



**Kigen v Mwaura & 9 others (Environment and Land Case E053 of 2024)
[2025] KEELC 6180 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E053 OF 2024**

**CK YANO, J
SEPTEMBER 25, 2025**

BETWEEN

MARGARET JEPCHUMBA KIGEN PLAINTIFF

AND

PETER NJUGUNA MWAURA 1ST DEFENDANT

ROSEBELLA KEMBOI 2ND DEFENDANT

JONATHAN SANG 3RD DEFENDANT

VALLEY MAPS SURVEYORS 4TH DEFENDANT

ASSISTANT COUNTY COMMISSIONER KAPSERET SUB-COUNTY 5TH DEFENDANT

THE COUNTY LAND REGISTRAR UASIN GISHU COUNTY 6TH DEFENDANT

THE ATTORNEY GENERAL 7TH DEFENDANT

BAYETE FARMERS CO-OPERATIVE SOCIETY LIMITED 8TH DEFENDANT

WENDANI FARMERS CO-OPERATIVE SOCIETY LIMITED . 9TH DEFENDANT

DIRECTOR OF CO-OPERATIVES & ENTERPRISE DEVELOPMENT UASIN GISHU COUNTY 10TH DEFENDANT

RULING

1. By a Notice of Motion brought under certificate of urgency dated 18th September, 2024 and amended on 16th December, 2024 the Plaintiff/Applicant seeks for:-

a. Spent.



- b. Spent.
 - c. An order of temporary injunction be issued restraining the Defendants/Respondents, their servants, agents or any other persons acting on their behalf from trespassing, re-surveying, subdividing, altering the existing boundaries and/or carrying out any other activity on the suit parcel of land affecting the suit parcel of land no. Ngeria/Kesses Block 5 (Bayete)/27 measuring approximately 8 acres pending the hearing and determination of this suit.
 - d. Costs of this application be provided for.
2. The application is anchored on the grounds on the face of it and supported by an affidavit of even date sworn by the Plaintiff. She avers that she is the registered owner of land parcel no. Ngeria/Kesses Block 5 (Bayete)/27 measuring 8 acres (the suit property), which she purchased in 2012. That the Defendants have trespassed into the suit property intending to re-survey and sub-divide it to third parties who have no claim over it, under the pretext that her title was fake and was cancelled and/or revoked vide Gazette Notice No. V.L CXIX No. 97 17/7/2017. She deponed that the Defendants never challenged her title or ownership of the land or presented proof of the alleged cancellation/revocation.
 3. The Plaintiff averred that the said Gazette Notice cancelled title deeds for land parcel No. 11130 belonging to the 8th and 9th Defendants, which was subdivided on 30/9/1994 vide a court order issued in Eldoret HCCC No. 266 of 1976 between the two groups. That the resultant L.R. No. 11130/1 owned by the 8th Defendant was later subdivided into Ngeria/Kesses Block 5 (Bayete)/1-65 which she purchased as a member thereof. She averred that her title is valid and has not been revoked, and that there is no proof of such revocation.
 4. The Plaintiff deponed that the Defendants' actions are actuated by mischief, malice and personal interests, and are interfering with her private property without any just cause. Further, that they are a violation of her rights under Article 40 of *the Constitution*. She avers that she will suffer irreparable loss and damage if the Defendants are not restrained, thus it is in the interests of justice that the orders sought are granted.
 5. The 1st-3rd Defendants opposed the Application through a Replying Affidavit sworn by Peter Mwaura Njuguna, the 1st Defendant herein. He deponed that he hails from Ngeria/Kesses Block 5 (Bayete)/38 which is registered in his father's name. That he is also the chairman of the harmonizing and reconciliation adhoc committee of the 8th and 9th Defendants. He averred that the Plaintiff's land came from L.R. No. 11130/1 which was itself hived off of L.R. No. 11130 that was owned jointly by the 8th and 9th Defendants.
 6. The 1st Defendant averred that after the 8th Defendant subdivided and allocated its land to its members, several issues arose. He explained that it was realised that there were no access roads to some plots, the sizes of the plots on the titles differed from the actual sizes on the ground and that some members of the 9th Defendant were settled on its land. That certain legal processes such as mutation of the mother title were either haphazardly done or not done at all. That to solve the problems bedevilling both the 8th and 9th Defendants, which all translated to boundary disputes, they enlisted the help of the 4th-7th Defendants in their facilitative capacities. That they held several meetings with the 4th-7th Defendants as well as the Mediation Registry at Eldoret which culminated in the Dispute Resolution Report dated 18th June, 2024.
 7. He deponed that having reached a consensus, his committee commenced the process of harmonizing and re-planning the farm to resolve the above mentioned issues, which is the process sought to be stopped by ELC No. E052 of 2024. That the Plaintiff's Plot No. 27 though measuring 8 acres on paper



