassed onto his deceased father’s parcel of land and begun farming.
102. The 1st Defendant/Respondent further contends that his deceased father appealed the Land Disputes Tribunal’s decision and it was set aside in Misc. Application No. 6 of 2006.
103. It is the 1st Defendant/Respondent’s contention that they wrote to the County Surveyor requesting for ascertainment of boundaries and on 12th March, 2024, a survey was conducted and it confirmed that the disputed portion of land falls within land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba) 41.
104. It is also the 1st Defendant/Respondent’s contention that his deceased father and the Plaintiffs/Applicants father were members of Kaplaba Estate Limited.
105. It is further the 1st Defendant/Respondent’s contention that as per the register of Kaplaba Estate Limited, the Plaintiffs/Applicants were allocated 16.66 Ha but their title deed now reads 20.98 Ha.
106. The 1st Defendant/Respondent contends that the said discrepancy has not been explained.
107. The 1st Defendant/Respondent further contends that it is the Plaintiffs/Applicants who are interfering with the boundaries of the two parcels of land.
108. Among the documents the 1st Defendant/Respondent has attached to his Replying Affidavit is a copy of the title deed for land parcel No. Kericho/Kipkelion/Barseile Block 2 (Kaplaba)/41. It states that it was issued to Joshua Machi Biegon on 7th August, 1992.
109. The 1st Defendant/Respondent has also attached a document issued in Kericho PM Misc. Application No. 6 of 2006 Jane Marusoi versus Joshua Yegon.
110. It states that on 25th May, 2006 the Court held as follows;

“The tribunal had no jurisdiction to handle the issues raised on amendment of records awarding costs (sic) and deciding on ownership of registered lands in issue. This matter is struck out and parties may move to the High Court if they so wish.”
111. The 1st Defendant/Respondent has also attached a Surveyor’s Report dated 4th April, 2024 on land parcel No’s Kericho/Kipkelion Barseile Block 2 (Kaplaba) 41 and 45. It is prepared by Raphael Letyo (surveyor) and checked by Kibet Isaack the County Surveyor.



112. The report under the sub-heading ‘Grounds Observations’ states as follows;
- “The parties in dispute showed the surveyors their current existing boundaries and the following was noted;The persons claiming ownership of parcel number Kaplaba/45 are currently using the disputed section (shaded part of figure 1) up to points K B N.”
113. The report under the sub heading ‘Grounds Technical Findings’ sets out two tables. Table one sets out the ground areas versus the registered area while Table two sets out the registered area versus the area on the map.
114. Under Table one, the ground area of land parcel No. 41 is 31.57 acres while its registered area is 40.82 acres. For land parcel No. 45 the ground area is 53.52 acres while its registered area is 51.84 acres.
115. Under Table two, the map area for land parcel No. 41 is 41.84 acres while its registered area is 40.82. For land parcel No. 45 the map area is 41.53 while its registered area is 51.84 acres.
116. From the two tables, the Surveyors Report states as follows;
- “It is noted that if the status quo remains as it was at the time of survey, the ground area to parcel number 41 will be less by about 9.25 acres while it will be more on parcel number 45 by about 1.68 acres (Table 1).
- If the map is used as a guide to re-establish the boundaries of the two parcels, the area to parcel number 41 will be more by about 1.02 acres while the area to parcel number 45 will be less by about 10.31 Acres (Table 2).
- The total cumulative registered areas are less than the map and the ground areas (Table 1 and 2)”
117. The report made the following conclusion;
- “The process of area confirmation was carried out effectively and the variations noted based on the current available records at the time of survey.”
118. This Court notes that the Plaintiffs/Applicants object to the findings of the said report.
119. Essentially, it is the Plaintiffs/Applicants case that the 1st Defendant/Respondent’s deceased father amended the area Registry Index Map and based on the said amendments, begun to claim ten acres of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45.
120. On the other hand, the 1st Defendant/Respondent contends that the Plaintiffs/Applicants were allocated 16.66 Ha as per the register of Kaplaba Estate Limited but their title deed now states that their parcel of land measures 20.98 Ha.
121. He also contends that based on the increase in acreage, the Plaintiffs/Applicants have trespassed onto his late father’s parcel of land i.e. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 41.
122. Basically, the Plaintiffs/Applicants are alleging that the disputed portion of land measuring ten acres is part of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45 while on the other hand, the 1st Defendant/Respondent is alleging that the disputed portion is part of land parcel No. Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 41.