actually measures 5 acres on the ground. That this is what they seek to resolve as shown in the PDP that they annexed, which process the Plaintiff seeks to stop through this suit. He deponed that the greater public good will be served if the orders sought are denied, adding that the application is defective in form and substance and that it has not satisfied the ingredients for grant of a temporary injunction.

8. In her Supplementary Affidavit dated 30th October, 2024, the Plaintiff explained that she bought the suit land in 2012 from one Mr. Ngungute Kariuki who was a member of the 8th Defendant. That at the time, she was not informed of any variations in the size of the land, and neither was it revealed during due diligence. She conceded that there was one access road on the land, but the said road could not cause a variation on the size of the land from what appears in the title deed. She denied participating in any meeting that resulted in the proposed sub-division that will affect her land. She also denied the allegation that members of the 9th Defendant were settled on her land warranting the re-survey thereof.
9. The Plaintiff clarified that she had no boundary disputes with any of her immediate neighbours, and neither did she know of any such dispute between the 8th and 9th Defendants to justify the re-survey and re-plan of her land. That she was unaware of any court proceedings nor was she involved in any mediation with regards to the land. Further, that a mediation agreement is binding only to the parties in dispute and not to third parties. She also did not know of the committee established to harmonize the boundaries, which exercise she termed unlawful as it aimed at unlawful re-surveying and subdividing her land.

Submissions:

10. The Application was canvassed by way of written submissions.

Plaintiff/Applicant's Submissions;

11. The Plaintiff/Applicant's submissions are dated 2nd April, 2025 where it was argued that the Plaintiff is the registered owner of the suit land and holds a valid title thereto, and that Kenya Gazette Notice No. V.L CXIX No. 97 17/7/2017 does not affect her land. For these reasons, it was submitted that the Plaintiff had a prima facie case as defined in *Mrao Ltd vs First American Bank of Kenya* [2003] eKLR and *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR.
12. Counsel submitted that the Plaintiff stands to suffer irreparable loss through loss of 1.5 acres of her land if the subdivision is allowed to continue. Further, that it will create competing interests in her land, interfere with her peaceful possession of the land and potential economic losses from being unable to use her land to its full extent. Counsel cited the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR.
13. Counsel submitted that the Plaintiff had proved that she was the registered owner of the land, while the Defendants have not provided any legitimate document to support their claim. Counsel urged that the defendants will suffer no prejudice if the injunctive orders are issued, as opposed to the Plaintiff who stands to suffer loss of her land through the unlawful actions of the Defendants. Counsel thus submitted that the balance of convenience tilts in favour of the Plaintiff. On costs, Counsel submitted that they should be awarded to the Plaintiff.

1st-3rd Defendants/Respondents Submissions;

14. In the 1st-3rd Defendants' submissions dated 5th April, 2025, it was submitted that the law governing injunctions is Section 63(c) of the *Civil Procedure Act*, Article 23(3) of *the Constitution* and Order 40 Rule 1(a) & (b) of the Civil Procedure Rules. Counsel submitted that a party seeking an injunction must meet the 3 conditions set out in *Giella vs Casmman Brown & Co. Ltd* (1973) EA 358. On



prima facie case, Counsel submitted that the Plaintiff is estopped from disowning a class decision by members of the 8th & 9th Defendants to correct outstanding boundary issues and access roads. Counsel cited Section 120 of the *Evidence Act* and relied on *Mrao vs First American Bank of Kenya Ltd* (Supra). Counsel submitted that the Plaintiff was pursuing injunctive orders against government officials unlawfully, without justification and without issuing prior notice as required under Section 13A of the *Government Proceedings Act*.

15. Counsel submitted that irreparable harm had not been established. Counsel explained that a public exercise affecting the whole community cannot be said to target one individual so as to deprive or dispossess her. Counsel argued that once the exercise is complete, a report would be tabled and if the Plaintiff did not agree with it, she would have the option of challenging it in court. Counsel opined that the Plaintiff's land can be quantified as it has a value.
16. With regards to the balance of convenience, Counsel argued that the acts complained of by the Plaintiff are actually not interference and neither do they amount to trespass. Counsel argued that the Defendants have acted in public interest thus their actions should be allowed to run the full course. In support of this argument, Counsel referred the court to the definition of public interest given by the Black's Law Dictionary 9th Edition at page 50 and cited Nairobi CA No. 41 of 1986, *Theresa Shitaka vs Mary Mwamodo & 4 Others*. Counsel concluded that the current application does not meet the threshold for grant of an interim order of injunction.

Analysis and Determination:

17. I have considered the application herein, the replying affidavit and the rival submissions. The main issue for consideration is whether the Plaintiff is deserving of the order of temporary injunction pending the hearing and determination of this suit.
18. The law regarding grant of interlocutory injunctions is Order 40 Rule 1 of the Civil Procedure Rules, which provide as follows:-
Where in any suit it is proved by affidavit or otherwise:
 - (a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree;
 - (b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing 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 order.
19. Order 40 therefore gives the court discretion to issue orders which are in the nature of an injunction restraining dealings on property pending determination of a suit or until further orders by the court. The conditions for the grant of interim injunctions are well known having been settled in the now famous case of *Giella vs Cassman Brown & Co. Ltd* (1973) E.A 358 where it was held that:

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be 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.”

20. The first element to be established by the Plaintiff herein is that she has a prima facie case, which the Court of Appeal in *Mrao Ltd vs First American Bank Of Kenya Ltd (2003) eKLR*, construed as follows:-

“... 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 legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

21. The Plaintiff submits that she has established a prima facie case as she is the registered owner of the suit property. She has exhibited a title deed to that effect showing that the land measures approximately 3.24 Hectares, which translates to about 8 Acres, and it is indeed registered in her name.
22. Being so registered as the owner thereof, Section 24(a) of the *Land Registration Act* vests in her the absolute ownership of the land. Under the said provision, the Plaintiff is also entitled to all rights and privileges belonging or appurtenant to such ownership and which arise out of such registration. The Defendants actions therefore are in direct violation of her said rights and privileges which include peaceful possession and occupation of the land.
23. The Defendants did not dispute that the suit property belongs to the Plaintiff, neither did they claim that the land was not legally acquired. The fact that the Defendants’ actions are intended to benefit the larger community does not in itself form a basis for limiting or infringing on the Plaintiff’s right to her property as enshrined at Article 40 of *the Constitution*.
24. I am well aware that at this stage, the court is not required to determine the merits and demerits of the parties’ claims. The court is only required to determine whether the Applicant has established a prima facie case. See the case of *Silvester Momanyi Marube vs Guizar Ahmed Motari & Another (2012) eKLR*, where Odunga J. held that:-

“In determining this application, I am well aware that at this stage the court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law and that in an application for injunction although the court cannot find conclusively who is to be believed or not, the court is not excluded from expressing a prima facie view of the matter and the court is entitled to consider what else the deponent to the supporting affidavit has stated on oath which is not true.”

25. That being the case, from the totality of the material before this court at this stage, I am satisfied that the Plaintiff has established that she has a prima facie case with a probability of success.
26. Secondly, an applicant is required to show that she stands to suffer irreparable loss if the order of injunction is not issued. The Plaintiff herein alleges that she will suffer irreparable loss which cannot be compensated by way of damages. In *Halsbury’s Laws of England, Third Edition, Volume 21, paragraph 739, page 352*, the element of substantial loss is well explained that:-

“It is the very first principle of injunction law that prima facie the court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy. Where the court interferes by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds first, that the injury is irreparable



and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question...”