123. The issue of whether or not the disputed portion of land forms part of Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 45 or Kericho/Kipkelion/Barsiele Block 2 (Kaplaba) 41 will be best addressed during the hearing of the main suit.
124. This Court notes that under paragraph 15 of the Affidavit in support of the application, the Plaintiffs/Applicants contend that the 1st Defendant/Respondent has used his influence to ensure that the disputed portion of land is inaccessible to them.
125. However, at paragraph 14 of their Supplementary Affidavit, the Plaintiffs/Applicants contend that the 1st Defendant/Respondent has never occupied and/or utilized any portion of the suit parcel.
126. In light of the said contradiction and given the totality of the circumstances of this case, it is my view that the Plaintiffs/Applicants have not demonstrated that they have a prima facie case.
127. The second condition for grant of orders of temporary injunction is that the Plaintiffs/Applicants must demonstrate that they will suffer irreparable injury that would not be adequately compensated by way of damages.
128. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:
- “On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.” (Emphasis mine)
129. The judicial decision in *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR provides an explanation of what is meant by irreparable injury. It is as follows;
- “Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.” (Emphasis mine)
130. The Plaintiffs/Applicants submit that they are likely to suffer irreparable damage that cannot be adequately compensated by way of damages as they are emotionally distressed and cannot utilize the disputed portion of land because of the 1st Defendant/Respondent’s actions.
131. The 1st Defendant/Respondent did not address this issue in his submissions.
132. As afore stated, the area in dispute measures ten acres. What is in dispute is whether the said ten acres form part of the Plaintiffs/Applicants parcel of land and/or whether it forms part of the 1st Defendant/Respondent’s parcel of land.



133. Further, the Plaintiffs/Applicants on one hand contend that the 1st Defendant/Respondent is in possession of the disputed portion while also on the other hand they contend that the 1st Defendant/Respondent is not in possession.
134. Given the said circumstances, it is my view that the Plaintiffs/Applicants have not demonstrated that they will suffer irreparable damage which cannot be adequately compensated by way of damages if the orders sought are not granted.
135. If after making considerations on the existence of a prima facie case and irreparable injury the Court is still in doubt, then an application for temporary injunction is to be determined on the basis of balance of convenience.
136. The Plaintiffs/Applicants have failed to establish a prima facie case and they have also failed to demonstrate that they will suffer irreparable damage which cannot be adequately compensated by way of damages. I shall therefore determine this application on the basis of balance of convenience.
137. In *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (supra) the Court held as follows;
- “The meaning of balance of convenience will favour of the Plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer. In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it” (Emphasis mine)
138. In *Paul Gitonga Wanjau vs Gathuthis Tea Factory Company Ltd & 2 others* [2016] eKLR the Court while considering the question of balance of convenience expressed itself thus;
- “Where any doubt exists as to the Applicants’ 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 the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.” (Emphasis mine)
139. It is not clear who between the Plaintiffs/Applicants and the 1st Defendant/Respondent is in possession of the disputed portion of land measuring ten acres.
140. That being the case, it is my view that the balance of convenience does not tilt in favour of the Plaintiffs/Applicants.



141. The Plaintiffs/Applicants have therefore failed to meet the threshold for the grant of an order for temporary injunction.

Disposition.

142. The upshot of the foregoing is that the Plaintiffs/Applicants application dated 16th December, 2024 lacks merit and it is hereby dismissed with costs.

143. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 25TH DAY OF SEPTEMBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of:

Miss Esang for Kemunto for the 1st Defendant/Respondent.

Mr. Ojwang for 2nd Defendant/Respondent.

No appearance for Plaintiff.

Court Assistant; Mr. Joseph Makori.