27. The Plaintiff states that arising out of the Defendants’ actions, she will suffer loss of 1.5 acres of her land if the subdivision is allowed to continue. That the subdivision will also create competing interests in her land and interfere with her peaceful possession thereof. It has also been alleged that the Plaintiff will also suffer potential economic losses from being unable to use her land to its full extent.
28. It has been alleged that the purported harmonisation exercise that has led to the re-survey and intended subdivision is a class decision by the members of the 8th & 9th Defendants. I have perused the Defendant’s annexures and have seen no proof that the Plaintiff herein was invited to any of the alleged meetings that led to the purported harmonization and re-planning exercise. Her name does not also appear anywhere on the Report on Dispute Settlement arising out of the mediation process.
29. Aptly put, the Plaintiff now stands to suffer the loss of her land, among other losses as particularised herein, yet she was not part of the dispute that led to the purported harmonization. There can be no greater harm than where one has been condemned unheard, as appears to have been the case herein.
30. In my opinion, the Plaintiff has satisfactorily set out the nature of the harm she stands to suffer at the hands of the Defendants, which in my view cannot be quantified by damages. But even if the land can be valued and/or quantified as alleged by the Defendants, as indicated in the above passage from the Halsbury’s Laws of England, the fact that the land can be valued is no reason to deny the injunction if the Applicant’s rights cannot be fully protected.
31. This means that while a court may award damages as an alternative, they cannot always fully address the specific nature of the harm or prevent ongoing injury that an injunction could. This was captured in *Joseph Siro Mosioma vs Housing Finance Company of Kenya Limited & 3 Others* (2008) eKLR, where it was held as follows by Warsame J (as he then was) that:-

“... damages is not automatic remedy when deciding whether to grant an injunction or not. Damages is not and cannot be substituted for the loss which is occasioned by a clear breach of the law, in any case, the financial strength of a party is not always a factor to refuse an injunction. More so a party cannot be condemned to take damages in lieu of his crystalized right which can be protected by an order of injunction.”
32. I am satisfied that the concerns raised by the Plaintiff are all valid, and that if the Defendants are allowed to continue with the said harmonization process, the Plaintiff will suffer irreparable loss. Accordingly, I am satisfied that the Plaintiff has surmounted the second condition.
33. Finally, where the court is in doubt as to whether to issue the injunction, it is required to determine the issue on a balance of convenience. *Ojwang, Ag. J* (as he then was), in *Amir Suleiman vs Amboseli Resort Limited* (2004) eKLR defined what the term balance of convenience means by stating that:-

“The Court in responding to prayers for interlocutory injunctive reliefs, should always opt for the lower rather than the higher risk of injustice.”



34. In other words, the Plaintiff must show that the comparative mischief which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it (see Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR).
35. I have no doubt that if the Defendants are allowed to proceed with re-surveying and subdivision of the land, the nature and character of the suit property will be altered significantly. As earlier stated, there is no indication that the Plaintiff was allowed to defend her entitlement to the suit land before the decision to vary the sizes of the plots was made. There is therefore need to preserve the property that is subject to these court proceedings so as to prevent the court from giving orders in vain upon hearing and determining a suit. For this reason, this court is satisfied that the balance of convenience if I had doubt tilts in favour of the Plaintiff.
36. The sum total of the foregoing deliberations is that the Plaintiff has met the threshold for grant of temporary injunction. The same is hereby allowed as prayed.

Orders:

37. In the circumstances, the application dated 16th December, 2024 is allowed in the following terms:-
- a. An order of temporary injunction be and is hereby issued restraining the Defendants/ Respondents, their servants, agents or any other persons acting on their behalf from trespassing, re-surveying, sub-dividing, altering the existing boundaries and/or carrying out any other activity on or affecting the suit parcel of land No. Ngeria/Kesses Block 5 (Bayete)/27 measuring approximately 8 acres pending the hearing and determination of this suit.
 - b. Costs of this application will be in the cause.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 25TH DAY OF SEPTEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Ms. Odeyo for 5th, 6th & 7th Defendants.

Ms. Tanui holding brief for Mwirigi 1st -3rd Defendants.

No appearance for Plaintiff.

No appearance for 4th, 8th, 9th & 10th Defendants.

Court Assistant - Laban.

